

Moving For Remand: When Have You Lost Your Chance?

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If you actively litigate your removed case in federal court before timely moving to remand, do you waive the right to remand? It depends on the Circuit. A February 2016 decision from the Southern District of West Virginia highlights the importance of knowing the rules that apply in the Circuit in which you litigate.

In *Central West Virginia Regional Airport Authority, Inc. v. Triad Engineering, Inc.*, No. 2:15-cv-11818, 2016 WL 685086 (S.D. W. Va. Feb. 18, 2016), the defendant opposed the plaintiff's motion to remand the case to the state court, asserting that the plaintiff had waived his right by filing several documents in the federal court, including a motion to dismiss, various stipulations, and discovery. In support, the defendant cited to two district court cases that adopted the Eighth Circuit's holding that a plaintiff waives its right to remand when it litigates its case in federal court.

Rejecting the defendant's argument, the court noted that the Fourth Circuit – the circuit in which the court sat – has not adopted the Eighth Circuit's rule. Contrary to the Eighth Circuit rule, the court held that precedent from the Fourth Circuit suggests the opposite would be true – “that a timely-filed motion for remand renders the waiver doctrine inapplicable.” *Id.* at *16 (citing *King v. Marriott Int'l, Inc.*, 337 F.3d 421 (4th Cir. 2003)). Based on this authority, the court held the plaintiff had not waived its right to seek remand.

Preservation Issue:

In certain circuits, a party waives its right to remand a case to state court when it actively litigates its case in federal court prior to moving to remand.

Tips:

Know the rules that apply in your Circuit. While the plaintiff in *Triad Engineering* successfully remanded its case to state court, a similarly situated plaintiff in the Eighth Circuit, for example, would have waived its right to remand by litigating its case in federal court before timely moving to remand.

And if some pleading is required before the time for remand, such as the deadline to file an answer, consider including in the pleading an express caveat that the filing is to satisfy the requirements of the rule and not a waiver of the right to seek remand.