

THOUGHT LEADERSHIP

News

FIFTH CIRCUIT: “COMPLETE DIVERSITY IS STILL REQUIRED EVEN IF ONE OR MORE DEFENDANTS HAVE NOT BEEN SERVED.”

Newsbrief

31 OCT 2022

Also mid last week, the United States Court of Appeals for the Fifth Circuit held that “snap removals,” those in which a defendant tries to remove an action before a resident co-defendant has been served, are not permitted absent full diversity of citizenship.

Even though this case (*In Re: Levy*, 2022 WL 14732482 (5th Cir. October 26, 2022)) arose out of the Eastern District of Louisiana, the parties cited apparently contradictory Texas cases to determine whether snap removals were allowed. 28 U.S.C. § 1441(b)(2) states that an action that is otherwise removable and based solely on diversity of citizenship may not be removed if any defendant is joined and served. Relying on this and *Texas Brine Co., LLC v. American Arbitration Association, Inc.* 955 F.3d 482 (5th Cir. 2020), Liberty mutual argued that that snap removals were permissible. However, the Court sided with the plaintiffs and *New York Life Ins. Co. v. Deshotel*, 142 F.2d 873 (5th Cir. 1998) to hold that *Texas Brine* was only allowed a “snap removal” because the parties were completely diverse. “[A] defendant may not remove an otherwise-removable matter if any properly joined defendant is a citizen of the forum.”