

Press Release



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FOR IMMEDIATE RELEASE

March 25, 2016

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En Banc Fifth Circuit Upholds Defendants' Rights to Remove Suits to Federal Court

(*Flagg v. Stryker Corp.*)

"The Fifth Circuit has taken an important step toward ending plaintiffs' lawyers' fraudulent joinder of defendants to keep cases in sympathetic state courts. The Constitution's Framers viewed the right to remove cases to federal court as an important safeguard against the bias that state courts sometimes exhibit towards local plaintiffs."—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—The U.S. Court of Appeals for the Fifth Circuit late yesterday issued an *en banc* decision that broadly supports the right of defendants to remove cases from state to federal court, and that prevents plaintiffs from blocking removal by improperly joining extraneous parties. The 11-4 decision in *Flagg v. Stryker Corp.* overturned a previous panel decision that had denied removal rights. The decision was a victory for WLF, which filed a brief urging the court to support broad removal rights.

Where diversity of citizenship exists in connection with a lawsuit filed in state court (that is, the plaintiff and defendant are citizens of different states), federal law generally permits the defendant to remove the case to federal district court. Because most plaintiffs' attorneys prefer to keep their suits in state court, they will sometimes block removal by suing a defendant who shares the plaintiff's citizenship—thereby eliminating complete diversity of citizenship. This is commonly known as "fraudulent joinder." The fraudulent-joinder doctrine prevents such maneuvers by decreeing that removal is still permitted when the claims against the nondiverse defendant are patently invalid.

In a product-liability case arising under Louisiana law, the Louisiana plaintiff sued both a medical-device manufacturer and the Louisiana doctor who had implanted the device. The Fifth Circuit agreed with WLF that the Louisiana doctor was improperly joined because the claim against the doctor was premature as a matter of law—Louisiana medical malpractice law requires plaintiffs to bring their claims to a medical review board before filing a malpractice claim in court. The Fifth Circuit held that joinder was improper because, at the time of removal, the plaintiff had not yet completed review-board proceedings—even though (as the dissent noted) the right to sue the doctor would eventually ripen.

After the decision, WLF issued the following statement by Chief Counsel Richard Samp: "The Fifth Circuit has taken an important step toward ending plaintiffs' lawyers' fraudulent joinder of defendants to keep cases in sympathetic state courts. The Constitution's Framers viewed the right to remove cases to federal court as an important safeguard against the bias that state courts sometimes exhibit towards local plaintiffs. In the absence of the fraudulent-joinder doctrine, a plaintiff could always avoid removal by adding random defendants to a suit."

WLF is a free-market, public-interest law firm and policy center that seeks to ensure that economic liberty is not impeded by excessive litigation.

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