

SOUTHERN DISTRICT CIVIL ROUNDUP

When an Amended Complaint Undoes Removal

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Under 28 U.S.C. §1441, a defendant may remove to federal court any civil action brought in state court over which the federal district courts would have had original jurisdiction. For a plaintiff who deliberately chose a state forum, removal can come as an unwelcome surprise.

Historically, the plaintiff's options for undoing it were limited: challenge the removal as procedurally or jurisdictionally defective, or ask the federal court to exercise its discretion to decline supplemental jurisdiction over state law claims. A plaintiff who attempted to "plead out" of federal court by amending the complaint after removal often met resistance from courts concerned about forum manipulation.

The Supreme Court's unanimous decision in *Royal Canin U.S.A. v. Wullschleger*, 604 U.S. 22 (2025), changed the calculus by holding that, in removed cases as in original ones, federal jurisdiction depends on the operative, amended complaint. Southern District Judge Jed S. Rakoff's recent decision in *Jason Emer MD New York City v. Kelley*, 2026 WL 3056866 (S.D.N.Y. Oct. 13, 2026), applies that reasoning to diversity jurisdiction and holds that a post-removal amendment naming a non-diverse plaintiff destroys diversity and requires remand under 28 U.S.C. §1447(c).

Royal Canin U.S.A. v. Wullschleger

In *Royal Canin*, the plaintiff sued in Missouri state court, asserting claims under both federal and state law concerning the marketing of prescription dog food. The defendants removed the case based on federal question jurisdiction, with the court exercising

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supplemental jurisdiction over the state law claims. The plaintiff then amended her complaint to delete every reference to federal law and moved to remand. The Eighth Circuit reversed the district court's denial of remand.

In the Supreme Court, the defendants argued that "[t]he amendment of a complaint following removal of a suit to federal court cannot divest that court of supplemental jurisdiction." *Royal Canin*, 604 U.S. at 32.

Faced with a circuit split in which the First, Third, Fourth, Sixth, and Eleventh Circuits had held that jurisdiction in a removed case must be decided based on the original complaint and "a post-removal amendment cannot divest a federal court of jurisdiction," *Royal Canin*, 604 U.S. at 30, the Supreme Court unanimously affirmed the Eighth Circuit's deviating approach.

Writing for the court, Justice Elena Kagan explained that "[i]f a plaintiff amends her complaint, the new pleading 'supersedes' the old one: The 'original pleading no longer performs any function in the case.'" *Royal*

Canin, 604 U.S. at 35. Accordingly, “[w]hen a plaintiff amends her complaint following her suit’s removal, a federal court’s jurisdiction depends on what the new complaint says.” *Royal Canin*, 604 U.S. at 30.

The court grounded its holding in the text of §1367, which, it observed, does not distinguish between removed cases and cases originally filed in federal court. The court also emphasized the “uniformity... between original and removed cases,” explaining that the appropriateness of federal jurisdiction “does not depend on whether the plaintiff first filed suit in federal or state court” but rather “on the substance of the suit—the legal basis of the claims (federal or state?) and the citizenship of the parties (diverse or not?).” *Royal Canin*, 604 U.S. at 38-39.

Where “[t]he operative pleading no longer supports federal jurisdiction,” the court concluded, “the federal court must remand the case to the state court where it started.” *Royal Canin*, 604 U.S. at 39.

Two aspects of *Royal Canin* are particularly significant for practitioners. First, once the federal claims are gone, remand of the remaining state law claims is not a matter of the district court’s discretion under §1367(c)—the court simply lacks jurisdiction. Second, the court stated, albeit in dicta, that “in removed cases too, amending a complaint to join a non-diverse party destroys diversity jurisdiction,” citing 28 U.S.C. §1447(e), which address post-removal joinder of non-diverse defendants. *Royal Canin*, 604 U.S. at 38. *Emer* tests that dicta in the context of a non-diverse plaintiff.

Emer v. Kelley

Defendant Mason Kelley served as Head of Sales for a medical spa operated by Jason J. Emer, MD, Professional Corporation (PC), a California corporation doing business in New York as “Jason Emer MD New York City.” Plaintiffs (originally listed as Jason Emer MD New York City, and Jason Emer, M.D.) alleged that Kelley granted unauthorized discounts on completed procedures and failed to properly charge for additional services, and that he falsely promised to “own the pricing error” and “cover the difference.”

Plaintiffs sued in New York state court asserting faithless servant, breach of fiduciary duty, and fraud claims, naming as plaintiffs “Jason Emer MD New York City” and Dr. Emer himself.

Kelley removed on diversity grounds, asserting that he was a citizen of California and, based on the complaint, that plaintiffs, Dr. Emer and Jason Emer MD New York City, were both citizens of New York. Plaintiffs moved to remand, arguing that Dr. Emer, like Kelley, was domiciled in California.

In opposing remand, Kelley submitted evidence that “Jason Emer MD New York City” was not a registered New York entity and that the only entity with “Jason Emer” in its name was “Jason J. Emer, MD, PC,” registered in California. At oral argument, plaintiffs’ counsel conceded that the PC was the proper plaintiff, and Judge Rakoff permitted plaintiffs to file an amended complaint naming the PC as a plaintiff, followed by supplemental briefing on remand.

Post-Removal Amendment Destroys Diversity

Judge Rakoff concluded that the amended complaint, which named a California plaintiff opposite a California defendant, eliminated complete diversity and required remand.

He reasoned that *Royal Canin* applied because: “(1) subject matter jurisdiction limits federal courts’ power to hear cases; (2) in both original and removed cases, subject matter jurisdiction is determined based on the operative, amended, complaint; (3) the requirements for diversity jurisdiction are the same in original and removed cases; and (4) the Supreme Court has held that, in an original case, the addition of a non-diverse party in an amended complaint eliminates diversity jurisdiction.” *Emer*, 2026 WL 3056866 at *3. It followed, the court concluded, that the same result must occur in a removed case, and that the *Royal Canin* dicta was “legally correct.”

The court rejected Kelley’s argument that remand was inconsistent with the time-of-filing rule, under which a party’s citizenship is evaluated when suit is brought “and never again later.” Relying on *Royal Canin*, Judge Rakoff explained that the rule is a narrow exception that “concerns only the actual ‘state of things’ relevant to jurisdiction—meaning, the facts on the ground, rather than... the claims and parties that the plaintiff includes in a complaint.” *Emer*, 2026 WL 3056866 at *4.

Because the issue was which parties the plaintiffs had named, not a post-filing change in any party’s citizenship, the time-of-filing rule did not apply. Nor

did the fraudulent joinder doctrine save removal: although Kelley argued that the fraudulent joinder rule applied to Dr. Emer, he did not contend that it applied to the PC—his actual employer—and the PC “independently defeat[ed] diversity jurisdiction.”

As to attorneys’ fees, Judge Rakoff declined to award fees under §1447(c). He concluded that removal was objectively reasonable based on the original complaint’s allegations that the practice was located in New York, and that neither Kelley’s own California lawsuit alleging that Dr. Emer resided in California nor plaintiffs’ pre-removal evidence of Dr. Emer’s California domicile presented the kind of unusual circumstances that would warrant a fee award.

The Path Forward for Practitioners

Royal Canin and *Emer* together offer a practical pathway for plaintiffs back to state court after removal, as well as guidance for the defense.

A plaintiff whose complaint includes a federal claim alongside state law claims can amend to drop the federal claim. Under *Royal Canin*, if no federal claim remains, the federal court lacks supplemental jurisdiction over the state law claims and must remand.

The plaintiff need not persuade the court to decline jurisdiction as a matter of discretion. The tradeoff is that the plaintiff must actually abandon the federal claim, and counsel should carefully consider whether the federal claim offers remedies, such as fee-shifting or statutory damages, that the state law claims do not.

When removal rests on diversity, *Emer* indicates that a plaintiff may end up back in the state forum by amending to add a non-diverse party with a genuine stake in the controversy. The added party, however, must be a “real and substantial part[y] to the controversy.” *Navarro Sav. Ass’n v. Lee*, 446 U.S. 458, 460-61 (1980).

Under the fraudulent joinder rule, courts will disregard nominal or formal parties joined solely to defeat diversity. In *Emer*, the added plaintiff was the defendant’s actual employer and, by plaintiffs’ own concession, the proper party. When a plaintiff seeks to join a non-diverse defendant after removal, 28 U.S.C. §1447(e) expressly gives the court discretion to “deny

joinder, or permit joinder and remand the action to the state court,” so the court will scrutinize the plaintiff’s motives before allowing the amendment.

In many removed cases, the plaintiff will need the defendant’s consent or the court’s leave to amend under Federal Rule of Civil Procedure 15(a)(2). District courts may consider whether a proposed amendment reflects bad faith or forum manipulation in deciding whether to grant leave.

Plaintiffs and their counsel therefore should be prepared to articulate a legitimate, substantive reason for the amendment, such as in *Emer* where the amendment corrected the identity of the proper plaintiff.

For defendants and their counsel, *Royal Canin* and *Emer* underscore that a successful removal may be fleeting. A defendant contemplating removal should evaluate not only the complaint as filed, but also how readily the plaintiff could amend to eliminate the jurisdictional basis. Defense counsel should be prepared to oppose leave to amend where the amendment appears designed solely to defeat jurisdiction.

Conclusion

Judge Rakoff’s decision in *Emer* extends *Royal Canin*’s operative-complaint rule from supplemental jurisdiction to diversity jurisdiction, holding that a post-removal amendment adding a non-diverse party with a genuine stake in the controversy requires remand.

For plaintiffs’ counsel who find themselves in federal court involuntarily, the decisions make a carefully considered amendment a viable path back to state court, provided that the amendment rests on a legitimate basis and does not run afoul of the fraudulent joinder doctrine or §1447(e).

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