

# Product Manufacturer Wins Strategic Victory at the Eighth Circuit Court of Appeals



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Plaintiff sued a wood chipper manufacturer alleging products liability and failure to warn claims under both strict liability and negligence. The manufacturer filed timely, strategic motions resulting in dismissal of the lawsuit in federal district court. In this recent decision by the Eighth Circuit Court of Appeals, the manufacturer prevailed. Given the facts of the case, the manufacturer was certainly deserving of this outcome. However, its victory was by no means preordained. Even when the facts are on your side, it still takes strategic motions and timely navigation of court procedure to win.

## Lessons Learned

**The Importance of Getting to Federal Court.** For a host of reasons, chief among them the procedural rigor and stringent analysis of dispositive motions, federal court is often times a much preferred venue for an out-of-state products manufacturer. As such, a skilled defense lawyer examines every angle of the plaintiff's pleadings filed in state court, seeking a basis for justifying removal to federal court. As illustrated here, one commonly invoked ground is the fraudulent joinder doctrine, whereby federal court jurisdiction is properly laid because plaintiff has improperly named a party strictly for the purpose of defeating diversity jurisdiction. In this case, plaintiff named his supervisor despite the fact that there existed "no cause of action against him," making this a textbook case of fraudulent joinder. On appeal plaintiff tried to make much out of the timing of dismissal of the improperly named party, but the Eighth Circuit clarified that application of its general rule should not be thwarted by the posture of this case. Moreover, the Eighth Circuit affirmed adherence to its rule that—"a district court's error in failing to remand a case improperly removed is not fatal to the ensuing adjudication if federal jurisdictional requirements are met *at the time judgment is entered*"—and that "at the time judgment is entered" should be interpreted literally.

**Knowing when to file a motion to dismiss, and when to hold back.** As the old Kenny Rogers song goes, "you've got know when to hold 'em, and know when to fold 'em." And what is true about poker is, at least in this instance, true about motions to dismiss. In this case, the manufacturer did not file a motion to dismiss. Why? Some seasoned defense lawyers believe in filing a motion to dismiss whenever one is even remotely conceivable. However, as illustrated here, there are sometimes strategic reasons for holding one's cards until a later round. Early in litigation, the manufacturer could have filed a comprehensive motion to dismiss on many possible grounds, including the grounds that ultimately proved successful here. This might have ended the case much earlier. But filing an early motion to dismiss, especially during the infancy of discovery, could merely allow plaintiff the opportunity to amend the pleadings or otherwise refine his theory of the case during discovery. In products liability cases where the law is nuanced and the

facts can be complex, allowing plaintiff's counsel greater leeway can result in a situation where they have painted themselves into a corner. Here, this is what ultimately led to the manufacturer's success, a possibility that arose, once again according to Kenny Rogers, at the moment the manufacturer could confidently say "I can see you're out of aces."

**A Change in Litigation Strategy is not Justification to Amend a Complaint.** Following from above, because the manufacturer was intentional about the timing of its legal strategy, the plaintiff did not have advanced notice of the deficiencies of his complaint. The litigation was at an advanced stage, and granting the motion would have required reopening discovery. Upon later discovering the error of his ways, the plaintiff sought to amend the complaint. However, the Eighth Circuit held that the district court did not err in denying plaintiff's motion to amend to add a claim of agency liability against the manufacturer. The plaintiff actually admitted that he had no other legally recognized way to hold the manufacturer liable. As the Eighth Circuit wisely distinguished, plaintiff's "attempted addition of the claim had more to do with a change in litigation strategy than in the factual or legal basis of his case." The legal standard for being allowed to amend required establishing good cause for his failure to timely amend the complaint, and a change in legal strategy does not meet this standard.

Case reference: *Ellingsworth v. Vermeer Manufacturing Co.*, No. 18-3587 (8th Cir. Feb. 10, 2020).