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Supreme Court to Consider Removal Case

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In a rare moment, the United States Supreme Court has granted *certiorari* in a case involving the removal to Federal District Court of an action filed in State Court. The specific issue is whether Federal District Courts have the authority to excuse the 30-day procedural time limit for removal set out in 28 U.S.C. § 1446(b)(1).¹

The underlying facts of the case are significant. Enbridge is an energy infrastructure company focused on transporting and distributing energy, including crude oil, liquids, and natural gas. Enbridge owns and operates one of the world's largest crude oil and liquids pipeline systems. It operates a pipeline built in 1953 known as Line 5 that extends over 645 miles, traversing Wisconsin and Michigan before crossing into Ontario, Canada. To the point here, a four-mile segment of Line 5 crosses the Straits of Mackinac under a perpetual easement that the state of Michigan granted to Enbridge in 1953. See the map below.

In June 2019, the Michigan Attorney General filed suit on behalf of the People of the State of Michigan. Her complaint alleged that Line 5 was at risk of release in

the Straits of Mackinac due to the "inherent risks of pipeline operations" and potential "anchor strikes" from shipping traffic. The Attorney General sought a shutdown of Line 5, asserting violations of three state laws: the Public Trust Doctrine, common-law public nuisance, and the Michigan *Environmental Protection Act*. Enbridge did not file an answer in the state court action; the parties filed cross-motions for summary disposition on the pleadings, which remain pending.

In November 2020, the State of Michigan filed a second lawsuit in state court, repeating the same basic facts and state law theories alleged in the Attorney General's complaint. Unlike the Attorney General's action, however, the State's action sought to enforce the Governor's deadline of May 2021 for shutting down Line 5. This sparked strong reactions from the Government of Canada, which indicated that a shutdown of Line 5 could constitute a violation of the United States' treaty commitments.

Enbridge removed the State's case to federal court, alleging jurisdiction under the federal common law of foreign affairs. At the same time, a third lawsuit was filed by Enbridge against Michigan state officials in federal court seeking to enjoin the governor's shutdown deadline. Once the Straits controversy was in federal court, the Attorney General agreed to hold her State Court action in abeyance.

In November 2021, the Federal District Court denied the State of Michigan's remand motion, holding that "this case is properly in

federal court."²

The removal statutory scheme is concise. To remove a civil case from state to federal court, a defendant must meet the requirements for removal detailed in § 1446. That statute requires the defendant to file a notice of removal, 28 U.S.C. § 1446(a), within 30 days of the defendant's receipt of the complaint or summons: § 1446(b)(1). However, § 1446(b)(3) allows relief from that 30-day deadline under the following specific circumstances: [I]f the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

Enbridge unquestionably did not comply with § 1446(b)(1)'s initial 30-day removal but argued that equitable circumstances excused it from doing so. In the underlying case here, the Sixth Circuit found otherwise, and held that the 30-day deadline is mandatory.³

The Sixth Circuit deepened a circuit conflict on this issue. The Fifth Circuit agrees with the Eleventh Circuit that the District Court can excuse the 30-day time requirement in certain circumstances, but the Second Circuit—and now the Sixth Circuit—have reached the opposite conclusion.⁴

We now await a resolution of this issue by the Supreme Court. 🐾



CBC NEWS

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TLA Feature Articles and Case Notes

Endnotes

- ¹ No.24-783, *Enbridge Energy, Limited Partnership, et al., Petitioners, V. Dana Nessel, Attorney General of the State of Michigan, on behalf of the People of the State of Michigan, Respondent*.
- ² *Michigan v. Enbridge Energy, L.P.*, 571 F. Supp. 3d 851 (W.D. Mich. 2021).
- ³ *Nessel v. Enbridge Energy, LP*, 104 F.4th 958 (6th Cir. 2024.)
- ⁴ *Gillis v. Louisiana*, 294 F.3d 755 (5th Cir. 2002); *Taylor v. Medtronic, Inc.*, 15 F.4th 148 (2d Cir. 2021.)