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Resolving the Conflict Between Receipt and Proper Service: *Murphy Bros. v. Michetti Pipe Stringing, Inc.*

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Resolving the Conflict Between Receipt and Proper Service: *Murphy Bros. v. Michetti Pipe Stringing, Inc.*

In *Murphy Bros. v. Michetti Pipe Stringing, Inc.*,[1] the United States Supreme Court resolved the conflict over what event triggers the removal period under 28 U.S.C. § 1446(b),[2] proper service or receipt of a copy of the complaint. The Court held proper service begins the removal period.[3]

I. FACTS

Michetti Pipe Stringing, Inc. brought suit against Murphy Brothers, Inc. in Alabama state court on January 26, 1996, seeking damages for breach of contract and fraud. Three days after filing its complaint, Michetti sent a "courtesy copy" of the filed complaint to Murphy Brothers via facsimile. Official service did not occur until February 12, 1996, after the parties failed to reach a settlement. Murphy removed the case to the United States District Court for the Northern District of Alabama on March 13, 1996—thirty days after official service on February 12 but forty-four days after receipt of the courtesy copy of the complaint on January 29. Because Murphy filed the removal notice fourteen days after their receipt of the courtesy copy, Michetti moved to remand the case to state court, asserting that Murphy's removal was untimely.[4]

The district court denied Murphy's motion to remand and held that the thirty-day removal period under 28 U.S.C. § 1446(b) did not commence until Murphy received official service of the complaint. The Court of Appeals for the Eleventh Circuit reversed on interlocutory appeal and instructed the district court to remand the action. The Eleventh Circuit held that the removal period began to run when

1. 526 U.S. 344 (1999).
2. 28 U.S.C. § 1446(b) (1994).
3. 526 U.S. at 356.
4. *Id.* at 348.

Michetti received the courtesy copy of the complaint.[5] Because lower courts were split on the issue, the Supreme Court granted certiorari and held that the thirty-day removal period under section 1446(b) began to run when Murphy received official service of the complaint.[6]

II. LEGAL BACKGROUND

The "receipt" and "proper service" rules developed as courts struggled with the issue of when the thirty-day removal period commenced under 28 U.S.C. § 1446(b).[7] According to section 1446(b):

> The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.[8]

Most courts adopting the receipt rule relied on the plain meaning of section 1446(b) as their basis for holding that the thirty-day removal period commenced when the defendant received an "initial pleading" in the action, regardless of whether the defendant had been officially served.[9] Circuit courts adopting the proper service rule relied on the legislative history of section 1446(b) as their basis for holding that the thirty-day removal period did not commence until the defendant was properly served.[10]

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5. *Id.* at 349.

6. *Id.* at 349, 356.

7. See *Love v. State Farm Mutual Automobile Insurance Co.*, 542 F. Supp. 65 (N.D. Ga. 1982) as the seminal case in the "proper service rule" history and *Tyler v. Prudential Ins. Co. of Am.*, 524 F. Supp. 1211 (W.D. Pa. 1981) as the seminal case in the "receipt rule" history.

8. 28 U.S.C. § 1446(b) (1994).

9. *See* Reece v. Wal-Mart Stores, Inc., 98 F.3d 839, 841 (5th Cir. 1996); Roe v. O'Donohue, 38 F.3d 298, 303 (7th Cir. 1994); Tech Hills II Assocs. v. Phoenix Home Life Mut. Ins. Co., 5 F.3d 963, 968 (6th Cir. 1993); Schnable v. Drexel Univ., No. 95-21, 1995 WL 412415, at *2 (E.D. Pa. July 10, 1995); Trepel v. Kohn, Milstein, Cohen & Hausfeld, 789 F. Supp. 881, 883 (E.D. Mich. 1992); Pillin's Place, Inc. v. Bank One, Akron, N.A., 771 F. Supp. 205, 207 (N.D. Ohio 1991).

10. *See Love*, 542 F. Supp. at 67-68; Marion Corp. v. Lloyds Bank, PLC, 738 F. Supp. 1377, 1379 (S.D. Ala. 1990); Goodyear Tire & Rubber Co. v. Fuji Photo Film Co., 645 F. Supp. 37, 38 (S.D. Fla. 1986); Hunter v. American Express Travel Related Servs., 643 F. Supp. 168, 170 (S.D. Miss. 1986); Thomason v. Republic Ins. Co., 630 F. Supp. 331, 333-34 (E.D. Cal. 1986); Skinner v. Old S. Life Ins. Co., 572 F. Supp. 811, 813 (W.D. La. 1983).

A. The Receipt Rule

Courts adopting the receipt rule held that the thirty-day removal period under section 1446(b) began to run when the defendant received an initial pleading in the action. The rule was applied in cases when the defendant received service but disputed whether it was proper,[11] when the defendant received a copy of an initial pleading before service of process,[12] and when the defendant disputed the date of proper service.[13]

In *Tyler v. Prudential Insurance Co.*,[14] defendant received service but disputed whether it was proper. Plaintiff filed a petition for a rule to show cause in the Court of Common Pleas of Allegheny County on March 3, 1981. Defendant Prudential received a copy of the petition by certified mail on March 4, 1981. On March 16, 1981, defendant filed preliminary objections to the petition and moved for dismissal, arguing, among other things, that service of process was defective. Defendant's preliminary objections were sustained on April 6, 1981, but the court ordered the petition be redesignated as a complaint in assumpsit and served in compliance with the Rules of Civil Procedure. Defendant was served on April 10, 1981, and filed for removal on May 4, 1981. Defendant contended that when the court sustained its objections, the court dismissed the original action and redesignated the petition as a complaint only for the convenience of plaintiff. With the original action dismissed, defendant argued there was no action to remove. Therefore, defendant contended, the removal notice was timely filed on May 4, 1981, because proper service did not occur until April 10, 1981.[15] The court disagreed with defendant, reasoning that the petition qualified as an initial pleading under section 1446(b) and, therefore, the thirty-day time period for removal began to run on March 4, 1981.[16]

District courts in Florida and Michigan relied on *Tyler* when adopting the receipt rule in cases with similar facts. In *IMCO USA, Inc. v. Title*

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11. *See Tyler*, 524 F. Supp. at 1212; IMCO USA, Inc. v. Title Ins. Co. of Minn., 729 F. Supp. 1322, 1322-23 (M.D. Fla. 1990); *Trepel*, 789 F. Supp. at 882.

12. These are the courtesy copy cases. *See* Burr v. Choice Hotels, Int'l, Inc., 848 F. Supp. 93, 93 (S.D. Tex. 1994); Kerr v. Holland America-Line Westours, Inc., 794 F. Supp. 207, 208-09 (E.D. Mich. 1992); *Pillin's Place*, 771 F. Supp. at 206; North Jersey Sav. & Loan Ass'n v. Fidelity & Deposit Co. of Md., 125 F.R.D. 96, 98 (D. N.J. 1988); *Reece*, 98 F.3d at 841.

13. *See Tech Hills II*, 5 F.3d at 966; *Roe*, 38 F.3d at 300.

14. 524 F. Supp. 1211 (W.D. Pa. 1981).

15. *Id.* at 1212-13.

16. *Id.* at 1213.

Insurance Co. of Minnesota[17] and *Trepel v. Kohn, Milstein, Cohen & Hausfeld*,[18] defendants disputed whether they were properly served.[19] In *IMCO USA* the District Court for the Middle District of Florida found that even though plaintiff erred in completing service of process, "[d]efendant was on notice of the pending action through receipt of the 'initial pleading.'"[20] In *Trepel* the District Court for the Eastern District of Michigan declined to rule on whether service was improper and found defendants had "incorrectly interpret[ed] [the phrase 'within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading'] to mean that only proper service of process triggers the statutory period."[21] Both courts granted plaintiffs' motions to remand on the ground that the thirty-day removal period began to run when defendants received a copy of an initial pleading.[22]

In *Tyler* and *IMCO USA*, the district courts focused on achieving uniformity in the federal removal statute even if at the expense of state service requirements.[23] Neither court addressed the plain meaning of the statute. The court in *IMCO USA* disapproved of defendant's "legal maneuvering," implying that manipulating the courts would be easier if the removal statute was interpreted to require proper service before triggering the thirty-day time period.[24]

In *Trepel* another case involving a disputed service question, the court found three reasons to adopt the receipt rule.[25] First, "the legislative history of the 1949 Amendment of [the removal statute] does not lead to the conclusion that the Receipt Rule is demonstrably at odds with Congress' intent or the purpose of the statute" because the receipt rule promotes uniformity in the federal system.[26] Second, "the Receipt Rule arises from a straightforward interpretation of the clear, unambiguous statutory language of 28 U.S.C. § 1446(b)."[27] And finally, the receipt rule is consistent with the interpretive canon that "the removal statute is to be construed narrowly and against removal."[28] The court focused

17. 729 F. Supp. 1322 (M.D. Fla. 1990).
18. 789 F. Supp. 881 (E.D. Mich. 1992).
19. *IMCO USA*, 729 F. Supp. at 1323; *Trepel*, 789 F. Supp. at 882.
20. 729 F. Supp. at 1323.
21. 789 F. Supp. at 882. The inserted language may be found at 28 U.S.C. § 1446(b).
22. *IMCO USA*, 729 F. Supp. at 1323-24; *Trepel*, 789 F. Supp. at 883-84.
23. *Tyler*, 524 F. Supp. at 1213-14; *IMCO USA*, 729 F. Supp. at 1323.
24. 729 F. Supp. at 1323.
25. 789 F. Supp. at 883.
26. *Id.* (citation omitted).
27. *Id.*
28. *Id.*

on the plain meaning of the statute, explaining why Congress added the words "or otherwise" to the removal statute in 1949: "'[Q]uite obviously, Congress, by adding "or otherwise," intended that "receipt" of necessary information about the action pending in the state court, by the named defendant, need not be confined to that had in accordance with the requirements for service set out in the practice of the particular state.'"[29]

The plain meaning argument also persuaded district courts faced with the issue of whether receipt of a courtesy copy of the complaint could trigger the removal period.[30] District courts in New Jersey,[31] Ohio,[32] Michigan[33] and Texas,[34] as well as the Fifth Circuit Court of Appeals,[35] all adopted the receipt rule in the courtesy copy fact scenario.

The New Jersey district court in *North Jersey Savings & Loan Ass'n v. Fidelity & Deposit Co. of Maryland*[36] not only considered the plain meaning argument but also the reality of the courtesy copy situation:

> An attorney who receives a copy of a complaint, which is not stamped "filed" [sic] but is accompanied by a letter which clearly indicates that it has been sent to the court for filing and that the plaintiff intends to go forward with the suit, has been provided with adequate notice that his or her client is being sued. More importantly, the attorney has been provided with a basis upon which to determine if the case is removable.[37]

Substance was to be valued over form in these cases because attorneys who waited for proper service might be tempted to "hesitate before aggressively protecting their client's interests when suits [were] impending against them."[38]

In *Reece v. Wal-Mart Stores, Inc.*,[39] the Fifth Circuit found the plain language of the statute was supported by Congress' policy considerations

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29. *Id.* (quoting Jean F. Rydstrom, Annotation, *When Period for Filing Petition for Removal of Civil Action from State Court to Federal District Court Begins to Run Under 28 U.S.C. § 1446(b)*, 16 A.L.R. Fed. 287, 310 (1973)).

30. *See North Jersey Sav. & Loan Ass'n*, 125 F.R.D. at 98-99; *Pillin's Place*, 771 F. Supp. at 207; *Kerr*, 794 F. Supp. at 213; *Reece*, 98 F.3d at 841; *Burr*, 848 F. Supp. at 94.

31. *North Jersey Sav. & Loan Ass'n*, 125 F.R.D. at 100.

32. *Pillin's Place*, 771 F. Supp. at 207.

33. *Kerr*, 794 F. Supp. at 212-13.

34. *Burr*, 848 F. Supp. at 94-95.

35. *Reece*, 98 F.3d at 841-42.

36. 125 F.R.D. 96 (D. N.J. 1988).

37. *Id.* at 100.

38. *Id.*

39. 98 F.3d 839 (5th Cir. 1996).

in amending the statute's language.[40] Congress's intent, the court reasoned, was to resolve removal issues as quickly as possible.[41] Therefore, holding that receipt of a copy of an initial pleading started the removal clock running would allow removal to occur as soon as possible.[42]

Defendants in *Tech Hills II Associates v. Phoenix Home Life Mutual Insurance Co.*[43] and *Roe v. O'Donohue*[44] disputed the dates of proper service. In *Tech Hills II* the complaint was sent by Federal Express and received by a security guard in defendants' closed office on May 20, 1989. Defendants' counsel received the complaint on May 22, 1989 and filed for removal within thirty days of May 22, 1989. Both parties conceded, however, that formal service did not occur until May 22, 1989, but disagreed about when the removal period commenced.[45] Similarly, in *Roe*, defendant's receptionist received the complaint and summons on February 19, 1991, but defendant's employee who was the ultimate recipient of the papers did not receive them until February 22, 1991. Defendant filed the notice of removal on March 25, 1991, which was timely if the removal period commenced on February 22, 1991.[46]

The Sixth Circuit Court of Appeals in *Tech Hills II* pointed out that the earlier cases adopting the receipt rule focused on the conclusion that "the ambiguous legislative history [did] not compel the conclusion that service of process is necessary to commence the removal period,"[47] whereas the later cases relied on statutory interpretation principles, an approach the court said was a "sounder rationale."[48] The Fifth Circuit in *Roe*, however, parsed the language and reasoned that because "or otherwise" must mean something other than service, there were three categories of receipt that were not service: (1) service of process that is ineffective because of its shortcomings; (2) service of process that is ineffective because the recipient will not sign and return the acknowledgment; and (3) transmission of a courtesy copy to the defendant before service is attempted.[49] The court held, "[v]ia the 'or otherwise' language, § 1446(b) starts the clock with actual receipt in all three

40. *Id.* at 842.
41. *Id.*
42. *Id.*
43. 5 F.3d 963 (6th Cir. 1993).
44. 38 F.3d 298 (7th Cir. 1994).
45. *Tech Hills II*, 5 F.3d at 966.
46. *Roe*, 38 F.3d at 300.
47. *Tech Hills II*, 5 F.3d at 967-68.
48. *Id.* at 968.
49. *Roe*, 38 F.3d at 302-03.

categories."[50] Relying on *Tech Hills II*, the court in *Roe* further held, "[W]e see no escape from the language of the statute. . . . [C]ourts are not authorized to disregard express language just because the legislative history does not echo 'and we really mean it!'"[51]

Circuit courts declined to apply the receipt rule in cases when a defendant only received constructive notice of the action or when a defendant received an unfiled copy of the motion. For example, in *Murphy v. Allora*,[52] counsel for defendant's insurance company received notice via plaintiff's counsel of an action which had been filed against the insured. The District Court for the Eastern District of Virginia would not extend the receipt rule to situations in which the defendant is only "put on notice" that an action has been filed but has not received an initial pleading.[53] The courts in *Schneehagen v. Spangle*[54] and *Leverton v. AlliedSignal, Inc.*,[55] also interpreted section 1446(b) to provide "that the time period for removal begins after receipt of the initial pleading 'upon which such action or proceeding is based.'"[56] Thus, if the defendant received a copy of an unfiled pleading, the removal period had not begun because "[u]ntil the state court action [was] filed, no action or proceeding yet exist[ed]."[57]

B. The "Proper Service Rule"

The court in *Love v. State Farm Mutual Automobile Insurance Co.*[58] held that under the "proper service rule" only proper service of process triggers the removal period; thus, the facts of each case (for example, whether a defendant received a courtesy copy or a copy of the complaint through improper service) are irrelevant because the rule is so easy to apply.[59] In *Love* the District Court for the Northern District of Georgia found that the legislative history of section 1446(b) called for a statutory interpretation opposite the plain meaning interpretation of that section.[60] In 1948 to make the removal procedure more uniform, Congress changed the statute to require defendants to file a removal

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50. *Id.* at 303.
51. *Id.*
52. 977 F. Supp. 748 (E.D. Va. 1997).
53. *Id.* at 752.
54. 975 F. Supp. 973 (S.D. Tex. 1997).
55. 991 F. Supp. 481 (E.D. Va. 1997).
56. *Schneehagen*, 975 F. Supp. at 973 (quoting 28 U.S.C. § 1446(b)); *Leverton*, 991 F. Supp. at 485 (holding receipt is necessary to trigger time period for removal).
57. 975 F. Supp. at 973-74.
58. 542 F. Supp. 65 (N.D. Ga. 1982).
59. *Id.* at 68.
60. *Id.*

petition in federal court instead of state court.[61] Prior to 1948, the removal petition was basically a state court responsive pleading filed under state procedure rules.[62] The 1948 revision required that the removal petition be filed "'within twenty days after commencement of the action or service of process, whichever is later.'"[63] In states like New York, where a plaintiff could begin a suit by serving the defendant with a summons before actually serving or filing a complaint, the removal statute would allow the removal period to expire before the defendant had a copy of the complaint.[64] To solve this problem, in 1949 Congress added the "or otherwise" language to section 1446(b).[65] The court in *Love* reasoned that the addition of "or otherwise" to the statute "was not intended to diminish the right to removal, by permitting a plaintiff to circumvent the already existing requirement of personal service through informal service."[66]

To counter the argument that section 1446(b) is ambiguous, courts adopting the proper service rule made an effort to explain the "or otherwise" language in the statute. In *Skinner v. Old Southern Life Insurance Co.*,[67] the court stated, "We find that the words 'receipt by the defendant, through service or otherwise' means receipt by service or some action which is the equivalent of service."[68] The court did not, however, give specific examples of an action which would be the "equivalent of service."

The district court in *Arnold v. Federal Land Bank*,[69] however, found that *improper* official service was an example of service effected "or otherwise" under section 1446(b).[70] In that case, defendant was first served on September 25, 1989. Service was improper because it gave defendant only fifteen days to answer instead of the thirty days required by Louisiana law. Defendant was properly served on January 29, 1990, and filed a notice of removal on February 21, 1990.[71] The court found this was "a clear example of a defendant being advised of the suit 'through service or otherwise'" because "the September 25, 1989 service

61. *Id.* at 67-68. *See* 62 Stat. 939 (1948).
62. 542 F. Supp. at 67.
63. *Id.* at 68 (quoting 62 Stat. 939).
64. *Id.*
65. *Id.* (citing H.R. Rep. No. 81-352 (1949).
66. *Id.*
67. 572 F. Supp. 811 (W.D. La. 1983).
68. *Id.* at 813.
69. 747 F. Supp. 344 (E.D. La. 1989).
70. *Id.* at 344.
71. *Id.* at 343.

. . . put the defendant on notice that a suit was filed against it in state court and [informed it of] the nature of the suit."[72]

The court's application of *Love* in *Arnold* is not necessarily consistent with other courts' applications of the proper service rule. The court in *Goodyear Tire & Rubber Co. v. Fuji Photo Film Co.*,[73] interpreted *Love* to mean that there were two prerequisites to trigger the removal period: "(1) That the defendant actually receives a copy of the complaint through service or otherwise; and (2) that the defendant has been properly served under state law. The removal period commences on the date both requirements are satisfied."[74]

In its criticism of the receipt rule, the court in *Goodyear* reasoned that "[t]he touchstone [in cases applying the receipt rule] is the receipt of the complaint by the defendant. If the defendant, by the purest chance, found a copy of the complaint on the street, the removal period would begin to run on the date he picks it up."[75] While the court admitted it was using an extreme example, it found the example "demonstrate[d] the onerous burden on a defendant who must show that he did *not* receive a copy of the complaint prior to service of it upon him when challenged by a plaintiff seeking remand."[76]

III. RATIONALE

In *Murphy Bros. v. Michetti Pipe Stringing, Inc.*,[77] the Supreme Court based its holding on the limit of a court's reach.[78] A court cannot exercise jurisdiction over someone until that person has been served with process and made an official party to the action.[79] Until service of process has been effected, the Court implied, a court cannot expect a potential defendant to act as a party to the action under section 1446(b).[80]

Echoing the reasoning in *Love,* the Court also addressed the legislative history of the statute and concluded:

> Nothing in the legislative history of the 1949 amendment so much as hints that Congress, in making changes to accommodate atypical state commencement and complaint filing procedures, intended to dispense

72. *Id.* at 344.
73. 645 F. Supp. 37 (S.D. Fla. 1986).
74. *Id.* at 38.
75. *Id.* at 39.
76. *Id.*
77. 526 U.S. 344 (1999).
78. *Id.* at 350.
79. *Id.*
80. *Id.*

> with the historic function of service of process as the official trigger for responsive action by an individual or entity named defendant.[81]

To make sense of the "or otherwise" language, the Court drew its reasoning from *Potter v. McCauley*.[82] The court in *Potter* fit the various state provisions for service of the summons, and filing or service of the complaint, into four categories that would all fall into the "or otherwise" language of the removal statute:

> First, if the summons and complaint are served together, the 30-day period for removal runs at once. Second, if the defendant is served with the summons but the complaint is furnished to the defendant sometime after, the period for removal runs from the defendant's receipt of the complaint. Third, if the defendant is served with the summons and the complaint is filed in court, but under local rules, service of the complaint is not required, the removal period runs from the date the complaint is made available through filing. Finally, if the complaint is filed in court prior to any service, the removal period runs from the service of the summons.[83]

The Court noted that the "or otherwise" language in section 1446(b) is also in Federal Rule of Civil Procedure 81(c).[84] Rule 81(c) was interpreted to give defendant at least twenty days after service of process to respond.[85] From this, the Court concluded that if the "service or otherwise" language of Rule 81(c) was not intended to let parties bypass the service requirement, then "that same language also was not intended to bypass service as a starter for § 1446(b)'s clock."[86]

In its criticism of the receipt rule, the Court expressed concern for foreign individuals and entities.[87] The rule could be unfair to those parties because formal service takes longer abroad.[88] In addition, if the foreign defendant received a copy of the complaint by facsimile, but was not served with process until thirty days later, plaintiffs would be able to keep foreign defendants in state courts.[89]

In conclusion, the Court emphasized Congress's lack of specificity in the statute:

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81. *Id.* at 352-53.
82. 186 F. Supp. 146, 149 (D. Md. 1960).
83. *Murphy Bros.*, 526 U.S. at 354.
84. *Id.*
85. *Id.* at 355.
86. *Id.*
87. *Id.* at 356.
88. *Id.*
89. *Id.*

> [I]t would take a clearer statement than Congress has made to read its endeavor to extend removal time (by adding receipt of the complaint) to effect so strange a change — to set removal apart from all other responsive acts, to render removal the sole instance in which one's procedural rights slip away before service of a summons, *i.e.*, before one is subject to any court's authority.[90]

The dissent, finding the plain language of the statute perfectly clear, accused the majority of "superimpos[ing] a judicially created service of process requirement onto § 1446(b)."[91] The dissent agreed with the lower court's reasoning and disagreed with the majority's departure from the principles of strictly construing removal statutes.[92]

IV. IMPLICATIONS

The Supreme Court's holding in *Murphy Brothers* departs from the well-established principle that the removal statute is to be strictly construed against removal.[93] Therefore, the dissent's point noting this departure is well taken. By holding that the removal period is not triggered until proper service, the Court broadens the jurisdiction of federal courts by allowing defendants more time to file for removal when they receive a copy of the complaint before proper service is effected.

This holding clearly benefits the defendant by allowing more time in which to file for removal; contrarily, it disadvantages the plaintiff by lengthening the time before the plaintiff knows whether the case will proceed in federal or state court. Also, both parties are potentially disadvantaged in their attempts to resolve the case before trial. While the defendant can delay filing for removal until after proper service, but at the same time possess the filed complaint, the plaintiff may choose to serve the defendant properly to trigger the removal period, thus shortening the parties' negotiation.

Jurisdictions already following the proper service rule, but allowing improper service to trigger the removal period (as falling under the "or otherwise" language) will also be affected by the Court's holding. Under the Court's rationale, the removal period cannot begin until the defendant is *properly* within the power of the court.

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90. *Id.*
91. *Id.* at 357 (Rehnquist, C.J., dissenting).
92. *Id.*
93. *Tyler*, 524 F. Supp. at 1213; *Trepel*, 789 F. Supp. at 883.

The American Law Institute is seeking to change the language of section 1446(b) to conform with the Court's decision in *Murphy Brothers*.[94] While the present language of section 1446(b) reads: "The notice of removal . . . shall be filed within thirty days after the receipt by the defendant, through service or otherwise," the proposed revision reads, "The notice of removal . . . shall be filed within 30 days after the receipt or possession by a defendant."[95] The proposed revision adopts the dual requirement set out by the Court in *Murphy Brothers* that the defendant must be properly served and have received a copy of the complaint:

> The addition of the words "or possession" allows the period for removal to commence when a defendant who has previously received a copy of the complaint or other initial pleading, as will be the case when process has been served but has been ruled ineffective, is later effectively served with summons or waives such service.[96]

Thus, the revision codifies the Court's holding by requiring only effective service to trigger the removal period.

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94. AMERICAN LAW INSTITUTE, FEDERAL JUDICIAL CODE REVISION PROJECT: TENTATIVE DRAFT NO. 3, at 137 (Apr. 30, 1999).

95. *Id.* at 9.

96. *Id.* at 137.