

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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3	FEDERAL DEPOSIT INSURANCE)	Case No.: 2:10-cv-02103-GMN-RJJ
4	CORPORATION, as Receiver for)	
5	SOUTHWESTUSA BANK, N.A., a)	ORDER
6	Nevada banking association,)	
7)	
8	Plaintiff,)	
9	vs.)	
10)	
11	KC2-2, LLC et al.,)	
12)	
13	Defendants.)	
14)	

Before the Court is Defendants KC2-2, LLC et al.’s Motion to Remand (ECF No. 8). Plaintiff, Federal Deposit Insurance Corporation (“FDIC”) filed a Response (ECF No. 9) and Defendants filed a Reply (ECF No. 12). For the following reasons the Court Grants the Motion to Remand.

This action was commenced in the Eighth Judicial District Court of the State of Nevada on July 14, 2009. (Response 2:14–20, ECF No. 9.) On July 23, 2010, SouthwestUSA Bank was closed and the FDIC was appointed a receiver of the institution. (Id. at 2:26–28.) On August 11, 2010 FDIC was substituted as a party to the Counterclaims only. (Id. at 3:1–3.) On October 20, 2010 FDIC was substituted as a party to all remaining claims. (Id. at 3:3–5.) FDIC filed a notice of removal on December 3, 2010 (ECF No. 1).

12 U.S.C. §1819(b)(2)(B) confers several procedural advantages for FDIC to remove an action when it becomes a party to a case. It provides:

. . . the Corporation may, without bond or security, remove any action, suit, or proceeding from a State court to the appropriate United States district court before the end of the 90-day period beginning on the date the action, suit, or proceeding is filed against the Corporation or the Corporation is substituted as a party.

1 12 U.S.C. §1819(b)(2)(B). The Ninth Circuit has acknowledged that when Congress amended
2 the FDIC's enabling statute by enacting the Financial Institutions Reform, Recovery and
3 Enforcement Act (FIRREA), "it greatly expanded the FDIC's ability to remove cases to federal
4 court." *Bullion Services, Inc. v. Valley State Bank*, 50 F.3d 705, 707 (9th Cir. 1995). In 12
5 U.S.C. § 1819(b)(2)(B), Congress "confer[red] several procedural advantages on the FDIC that
6 go beyond the general removal authorization found in 28 U.S.C. §§ 1441-1452." *Id.* There is
7 no doubt that enacting FDIC's removal statute evidences Congress's desire that cases involving
8 the FDIC should generally be heard and decided by the federal courts. *Id.*

9 In this case, FDIC was substituted as a party twice, once on August 11, 2010 and once
10 on October 20, 2010. FDIC argues that being substituted twice gives it two opportunities to
11 remove the action to federal court. Defendants argue that there is only one chance for FDIC to
12 remove the case, based on the first instance it is substituted as a party. It is unclear based on
13 the statutory language if the right to remove is renewable and the Ninth Circuit has not
14 addressed this issue specifically.

15 A district court in Wisconsin held that the right to remove was renewable under the
16 statute. In *FDIC v. First Mortgage Investors*, 459 F.Supp. 880 (E.D. Wisconsin 1978), the
17 FDIC participated as the plaintiff (after being appointed as receiver) in the underlying state
18 court action without removing to federal court. After the FDIC lost a motion for summary
19 judgment in state court and the defendant filed a counterclaim. After the filing of the
20 counterclaim, the FDIC moved for removal. The court held that even if the FDIC waived its
21 rights to remove, "its right was renewed when the defendant filed its counterclaim." *Id.* at 882.
22 Other courts have appeared to follow suit. See e.g., *F.D.I.C. v. S& I 85-1, Ltd.*, 22 F.3d 1070,
23 1072 (11th Cir. 1994)(FDIC, as original plaintiff in state court proceeding, had additional
24 removal rights accrue upon the filing of the counterclaims against it); *Yankee Bank for Finance
25 & Sav., FSB v. Hanover Square Associates-One Ltd. Partnership*, 693 F.Supp.1400, 1411

1 (N.D.N.Y. 1988) (FDIC's removal rights were renewed when party served amended answers
2 and counterclaims upon the FDIC).

3 These cases are distinguishable from the present suit, because in the present suit, FDIC
4 was first substituted as a party to the counterclaims and subsequently substituted as a party to
5 the remaining claims. Regardless, it does not change the reasoning why other courts have held
6 that the right to remove is renewable. The FDIC's decision to remove or not remove a case will
7 depend on what claims it is substituted as a party for. Given that the FDIC cannot predict what
8 kinds of claims it will face it should be allowed to remove within 90 days after it is substituted
9 as a party for any claim. Accordingly the Court finds that FDIC is allowed to remove the
10 action within ninety days after it was substituted as a party on all the remaining claims on
11 October 20, 2010. FDIC removed this action on December 3, 2010 and it is therefore timely
12 under 12 U.S.C. § 1819(b)(2)(A).

13 **IT IS HEREBY ORDERED** that Defendants KC2-2, LLC, et al.'s Motion to Remand
14 (ECF No. 8) is **DENIED**.

15 DATED this 23rd day of September, 2011.

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19 Gloria M. Navarro
20 United States District Judge
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