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JUNE 2024

# LITIGATION INSIGHTS

# MOORE'S FEDERAL PRACTICE—TOP THREE HIGHLIGHTS

The following three summaries are this month's Editor's Top Picks from the dozens of decisions added to Moore's Federal Practice and Procedure.

## DISCOVERY

**Initial Disclosures**

***Santa Clarita Valley Water Agency v. Whittaker Corp.***

99 F.4th 458, 2024 U.S. App. LEXIS 8983 (9th Cir. Apr. 15, 2024)

Jump to full summary

Deciding an issue of first impression, the Ninth Circuit holds that the initial disclosure requirements of Federal Rule of Civil Procedure 26(a) do not mandate the disclosure of legal theories, but only of the evidence that will be used to support those theories.

## MOTION TO ALTER OR AMEND JUDGMENT

**Effect on Time for Appeal**

***Wilmington Sav. Fund. Soc'y v. Myers***

95 F.4th 981, 2024 U.S. App. LEXIS 6468 (5th Cir. Mar. 18, 2024) (per curiam)

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The Fifth Circuit holds that when a district court grants a Rule 59(e) motion to remove an ambiguity in the legal effect of its initial judgment, that order is a new judgment from which the appeal clock runs anew.

## REMOVAL

**Consent to Removal**

***Roberts v. Smith & Wesson Brands, Inc.***

98 F.4th 810, 2024 U.S. App. LEXIS 8459 (7th Cir. Apr. 8, 2024)

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The Seventh Circuit has held, in a suit brought by victims of a mass shooting, that a gun manufacturer was not acting under the Bureau of Alcohol, Tobacco, and Firearms for purposes of federal-officer removal, and that removal therefore required the consent of all defendants.



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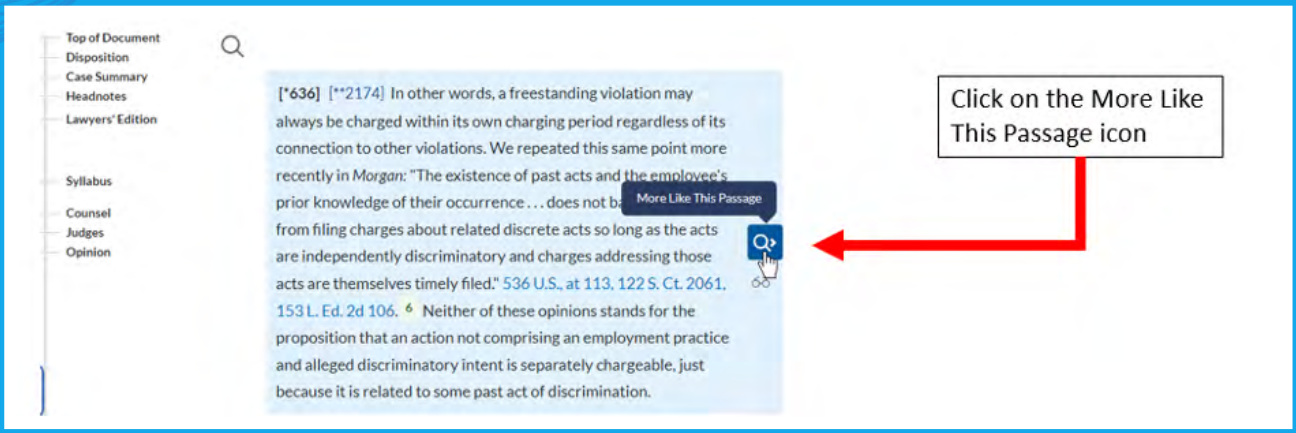
# Lexis+ "More Like This Passage" Feature Now Includes Relevant Secondary Materials

**By Meghan Atwood,**
**LexisNexis Federal Government Consultant**

You may be familiar with a recently added Lexis+ feature, "More Like This Passage," which provides case law recommendations to legal researchers when they need to find passages in other cases that are similar to a passage in a case at-hand. Lexis+ has now expanded this feature so that it includes relevant related secondary materials, along with cases, when researchers click on the "More Like This Passage" icon during a research session. In fact, the "More Like This Passage" feature will now draw recommendations from a repository of over a thousand Matthew Bender publications. Before the "More Like This Passage" feature was introduced, researchers would often find an on-point and relevant passage but then need to go back to the search box to type a new query. But with the "More Like This Passage" feature, researchers are able to advance their research from a specific passage within a case and quickly get to other cases that have highly similar passages.

So, how does this new Lexis+ feature work? Begin with a case you are interested in, and once a relevant passage is located, hover over the passage and locate the blue "More Like This Passage" icon on the right side (see screenshot below).




A pop-up will appear with the selected passage and a user can click on the "More Like This Passage" icon to find the "Secondary Materials" tab, which is now available on the right (see screenshot below). The "More Like This Passage" feature will display similar passages in a right-side panel (i.e., it is similar to how "Recommended Secondary Sources" functions in Lexis+).

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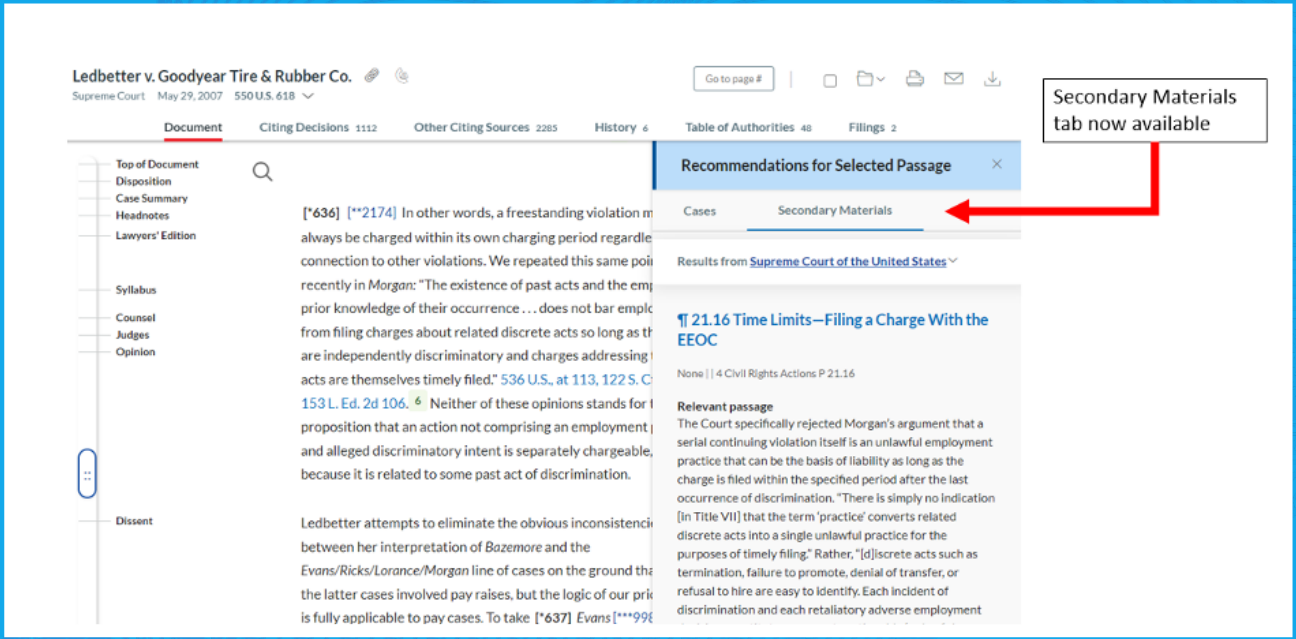


From there, researchers can click a case or a source to open it in a new tab.

As you can see, the "More Like This Passage" with newly added secondary sources recommendations will streamline your Lexis+ legal research and can reduce the number of overall searches you will have to perform. For more information on "More Like This Passage" and secondary sources or any other Lexis+ feature, please contact your LexisNexis Solutions Consultant.

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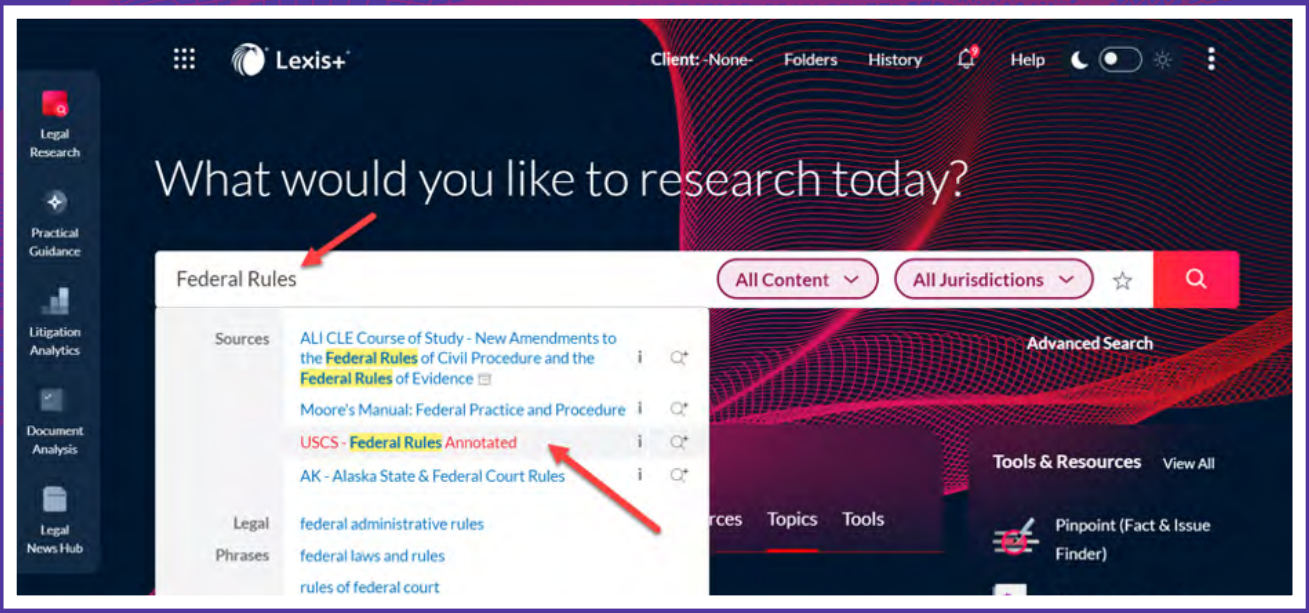
# Federal Rules of Evidence on Lexis+

Imagine this: You're sitting at your desk when a flurry of Motions in Limine are delivered to your inbox seeking to exclude some key pieces of evidence. What's next? It's likely that you'll want to review the Federal Rules of Evidence as part of your analysis of the issues presented. Where do you find them on Lexis+?

Let's review: From the Lexis+ home page, enter the term "Federal Rules" in the search box and allow the suggestions to populate. Then, select "USCS – Federal Rules Annotated" from the options.




This will take you to a page where the various sets of federal rules, including the Federal Rules of Evidence, are indexed. You can either browse the rules by clicking the + symbol next to the title or you can search by checking the box next to the appropriate line then entering your search terms in the box at the top. This will limit your answer set to only the Federal Rules of Evidence so that you don't have to filter through other types of rules. Additionally, you can Pin the rules to your list of easy-to-access sources by clicking the push-pin symbol at the top of the page.

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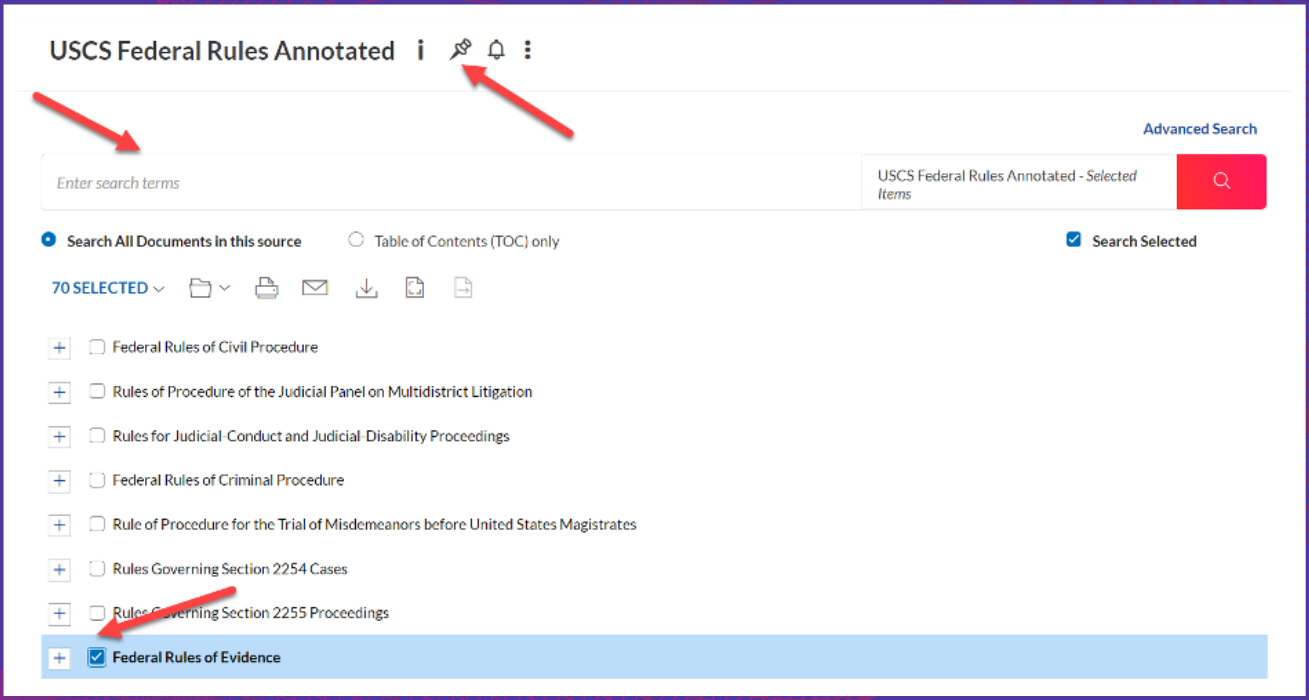
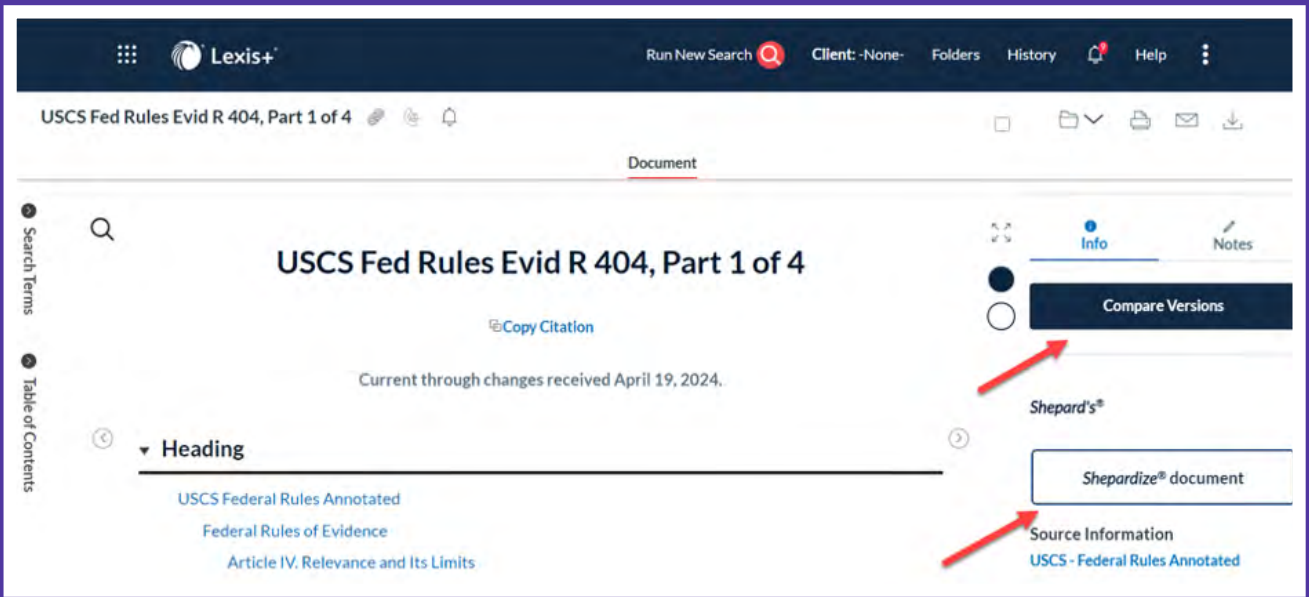



In addition to the text of the rules, you can also find helpful tools to enhance your understanding. First, you can use the "Compare Versions" button to view 2 different versions of the rule, including redline and newly added text. This feature spans from the currently enacted version all the way back to the 1998 version. You can also *Shepardize* the rule by clicking the "*Shepardize* document" button to see the *Shepard's* analysis for the rule as well as its subsections.

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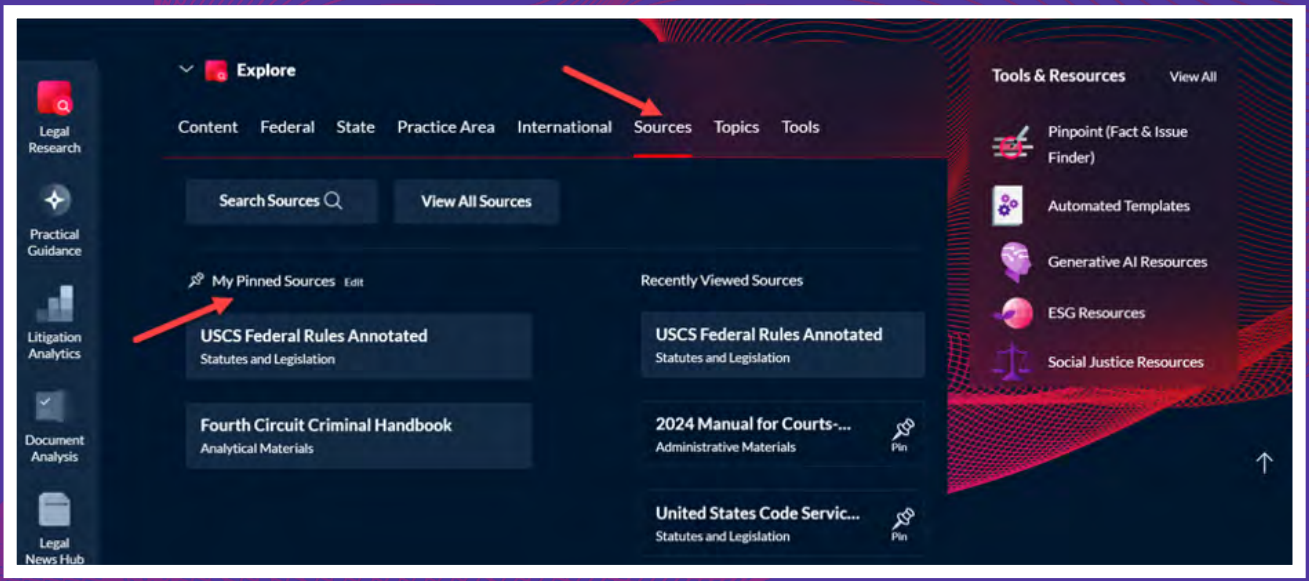
To access your pinned sources, click the Sources tab from the Explore menu on the Lexis+ home page and your list will appear on the left.




With these resources you will be prepared to handle that pile of motions in no time! If you have any questions or would like to take a deeper dive into the rules or any other Lexis+ research question you may have, please contact your Solutions Consultant.

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# WIN WITH JIM WAGSTAFFE
# Current Awareness Insights!

## Alert: Removal Jurisdiction Strictly Construed?

For the longest time, parties seeking remand of an action to state court took solace in what was an established rule: removal statutes are to be strictly construed against removal jurisdiction. See African Methodist Episcopal Church v. Lucien, 756 F.3d 788 (5th Cir. 2014) ("any doubts regarding whether removal jurisdiction is proper should be resolved against federal jurisdiction"); Corral v. Select Portfolio Servicing, Inc., 878 F.3d 770, 773–774 (9th Cir. 2017) (same).

In the instant case, the plaintiff brought a federal question class action against Target for its failure to provide a copy of the relevant warrant until after checkout. In remanding the case to state court for lack of the requisite CAFA amount in controversy ($5 million), the federal judge applied a presumption against removal. However, since the case was a class action, the Eighth Circuit rejected any presumption against removal, finding instead that, at least in the CAFA context, there is a "strong preference" that the action be heard in federal court by way of removal, citing Dart Cherokee Basin Operating Co., LLC v. Owens, 135 S. Ct. 547, 554 (2014) (removal under Class Action Fairness Act (CAFA). Significantly and in a footnote, the Court suggested that "there is good reason to believe that the anti-removal presumption also has no place in ordinary diversity cases." Stay tuned and be careful about relying on the "strict construction against removal" presumption. See Leflar v. Target Corp., 57 F.4th 600, 604, n.23) (8th Cir. 2023).

Fed Civ Proc Before Trial: The Wagstaffe Group § 8-III[A][5]—Removal Strictly Construed?; Fed Civ Proc Before Trial: The Wagstaffe Group § 8-X[B][1][a]—Notice of removal need not contain evidence; Fed Civ Proc Before Trial: The Wagstaffe Group § 8-XI[F]—Burden of Proof When Removal is Contested.

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## DISCOVERY

### Initial Disclosures

***Santa Clarita Valley Water Agency v. Whittaker Corp.***

99 F.4th 458, 2024 U.S. App. LEXIS 8983 (9th Cir. Apr. 15, 2024)

**Deciding an issue of first impression, the Ninth Circuit holds that the initial disclosure requirements of Federal Rule of Civil Procedure 26(a) do not mandate the disclosure of legal theories, but only of the evidence that will be used to support those theories.**

**Background.** Santa Clarita Valley Water Agency (SCVWA) is a public agency in northern Los Angeles County that supplies water to the over 300,000 residents of the Santa Clarita Valley. Water is supplied primarily through a combination of local groundwater pumped from wells and surface water purchased from the State Water Project. The SCVWA pumps groundwater from two aquifers. SCVWA sued Whittaker Corporation, the landowner of certain property above the aquifers, for contamination of the ground water in violation of state law as well as the federal Comprehensive Environmental Response, Compensation, and Liability Act [see 42 U.S.C. § 9601 et seq.].

Shortly before trial, Whittaker filed a motion in limine for exclusion of evidence supporting the restoration costs (costs to treat the contaminated water). Whittaker argued that SCVWA violated Federal Rule of Civil Procedure 26(a), which requires a party to disclose the computation of damages. It asserted that SCVWA committed error by not disclosing the legal theory that entitled it to those damages. The district court determined that Whittaker's argument failed because legal theories are not subject to Rule 26 disclosures, and SCVWA timely disclosed all of the supporting evidence for the damages that it sought.

After a $68 million judgment in favor of the SCVWA, Whittaker appealed on a number of grounds, including that the district court abused its discretion by permitting SCVWA to assert restoration costs as a measure of damages for the first time after the close of discovery.

**Rule 26 Does Not Require Disclosure of Legal Theories.** Federal Rule of Civil Procedure 26 requires a party to disclose "a computation of each category of damages claimed by the disclosing party" [Fed. R. Civ. P. 26(a)(1)(A)(iii)]. If a party fails to disclose information required by Rule 26, exclusion of the evidence under Federal Rule of Civil Procedure 37 is proper unless the failure to disclose was substantially justified or harmless. The Ninth Circuit explained that exclusion of evidence under Rule 37 for failure to disclose pursuant to Rule 26 is a tool that courts can use to sanction parties for failing to make discoverable evidence available or for failing to cooperate during discovery.

The Ninth Circuit noted that whether Rule 26 requires the disclosure of legal theories was an issue of first impression for the Ninth Circuit. However, district courts within the circuit had consistently held that the rule does not require disclosure of legal theories. These courts found that while Rule 26 requires the identification of certain evidence and its disclosure to the opposing party, it does not require a party to disclose its legal theory to the opposition. Further, Rule 37(c)(1) concerns the exclusion of only untimely disclosed evidence, and does not bar the introduction of a previously undisclosed legal theory.

The Ninth Circuit agreed and held that Rule 26 does not require disclosure of legal theories. Rule 26 is a discovery rule intended to ensure that the parties have access to the information that will be used to support a claim or defense. In the operative complaint, SCVWA explicitly requested "payment of all necessary costs of response, removal and remedial action costs, [and] costs of abatement and liability incurred by [SCVWA] as a result of any release or threatened release of hazardous substances at the Whittaker Site." Whittaker had access

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to the computation of damages sought by SCVWA, as required by Rule 26(a)(1)(A)(iii). Whittaker equally had access to the applicable law and facts and could have mounted a defense based on the damages sought and the evidence that supported the computation of damages.

- **Conclusion.** Therefore, the Ninth Circuit found that the district court did not abuse its discretion by permitting SCVWA to assert a legal theory at trial that it had not included in its Rule 26(a) disclosures.

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## MOTION TO ALTER OR AMEND JUDGMENT

### Effect on Time for Appeal

***Wilmington Sav. Fund. Soc'y v. Myers***

95 F.4th 981, 2024 U.S. App. LEXIS 6468 (5th Cir. Mar. 18, 2024) (per curiam)

**The Fifth Circuit holds that when a district court grants a Rule 59(e) motion to remove an ambiguity in the legal effect of its initial judgment, that order is a new judgment from which the appeal clock runs anew.**

**Background.** The initial dispute in this lawsuit concerned a 2006 home equity loan that went into default in 2009, resulting in multiple abandoned foreclosure attempts. The original lender was Home 123 Corporation, and the only borrower who signed the note in 2006 was defendant Leeroy Myers, though he and his wife, codefendant Barbara Myers, both signed the Deed of Trust. The most recent foreclosure action was initiated in 2022 by plaintiff Wilmington Savings Fund Society and other alleged successors in interest. Summary judgment was granted in favor of Wilmington in August 2023.

The Myers filed two motions under Rule 59(e), both of which sought to amend the district court's final judgment. In the first motion, the Myers argued many things, including that the district court's judgment was mislabeled because the title of the order did not specify that it was a final judgment even though it purported to dispose of all the claims and parties in the case. Recognizing its mistake, the district court partially granted the Myers' motion to amend, keeping the body of the order the same but revising the order's title to instead read: "Amended Final Judgment." In so doing, the district court noted that it was granting the motion to amend "to clarify [its prior order] as a final judgment."

About a month later, the Myers filed their second Rule 59(e) motion and reasserted many of the same arguments from their first motion, but with alleged new evidence. The district court denied that motion, and the Myers filed their notice of appeal 30 days later.

Wilmington argued that the appeal should have been dismissed as untimely, because minor changes to a prior order do not change the time for filing a notice of appeal. It specifically argued that when a district court makes a mere clerical change to its final judgment—in this case, revising the title of the order—the time for filing a notice of appeal starts running from the date of the initial judgment rather than the date of the clerical change.

**Issue on Appeal.** The question for the Fifth Circuit panel in this case was whether a district court's order granting a motion to alter or amend an earlier order to clarify that it was a final judgment operates as a new judgment for purposes of starting the time to file a notice of appeal.

Reviewing the Federal Rules of Appellate Procedure, the Fifth Circuit noted that, generally, an appeal in a civil action must be filed within 30 days of the entry of judgment [see Fed. R. App. P. 4(a)(1)(A)]. However, a timely Rule 59(e) motion to alter or amend a judgment can suspend the 30-day time limit for filing a notice of appeal. When a party files a motion under Rule 59(e), "the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion" [Fed. R. App. P. 4(a)(4)(A)(iv)]. Thus, once the district court rules on the motion, the 30-day clock to file a notice of appeal begins to run anew.

**Successive Rule 59(e) Motions Will Not Indefinitely Suspend Time for Appeal.** Quoting a sister circuit, the Fifth Circuit cautioned that "[a] party may not continue to file Rule 59(e) motions in order to forestall the time for appealing, [and that] only the first motion stops the clock" [Andrews v. E.I. Du Pont De Nemours and Co., 447 F.3d 510, 515 (7th Cir. 2006)]. The court explained that when a district court decides a Rule 59(e) motion that does nothing more than make a clerical change like correcting the names of the parties or dates, the time for filing a notice of appeal starts to run from the date of the first judgment and not from the entry of the second, corrective judgment.

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- **Ambiguity Exception.** The deadline to appeal may run anew if the district court makes substantive changes to, or resolves ambiguities in, a prior judgment. Citing the Supreme Court's decision in Fed. Trade Comm'n v. Minneapolis-Honeywell Regul. Co., the Fifth Circuit recognized that, in rare cases, a district court may make more than clerical changes to a prior judgment when deciding a Rule 59(e) motion. For example, pursuant to a Rule 59(e) motion, a district court may change matters of substance, or resolve a genuine ambiguity, in a previously rendered judgment [see Fed. Trade Comm'n v. Minneapolis-Honeywell Regul. Co., 344 U.S. 206, 211, 73 S. Ct. 245, 97 L. Ed. 245 (1952)]. In such a case, when a district court's changes to a prior judgment involve matters of substance or resolve genuine ambiguities, then the order is treated as a new judgment from which the 30-day appeal clock begins to run anew. And if a party thereafter files a second motion under Rule 59(e), the time for filing a notice of appeal may be further suspended and not begin to run until the court decides the second motion.

  The Fifth Circuit rejected Wilmington's argument that the Myers' appeal should be dismissed as untimely because the district court's decision on the first Rule 59(e) motion to retitle the final judgment involved a mere clerical change to the court's order. Citing Honeywell, the court acknowledged that typically such minor changes to an order do not disturb or revise the legal rights and obligations of the parties, but it noted that other circuits have applied the Honeywell "genuine ambiguity" exception when there has been an ambiguity in the legal effect of a court's order. The court then applied the exception after finding that the district court "sought to remove an ambiguity in the legal effect of its initial order—that is, to amend the title of the order and clarify it as a final judgment," and distinguished it from the revision of the order in Honeywell, in which the court merely "reiterated" its prior order, in contrast to the "clear discrepancy" in this case between the label and the body of the district court's order, which arguably created an ambiguity. Accordingly, the court concluded that the Myers' notice of appeal—which was filed within 30 days of the district court's order denying their second Rule 59(e) motion—was timely.

- **Holding.** The Fifth Circuit denied Wilmington's motion to dismiss the appeal.

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## REMOVAL

### Consent to Removal

***Roberts v. Smith & Wesson Brands, Inc.***

98 F.4th 810, 2024 U.S. App. LEXIS 8459 (7th Cir. Apr. 8, 2024)

**The Seventh Circuit has held, in a suit brought by victims of a mass shooting, that a gun manufacturer was not acting under the Bureau of Alcohol, Tobacco, and Firearms for purposes of federal-officer removal, and that removal therefore required the consent of all defendants.**

**Background.** On July 4, 2022, a gunman opened fire on a parade in Highland Park, Illinois, spraying 83 bullets into the crowd, killing seven people and wounding 48 others. He used a Smith & Wesson M&P15 rifle with three 30-round magazines. The M&P15 is a derivative of Colt's AR-15 rifle and a cousin to the M16 machine gun.

Multiple consolidated suits, filed in state court by some of the victims or their estates, sought to recover damages under Illinois law from the gunman, his father, the gun shops where the gunman acquired the rifle and ammunition, and the rifle's manufacturer and corporate affiliates. The legal theories advanced against the manufacturer and its affiliates (collectively "Smith & Wesson") rested on state tort law, as well as the Illinois Uniform Consumer Fraud and Deceptive Business Practices Act [815 Ill. Comp. Stat. Ann. 505/1–505/12], and the Illinois Uniform Deceptive Trade Practices Act [815 Ill. Comp. Stat. Ann. 510/1–510/7].

The complaints asserted, among other things, that Smith & Wesson should not have offered the M&P15 to civilians because it is a machine gun reserved for police and military use [see 18 U.S.C. § 922(b)(4); 26 U.S.C. § 5845(b)], and that even if the civilian sale were lawful, the manufacturer was still liable because the weapon was advertised in a way that made it attractive to irresponsible persons seeking to do maximum damage in minimum time.

After the mass shooting, the State of Illinois and many municipalities enacted laws forbidding the sale of AR-15 style rifles and large-capacity magazines to civilians, and regulating those already in private hands. The constitutionality of those laws was the topic of separate litigation [see Bevis v. Naperville, 85 F.4th 1175 (7th Cir. 2023)] and was not at issue in this case.

The Smith & Wesson entities filed notices of removal to federal court, asserting that the victims' claims arose under federal law. The gun shops consented to removal, but the gunman and his father neither filed their own notices of removal nor consented to Smith & Wesson's.

The plaintiffs moved for remand, arguing that 28 U.S.C. § 1446(b)(2)(A) required the consent of all defendants in order to remove under § 1441(a). In addition, the plaintiffs contended that their suits arose exclusively under state law.

Smith & Wesson first insisted that removal rested on federal officer removal under 28 U.S.C. § 1442(a)(1), as it claimed it was an entity "acting under" a federal officer, and the statute allows for removal whether or not other defendants elect to be in federal court. Second, Smith & Wesson contended that removal was authorized by § 1441(c) rather than § 1441(a), and therefore removal was exempt from the all-defendant-consent requirement. It insisted that federal issues were embedded in the state-law claim.

The district court was not persuaded by Smith & Wesson's arguments and remanded the case to state court. Smith & Wesson appealed to the Seventh Circuit.

Federal Officer Removal Did Not Apply. The Seventh Circuit began by reiterating that appellate review of remand orders is generally not allowed [see 28 U.S.C. § 1447(d)], but review of remand is allowed for a case removed on the basis of the federal-officer removal statute [see 28 U.S.C. § 1442(d)]. Moreover, the Supreme

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Court held in BP P.L.C. v. Mayor of Balt. that in such a case appellate review of the entire remand order is permitted, including theories in addition to federal officer removal [see BP P.L.C. v. Mayor of Balt., 593 U.S. 230, 141 S. Ct. 1532, 209 L. Ed. 2d 631, 639 (2021)].

The Seventh Circuit rejected Smith & Wesson's federal-officer-removal argument, which hinged on § 1442's "acting under" language and an assertion that the statute should apply because Smith & Wesson was subject to a great deal of federal regulation. Quoting the Supreme Court's decision in Watson v. Philip Morris, the court of appeals emphasized that being subject to federal regulation does not constitute acting under a federal agent for the purpose of § 1442(a)(1), and "the fact that a federal regulatory agency directs, supervises, and monitors a company's activities in considerable detail" does not satisfy the acting-under requirement [Watson v. Philip Morris, 551 U.S. 142, 145, 127 S. Ct. 2301, 168 L. Ed. 2d 42 (2007)]. The court found it "hard to see any difference" between Smith & Wesson's situation and that of the tobacco producers in Watson.

Smith & Wesson asserted that the Bureau of Alcohol, Tobacco, and Firearms (ATF) referred to manufacturers as its "partners" and to the system of regulation as a "partnership," but the Seventh Circuit found that "this snippet of bureaucratese does not change the nature of the relationship between the regulator and the regulated." Smith & Wesson acted wholly as a private entity that must comply with regulations, and the ATF "may listen respectfully to manufacturers' arguments, as judges listen respectfully to lawyers, but in the end the agency and the judges make decisions without implying that the manufacturers or lawyers 'act under' their auspices."

The Seventh Circuit noted the pervasiveness of federal regulations, and that drug producers, airframe manufacturers, cigarette producers, medical providers, chicken farmers, and makers of pesticides, among others, must comply with innumerable rules and regulations. "But it is inconceivable that the existence of federal regulation would allow removal as § 1442 is written—whether or not a given agency refers to the objects of regulation as its 'partners.'"

The court emphasized that this would be different if a federal officer were to command a manufacturer to produce a particular item in a specific way. "But Smith & Wesson does not contend that ATF directed it to make any AR-15 style weapon or compelled it to include in the M&P15 the rapid-fire features that [the gunman's] victims call wrongful. Nor does Smith & Wesson contend that ATF directed it to advertise the M&P15 in the way that it did."

**Remand Was Proper Because Not All Defendants Consented.** The Seventh Circuit noted that § 1441(a) allows removal of all suits over which federal courts have original jurisdiction if all defendants consent [28 U.S.C. § 1446(b)(2)(A)].

The court rejected Smith & Wesson's argument that consent was not required because the suit presented at least two claims, and § 1441(c) allows multi-claim suits in which some claims arise under federal law and some under state law to be severed. The severed state-law claims can then be remanded, and only defendants who assert that the plaintiffs' claims present federal questions need consent to removal. Smith & Wesson argued that the claim that the M&P15 is a machine gun arose under federal law, and the claim that the M&P15 was improperly advertised arose under state law. The Seventh Circuit found that the reliance on § 1441(c) was inappropriate because the state suits did not present multiple claims.

The Seventh Circuit emphasized that there is a distinction between a legal "claim" and a theory supporting relief, and here the core claim was that the gunman killed and injured multiple persons. "A claim is the set of operative facts that produce an assertable right in court and create an entitlement to a remedy. A theory of relief is the vehicle for pursuing the claim; it may be based on any type of legal source, whether a constitution, statute, precedent, or administrative law" [quoting St. Augustine Sch. v. Underly, 78 F.4th 349, 352 (7th Cir. 2023)].

The Seventh Circuit found that the complaint stated separate legal theories that "may imply separate methods of proof but do not multiply the number of claims. That lawyers often set out each legal theory in a separate 'count'

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of a complaint does not multiply the number of claims."

The Seventh Circuit reasoned that if one of the victims had sued Smith & Wesson on an allegation that the M&P15 is a machine gun and lost, and then filed a second suit contending that Smith & Wesson was liable for the way it advertised the M&P15, principles of claim preclusion (also called res judicata) would prevent a court from entertaining the second suit. The court would rule that the plaintiff must present all legal theories in one suit, and would add that the claim in the first case included "all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction . . . out of which the action arose."

Here, the court found that the "transaction" at issue in the state suit was the mass shooting at the parade. "Whether the legal wrong, if any, lies in the weapon's design or its promotional campaign does not multiply the number of transactions or allow sequential suits."

- **District Court Should Consider Award of Costs and Fees for Unjustified Removal and Appeal.** The Seventh Circuit observed that the Supreme Court in BP P.L.C. v. Mayor of Balt. recognized that attempting to remove under § 1442 would be attractive to many defendants who wanted to obtain appellate review of any remand order, and that when defendants yield to the incentive to misuse § 1442 to get around § 1447(d) and § 1446(b)(2)(A), litigation will be delayed and become needlessly costly—other things that defendants may hope to achieve.

  But the Court in BP P.L.C. v. Mayor of Balt. reasoned that setting policy is for Congress, not the judiciary, and added that Congress has provided district courts with the ability to order defendants that frivolously remove cases from state court to pay plaintiffs' costs and expenses, including attorney's fees [see 28 U.S.C. § 1447(c)]. Moreover, under Civil Rule 11(b) and (c), courts may sanction frivolous arguments made in any context.

  Thus, the Seventh Circuit concluded that the district court "should consider whether Smith & Wesson must reimburse the plaintiffs' costs and fees occasioned by the unjustified removal and appeal."

- **Disposition.** The Seventh Circuit affirmed the district court's remand to state court, and the appellate panel remanded to the district court to consider whether to order Smith & Wesson to reimburse the plaintiffs' costs and expenses under 28 U.S.C. § 1447(c) and other sources of authority.