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Sixth Circuit Decision on Plaintiffs' Removal-Avoidance Tactic Underscores Courts' Reluctance to Creatively Interpret CAFA

by Gregory S. Chernack

In enacting the Class Action Fairness Act of 2005 (CAFA), Congress created federal jurisdiction over most "mass action[s]" involving "100 or more persons." 28 U.S.C. § 1332(d)(11)(B)(i). The legislation recognized the unfairness corporate defendants faced in many state courts particularly when faced with large-scale litigation. In addition to the local biases that could influence state judges' approach to civil litigation against businesses, Congress was concerned that state trial-level jurists lacked the expertise and discipline to manage large-scale civil matters. CAFA recognized that a federal forum was better suited to fairly adjudicate such mass (and class) actions.

In response, many plaintiff lawyers looked to avoid CAFA by, for example, filing state court complaints with 99 plaintiffs or some number close to but under 100 to avoid removal. Other plaintiff attorneys have sought alternative methods to get around the strictures of CAFA. In *Adams v. 3M Co.*, --- F.4th ----, 2023 WL 2997420 (6th Cir. Apr. 19, 2023), the U.S. Court of Appeals for the Sixth Circuit decisively rejected one such attempt in two cases, each involving more than 300 Kentucky coal miners as plaintiffs. Before the district court, the plaintiffs had successfully argued that the cases should be remanded because certain provisions of CAFA (e.g., whether the cases had common legal and factual questions and whether there would be joint trials) were not satisfied. The appeals court, per Chief Judge Sutton, reversed rather quickly. (CAFA allows for interlocutory appeals of remand decisions as opposed to remand orders on many other bases.)

The court found irrelevant the plaintiffs' contention that their cases may ultimately not involve common legal or factual questions. As the Sixth Circuit explained, plaintiffs cannot file a joint complaint requiring commonality and then try to undermine the basis for the joint complaint to escape federal jurisdiction. *See id.* at *2; *see also* 28 U.S.C. § 1332(d)(11)(B)(i) (requiring "common questions of law and fact" for CAFA removal).

Likewise, their claim that a joint trial may not happen was equally irrelevant. By presenting the hundreds of claims in a single complaint, the plaintiffs were seeking to try their claims "jointly." 2023 WL 2997420 at *1; *see* 28 U.S.C. § 1332(d)(11)(B)(i) (allowing removal in cases that "propose[]" to "tr[y] . . . claims of 100 or more persons). Because the plaintiffs had sought a joint trial, they were bound by this request. *See* 2023 WL 2997420 at *2. (Once the cases land in federal court, the likelihood of a joint trial (which is generally prejudicial to a defendant) is greatly reduced.)

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The court did note that the result would be different with an "explicit and unambiguous disclaimer" of a joint trial. *Id.* (citing *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 594-95 (2013)). The question is could a plaintiff state that they are only seeking trials involving 99 plaintiffs to defeat CAFA removal? As CAFA involves "bright line rules," *id.*, the answer may be yes. Of course, if a plaintiff's lawyer were so aware of CAFA, filing complaints of fewer than 100 plaintiffs would be the easier course than trying to make such a declaration.

Finally, the court rejected plaintiffs' argument that the cases fell under CAFA's "local controversy" exception. *Id.* at *3; *see* 28 U.S.C. § 1332(d)(4). As the Sixth Circuit recognized, the primary defendant in the case was 3M (a non-Kentucky party). Although the suit also named Kentucky merchants, their liability would be derivative of 3M's. *See id.* This case was not specific to Kentucky.

Ultimately, CAFA provides a valuable tool for defendants to extricate themselves from what can be extremely unfriendly state courts. Yet the clear lines created by CAFA (e.g., 100 plaintiffs, joint trial) provide any attentive plaintiff's counsel a road map of how to circumvent this law. The *Adams* decision clarifies that when a complaint on its face satisfies CAFA, attempts to avoid its strictures will be unavailing and underscores that federal appeals courts are unwilling to creatively interpret the statute to benefit either plaintiffs or defendants.