

CLASS ACTION BLOG

10th Circuit Rules CAFA Jurisdiction Proper—Plaintiff Failed to Prove Home State Exception Applicable

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Summary: Plaintiff, a royalty owner of Oklahoma natural gas wells, sued for alleged underpayment of royalties. Defendant filed a CAFA removal to federal court. The royalty owner's motion for abstention or to remand to state court based on the home state exception to CAFA was denied. The 10th Circuit reviewed the record and affirmed.

Nichols v. Chesapeake Operating, LLC

Plaintiff, a royalty owner in Oklahoma natural gas wells, sued Chesapeake Operating, LLC and Chesapeake Exploration, LLC (Chesapeake) in Oklahoma state court. Chesapeake then removed asserting CAFA jurisdiction because there were at least 100 proposed class members and more than \$5,000,000 in controversy. Chesapeake alleged its principal place of business was in Oklahoma and that at least one class member was a Texas citizen.

Plaintiff filed a motion to abstain or remand based on CAFA's home state exception arguing that at least two-thirds or more of the class members were Oklahoma citizens. Plaintiff based his position on a "random sample" of 100 royalty owners taken from a spreadsheet of nearly 29,000 record royalty owners with Oklahoma addresses. Those 100 royalty owners included 13 trusts, 7 entities, and 80 individuals. A statistician reviewed the results of the investigation and concluded that it was "more likely than not that more than 67% of the members of the [entire] proposed Plaintiff class are Oklahoma citizens." However, the District Court found that the study was flawed because none of the data showed the "citizenship of the trust beneficiaries or trustees," a number of the individuals identified were deceased, and that Plaintiff's attorney "had an 'insufficient basis' for determining that some members of the random sample were Oklahoma citizens." For those reasons the District Court denied the motion to abstain and remand because Plaintiff had not proven that CAFA's home state exception applied.

The 10th Circuit first addressed the Plaintiff's burden of proof on the motion to abstain/remand. Concededly, the purpose of CAFA was to "respond to perceived abusive practices by Plaintiffs and their attorneys in litigating major class actions with interstate features in state courts." For that reason, once a defendant establishes removal is proper, "a party seeking remand to the state court bears the burden of showing jurisdiction in Federal Court is improper in one of CAFA's exclusionary provisions." Plaintiff had conceded that the removal was proper and for that reason Plaintiff "must show the applicability of a CAFA exception by a preponderance of the evidence." The Court relied upon multiple sister circuit court rulings—*Mondragon v. Capital One Auto Fin.*, 736 F.3d 880, 884 (9th Cir. 2013), *Vodenichar v. Halcon Energy Props., Inc.*, 733 F.3d 497, 503 (3rd Cir. 2013), *In re Sprint Nextel Corp.*, 593 F.3d 669, 673 (7th Cir. 2010), and its earlier ruling in *Dutcher v. Matheson*, 840 F.3d 1183, 1189, 1190 (10th Cir. 2016).

Plaintiff contended he met his burden because "a rebuttable presumption of citizenship arises from his allegation that the proposed class members are Oklahoma residents." He argued that because Chesapeake had not offered evidence "that more than one-third of the proposed class members are not Oklahoma residents," the District Court had to abstain or remand. Plaintiff relied on the 6th Circuit majority opinion in *Mason v. Lockwood, Andrews & Newnam, P.C.*, 842 F.3d 383 (6th Cir. 2016).

The 10th Circuit reviewed *Mason's* dissenting opinion and noted that, like the dissenting judge in *Mason*, the 8th Circuit "read this historical citizenship/residency distinction into 'the CAFA mandatory exception statute and rejected the assertion that presumptions alone may transform a challenged allegation of residency into the establishment of citizenship.'" *Hargett v. RevClaims, L.L.C.*, 854 F.3d 962, 966 & n.2 (8th Cir. 2017). The 8th Circuit in *Hargett* had in turn cited the *Mason* dissent, the 10th Circuit opinion in *Reece v. AES Corp.*, 638 F.Appx. 755, 769 (10th Cir. 2016) and the 9th Circuit's ruling in *Mondragon, supra*.

The 10th Circuit agreed with "the other circuits that reject the applicability of a rebuttable presumption of citizenship in the context of a CAFA exception invoked based on the mere allegation of residence." The Court reaffirmed its position in *Dutcher v. Matheson* where it noted "a 'strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant.'" *Dutcher, supra* at 1190. The Court further emphasized that "[a]n individual's residence is not equivalent to his domicile and it is domicile that is relevant for determining citizenship." *Siloam Springs Hotel, L.L.C. v. Century Sur. Co.*, 781 F.3d 1233, 1238 (10th Cir. 2015).

The 10th Circuit also reviewed the District Court's analysis of Plaintiff's expert's conclusions that two-thirds or more of the class members were Oklahoma citizens. The Court stated that the expert's extrapolation was based on a flawed sample; Plaintiff failed to explain how the expert's "evidentiary extrapolation" could remain statistically viable. There was no clear error by the District Court rejecting that flawed analysis.

With the *Nichols* ruling the 10th Circuit has joined the 8th and 9th Circuits in rejecting the rebuttable presumption of citizenship position taken by the 6th Circuit in the *Mason* case. This circuit split needs to ripen further before it is resolved by the circuits adopting a clear rule or by the Supreme Court declaring the rule to follow.