

CLASS ACTION and ENERGY

ALERT

DECEMBER
2013THIRD CIRCUIT REMANDS MARCELLUS SHALE CASE
BASED ON THE CLASS ACTION FAIRNESS ACT'S
LOCAL CONTROVERSY EXCEPTION*By Monica C. Platt and John K. Gisleson*

The Third Circuit recently clarified the home state and local controversy exceptions to the Class Action Fairness Act (CAFA), remanding proceedings in a case involving Marcellus Shale oil and gas leases to a Pennsylvania trial court.

Plaintiffs in *Vodenichar v. Halcón Energy Properties, Inc.* were various Pennsylvania-domiciled landowners in Mercer County, Pennsylvania, seeking to lease their oil and gas rights to Halcón (a Texas domiciliary), with the assistance of the defendant law firm Morascyzk & Polochak (M&P) (a Pennsylvania domiciliary) and defendant marketing company Co-eXprise (a Pennsylvania domiciliary). Halcón entered a letter of intent to lease up to 60,000 acres of oil and gas rights from the landowners, but ultimately accepted leases for only approximately half of the acreage, rejecting the balance of the leases. Plaintiffs are the landowners whose leases Halcón rejected.

Plaintiffs filed their initial breach of contract class action in federal court against Halcón only based on diversity of citizenship. Plaintiffs later sought to join M&P and Co-eXprise as defendants, based on Halcón's assertions that they had altered one of the lease documents and that the alteration gave Halcón a right to reject the leases. Knowing that joinder of two Pennsylvania entities would destroy diversity, the plaintiffs filed a motion to voluntarily dismiss the federal suit without prejudice so that it could bring all of its claims in one state court action in Mercer County. Plaintiffs filed their class action complaint in state court concurrently with the motion to dismiss the federal action. Halcón opposed the motion to dismiss, arguing that, while all four sets of litigants would benefit from being heard in the same case, that case should be in federal court based on CAFA, and because of the amount of discovery that had already been produced and of the ongoing ADR activities in the federal forum. The district court dismissed the suit for lack

of diversity jurisdiction and because the plaintiffs did not allege CAFA jurisdiction, but ordered the parties to retain the discovery already produced and complete the ADR process.

Halcón then removed the state court action based on CAFA jurisdiction back to the federal court, and the plaintiffs moved for remand based on CAFA's local controversy exception. The district court denied remand on that basis, but granted remand based on CAFA's home state exception. The Third Circuit affirmed remand, finding that the local controversy exception applied but not the home state exception.

CAFA's home state exception to federal jurisdiction applies when at least two-thirds of the putative class members and the "primary" defendants are citizens of the state in which the action was filed. Because Halcón (a Delaware corporation headquartered and principally doing business in Texas) denied liability in its Answer to the Complaint and claimed that M&P and Co-eXprise were liable for any damages, the district court found that Halcón was not a "primary" defendant. The Third Circuit explained that liability must be assumed to exist and that a "primary defendant" is one whose alleged liability is "principal," "fundamental," or "direct." The proper focus addresses whether (1) the defendant is the "real target" of the plaintiff's accusations; (2) the plaintiffs seek to hold the defendant liable for its own actions (as opposed to seeking vicarious liability for the actions of others); and (3) the defendant is potentially exposed to liability to a significant portion of the class and would sustain substantial loss compared to other defendants if found liable. Because the Mercer County plaintiffs alleged that each defendant was directly and equally liable, and sought similar relief against all defendants, Hal-

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cón should have been considered a primary defendant. Because Halcón is a Texas domiciliary, and the home state exception requires remand only if *all* primary defendants are home state citizens, the Third Circuit rejected application of the home state exception.

In contrast, the local controversy exception in CAFA allows a federal court to decline jurisdiction when more than two-thirds of purported class members are citizens of the state in which the action was initially filed; *at least one* defendant is a defendant from whom “significant relief” is sought, whose alleged conduct forms a significant basis for the claims asserted, and who is a citizen of the state in which the action was originally filed; and the principal injuries were incurred in the state in which the action was originally filed. For the exception to apply, no other class action asserting the same or similar factual allegations against any of the defendants may have been filed in the three years prior to the filing of the case at issue.

The Third Circuit found that this exception was met and warranted remand. Although the plaintiffs had filed an earlier class action in federal court that they had dismissed, the Third Circuit determined that it was not a similar class action that would bar application of the exception. The court found that the intent behind CAFA was to provide one forum in which to resolve similar claims. Moreover, the exception was to ensure that all but truly local controversies were heard in federal court and to prevent the defendants from being subjected to copycat suits in multiple forums. The test is whether there are multiple class actions making similar factual allegations such that defendants are facing separate, distinct lawsuits, without regard to the procedural posture of the earlier filed cases or whether the putative classes overlap, or their claims arise from an identical event or involve the same causes of action or legal theories.

The Third Circuit found that the district court’s dismissal of the first action without prejudice and order that the parties continue ADR and retain discovery for their current dispute showed that it considered the second action a continuation of the first — in essence, it was akin to filing an amended complaint joining new parties. Such treatment of the second-filed action was consistent with

the intent behind the local controversy exception and did not subject the defendants to similar claims in different forums or to copycat litigation. Because the first-filed action was not an “other case” for the purposes of CAFA, the local controversy exception applied, and the Third Circuit affirmed remand to the state court. ♦

Schnader is counsel for Co-eXprise in the litigation, which is one of the largest class actions involving Marcellus Shale activity.

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