

Federal Courts Retain Jurisdiction over Individual Claims after Removal of Mass Action

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Considering whether a federal court retains subject matter jurisdiction over a case certified at the time of removal as a mass action under the Class Action Fairness Act (CAFA) and subsequently severed into individual cases by defendants, U.S. District Court Judge Timothy Corrigan has held that post-removal events do not deprive federal courts of subject matter jurisdiction, and thus, that federal courts retain jurisdiction over the individual cases.¹

The ultimate impact on plaintiffs' mass action objectives is devastating. This decision should prevent plaintiffs from joining their cases to parties of 100 or more simply to save on filing fees and expedite the filing of numerous claims in state court.

Removal of Class Action Claims to Federal Court Decertified as Jointly Filed Individual Claims

This mass action arose out of a class action involving approximately 700,000 Florida residents with various illnesses that they claim their addiction to cigarettes caused. The Florida Supreme Court in *Engle v. Liggett Group, Inc.*² decertified the case and announced that class members could bring individual damages actions.

Plaintiffs then filed cases in the Florida state court with each case encompassing the claims of about 200

plaintiffs for a total of approximately 3,400 individual claims. Defendants removed the cases to federal court under CAFA in a timely manner and then sought to sever the cases into individual trials for each plaintiff.

CAFA allows a party to remove a state claim to federal court if it meets the requirements of a class action and construes mass actions as class actions for the purposes of the statute. CAFA defines the term "mass action" as "any civil action in which the monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact."

Section 1332(d) of CAFA provides federal courts with diversity jurisdiction over actions seeking mass consolidation in which the number of plaintiffs in the mass action exceeds 100, any member of the mass action is diverse from any defendant, and the aggregate of the claims exceeds \$5 million.

Jurisdiction under CAFA Not Required to Continually Be Measured

In *Cooper*, plaintiffs argued that the court should continually measure whether it has CAFA jurisdiction and whether any future severance would strip the court of CAFA jurisdiction and force remand to state court. Judge Corrigan rejected plaintiffs' argument, citing the general rule that "post-removal events do not deprive federal courts of subject matter jurisdiction."³

Judge Corrigan also rejected plaintiffs' argument that CAFA's statutory text and legislative history show that, under CAFA, courts must consider post-removal events that affect the

propriety of continued jurisdiction. The district court noted that 28 U.S.C. § 1332(d)(11)(B)(i) applies to claims of "100 or more persons" that are "proposed to be tried jointly"; it was undisputed that plaintiffs proposed to try their cases by filing a complaint in state court naming approximately 200 individuals as plaintiffs. Therefore, defendants' post-removal intent to request severance would have no effect on the court's jurisdiction because the plaintiffs originally proposed to try the cases jointly.

Judge Corrigan agreed with defendants' argument that, because Congress chose the word "proposed" in the final version of the statute, CAFA's legislative history supports that it is "the request for a joint trial, and not whether the joint trial occurs, that triggers federal jurisdiction." Thus, the court concluded, the fact that "defendants removed to this Court with the strategic intent to seek severance of plaintiffs' claims has no effect on this Court's subject matter jurisdiction."

In reaching its decision, the district court relied on a recent Seventh Circuit decision holding that removal to federal court under CAFA is proper where "any 'civil action . . . in which monetary relief claims of 100 or more persons are proposed to be tried jointly.'"⁴ The Seventh Circuit added that a "trial of ten exemplary plaintiffs, followed by application of issue or claim preclusion to 134 more plaintiffs without another trial" meets CAFA standards and brings the suit under federal jurisdiction.

The *Cooper* ruling marks the first decision on the issue of whether a federal court retains subject matter jurisdiction over a case certified at the time of

removal as a mass action under CAFA and is subsequently severed into individual cases by defendant.

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Endnotes

1. *Cooper v. R.J. Reynolds Tobacco Co.*, No. 3:08-cv-153-J-32HTS, 2008 WL 4093715 (M.D. Fla. Aug. 29, 2008), rev. denied, No. 08-90021 (11th Cir. Oct. 28, 2008).

2. *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006).

3. *Cooper*, *supra* note 1.

4. *Bullard v. Burlington N. Santa Fe Ry. Co.*, 535 F.3d 759, 762 (7th Cir. 2008).

New Legislation Creates Enhanced Duties for Manufacturers of Children's Products

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13. Section 101 (a)(2)(D).

14. Section 101 (d).

15. Section 101 (a)(2)(E).

16. Section 101(b)(2)(A).

17. Section 101 (b)(1)(A)–(B).

18. Section 101(b)(2)(A).

19. Section 102 (a)(1)(A)–(B).

20. Section 102 (a)(2).

21. Section 102 (g)(1).

22. Section 103 (a)(5).

23. Section 217 (a) (1).

24. Section 217(c)(1).

25. Section 217(c)(2).

26. Section 218.

27. Section 212.

28. Section 214.

29. Section 219.

Using Statistical Analysis in Mass Toxic Tort Cases

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ground on which the court in *Knight* found certain studies to be insufficiently reliable, is consistent with this criteria for inadequate or insufficient evidence.

19. Such a “no association” finding may be made where “[s]everal adequate studies, which cover the full range of human exposure, are consistent in not showing a positive association between any magnitude of exposure to the herbicides of interest and the outcome. A conclusion of “no association is inevitably limited to the conditions, exposures, and length of observation covered by

the available studies. *In addition, the possibility of a very small increase in risk at the exposure studies can never be excluded.*” *Id.* at 12.

20. Committee to Review the Health Effects in Vietnam Veterans of Exposure to Herbicides.

21. VETERANS AND AGENT ORANGE, *supra* note 15, at 2.

22. Improving the Presumptive Disability Decision-Making Process for Veterans 7–8 (Institute of Medicine 2008).

23. *Id.* at 1.

24. *Id.* at 2.

25. *Id.* at 5.

26. *Id.* at 136 (emphasis added, final emphasis in original).

27. *Id.* at 172–73.

28. *Id.* at 173.

29. *A Quantitative Methodology*, *supra* note 3, at 57.

30. *Id.* at 66–73.

31. *Id.* at 81, 88–92.

32. *Id.* at 89.