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Pleading Artifices and CAFA Removal: Circuit Development

Minding Your Business on **July 5, 2023**

The Class Action Fairness Act ("CAFA"), was enacted to make federal courts the primary venue for class action litigation. It did so by modifying the usual jurisdictional requirements of the diversity jurisdiction statute. Under CAFA, federal courts may exercise removal jurisdiction over state law class actions originally filed in state court so long as there is "minimal" rather than "complete" diversity, and the amount in controversy is greater than $5 million.

Though the primary effect of CAFA's enactment was a significant expansion of the types of claims federal courts may decide, the statute also prompted creative strategies employed by plaintiffs to evade federal jurisdiction. In response to these strategies, courts have had to weigh whether—and how much—to cut through pleading artifices or look beyond complaints' "four corners." In a recent case, *Erie Ins. Exch. v. Erie Indemnity Co.*, the Third Circuit placed limits on this inquiry, validating a plaintiff's jurisdictional evasion strategy. *Erie* concerned CAFA's most basic jurisdictional prerequisite—whether the case was a "class action" in the first place.

The plaintiffs in *Erie* initially filed a class action under Pennsylvania's version of Fed. R. Civ. P. 23. After the defendant removed to federal court, the plaintiffs voluntarily dismissed their case under Fed. R. Civ. P. 41, then filed a nearly identical case in state court shortly thereafter. Their second complaint, however, was styled under a different state rule—one that allows suits by an association in the name of its members as trustees ad litem. Though the second case was not *formally* a class action, the defendant once again removed to federal court on the theory that it was one *in substance*.

The Third Circuit explained first that the newly-filed case was "not a class action as that term is defined in CAFA"—a civil action filed under Fed. R. Civ. P. 23 or a "similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action." It then explained that it would not look outside the four corners of the plaintiff's complaint because doing so is only proper to assess "factual predicates, not legal requirements." Notwithstanding the peculiar procedural history of the plaintiff's suit—which involved voluntary dismissal followed by re-filing—the Court explained: "[s]earch as it must, there are no facts beyond the Complaint that could alter our conclusion that the relevant state rules are dissimilar to Rule 23 and that this case therefore falls beyond the scope of CAFA jurisdiction."

In an earlier case, *Rodriguez v. AT&T Mobility Servs. LLC*, the Ninth Circuit endorsed a closer scrutiny of creative pleading artifices designed to evade CAFA jurisdiction. There, the plaintiff filed a putative class action in California state court. Seeking to evade federal court, the plaintiff affirmatively argued that the amount in controversy did not exceed $5 million and purported to "waive seeking more than five million dollars . . . regarding the aggregate amount in controversy for the class claims alleged." The defendant countered with several sworn declarations stating that the amount in controversy could not be less than roughly $5.5 million, and was likely much larger. The district court sided with the plaintiff and remanded. But shortly thereafter, the Supreme Court, in a different case—*Standard Fire Ins. Co. v. Knowles*, issued a decision neutralizing the exact move the plaintiff made. The Ninth Circuit followed the intervening Supreme Court decision, reversed the district court's order, and directed it to further consider the jurisdictional minimum. In doing so, the Ninth Circuit made clear the district court was to apply a *preponderance* standard, not the heightened *legal certainty* standard plaintiffs advocated. Relatedly, the Ninth Circuit clarified that the district court was not necessarily constrained to the "four corners" of the complaint in making its determination.

The *Erie* court distinguished *Rodriguez* by emphasizing the particular jurisdictional prerequisite at issue. An amount-in-controversy dispute, it explained, is a dispute over a "factual predicate," and it is therefore appropriate for a court to look beyond a complaint's "four corners" to resolve it.

It remains to be seen whether these decisions are more accurately explained by, on the one hand, a distinction between formalism and flexibility or, on the other hand, a distinction premised on whether a jurisdictional question is fact-bound or purely legal. But it is likely that these distinctions may be further developed through future cases in which plaintiffs employ creative strategies to avoid federal court jurisdiction under CAFA.

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