

Blog Entry: A Heartfelt Class Action

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Few class actions tug at the heart, but *Blevins v. Aksut* does.

Elizabeth Blevins and 180 others brought a class action in Alabama state court against Seydi V. Aksut, M.D., alleging that “after an examination, Doctor Aksut would falsely tell a patient that the patient needed heart surgery” and then perform the unnecessary procedure and bill the patient. Also sued were the clinics where the procedures took place.

Among plaintiffs’ claims were three under RICO: the federal Racketeer Influenced and Corrupt Organizations Act. They contended that “defendants operated a racketeering enterprise through which they performed and billed for the unnecessary heart procedures.”

Defendants removed the case to the Southern District of Alabama, claiming federal question jurisdiction. Plaintiffs, in turn, moved to remand, contending that this was a “local” and “home state” controversy under the Class Action Fairness Act (“CAFA”) over which the federal court must refrain from exercising jurisdiction.

The district court declined to remand, and on March 1, 2017, the Eleventh Circuit Court of Appeals affirmed. Here’s why:

Under CAFA, federal district courts have jurisdiction over class actions “in which the matter in controversy exceeds the sum or value of \$5,000,000” and diversity of citizenship exists between any class member and any defendant. But there are exceptions.

Among them are the “local” and “home state” controversy exceptions codified at 28 U.S.C. § 1332(d)(4). The local controversy exception exists in cases - and bear with me now - “in which greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed; at least 1 defendant is a defendant from whom significant relief is sought by members of the plaintiff class; whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and who is a citizen of the State in which the action was originally filed; and principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed; and during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons.”

That’s an interminable sentence, so let’s break it down. Generally speaking, federal courts cannot adjudicate class actions if more than two-thirds of the anticipated class members reside in the same state, at least one of the key defendants also resides in that state, the primary injury occurred in that state, and no similar class actions were filed by or on behalf of the same plaintiffs against any of the same defendants during the prior three years.

That's still a long sentence, but the bottom line is that Congress said that if a class action is essentially a local dispute, the federal court should step aside let the state court decide it.

The same philosophy underlies CAFA's "home state" exception. That exception applies when "two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed." That sentence is mercifully shorter.

Here, plaintiffs contended that the local and home state-controversy exceptions applied, given that plaintiffs and defendants were largely Alabamans and the alleged procedures occurred in Alabama. Seems pretty local, doesn't it?

Perhaps, but the Eleventh Circuit deemed that irrelevant to whether the case should return to state court. Why? Because even if those exceptions apply, they do not affect a district court's ability to exercise *federal question jurisdiction* under 28 U.S.C. § 1331. "When the requirements of federal-question jurisdiction are met," the court noted, "district courts may exercise jurisdiction over class actions, even if they involve only local parties." And here, the requirements of federal-question jurisdiction were met because plaintiffs asserted RICO claims.

So the case remained in federal court, where defendants wanted it. And they moved that court to dismiss plaintiffs' RICO claims, arguing that plaintiffs alleged only personal injuries, which are not actionable under RICO, rather than injuries to "business or property," which are.

The district granted defendants' motion, reasoning that plaintiffs "had failed to plead RICO-recoverable injuries." But the Eleventh Circuit vacated that decision, holding that "in the context of unnecessary medical treatment, payment for the treatment may constitute an injury to property." The plaintiffs, it noted, were seeking to recover damages "for the amounts they paid for the unnecessary heart procedures. These injuries do not flow from any personal injuries. Rather ... the payments themselves are economic injuries because they were for medically unnecessary procedures."

And so the RICO claims remain in the case, which could have a big-dollar impact on the outcome, given RICO's treble damages and attorneys' fees provisions. But first, plaintiffs have to prove their case.

The case is *Blevins v. Aksut*, Eleventh Circuit Court of Appeals, case no. 16-11585, and the opinion can be found at <https://goo.gl/N9laEg>.