

Blog Entry: Sixth Circuit Rules that the Class Action Fairness Act Means What it Says

MAY 1, 2017

Source: Array

Author: Jeremy Gilman (former Partner at Benesch Law)

A statute, distilled to its essence, is thought conveyed through words. And when those words are understandable and coherently arranged, there's nothing for courts to do when adjudicating disputes involving them, other than to apply them as written.

Simple, isn't it?

In theory, yes. But theories don't wear judge's robes.

Fast forward to Flint, Michigan, and the water crisis it's been enduring since 2014. Let's let the Sixth Circuit Court of Appeals set the stage:

"Prior to April 2014, Flint purchased treated water from the City of Detroit. Thereafter, the city began using the Flint River as its water source. The Flint River water was not treated with corrosion-inhibiting chemicals, and this led to a multitude of serious problems with the local water supply. Residents complained that the water was discolored and foul-smelling. There were reports of skin rashes, hair loss, and vomiting after drinking and bathing in the water. And most disturbingly, many children in Flint were found to have high levels of lead in their blood stream."

Lawsuits followed, including a putative class action filed during July 2016 in a Michigan state court against one of the City of Flint's engineering firms and one of its consultants. The claims? Negligence, intentional and negligent infliction of emotional distress, and unjust enrichment.

Defendants removed the case to federal court, claiming that doing was proper under the Class Action Fairness Act - CAFA, for short - because the amount in controversy exceeded \$5 million, the putative class consisted of at least 100 persons, and "minimal" geographic diversity between the parties existed (that is, at least one class member was a citizen of a state different from that of any defendant).

Plaintiff did not dispute these facts, but contended that the case was not removable and should be bounced back to state court. Why? Because this case, it argued, was a "local controversy" under CAFA, and therefore not eligible for removal. A "local controversy" is one in which more than two-thirds of the would-be class members are citizens of the state in which the case was first filed, at least one significant defendant is a citizen of that same state, and the alleged injuries were incurred in that state.

The district court sided with plaintiffs: this was, it held, a local controversy, so it entered an order shipping the case back to state court.

But there was a catch. CAFA explicitly states that the local controversy exception to federal jurisdiction does not apply if, “during the 3-year period preceding the filing of [the] class action,” another “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.” In other words, if, during that three-year period, another similar class action had been filed against any of the defendants, the case *can* be removed to federal court - even if it otherwise qualifies as a local controversy under CAFA.

In fact, the statute’s language is quite clear: a federal district court must decline jurisdiction over a local controversy class action if, “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.” (Emphasis added.)

What does that mean? That means that if *any other* class action based on analogous facts had been filed against *any* of the same defendants during that three-year period, the federal court *can* adjudicate that lawsuit. In fact, it *must* adjudicate the lawsuit if the other requirements for CAFA removal have been met.

And therein, the catch: In the Flint case, no fewer than *five* similar class actions had been filed against the same defendants over the water crisis during 2015 and 2016 alone.

If that’s the case, shouldn’t the federal court should have held onto the lawsuit after it was removed from state court?

One would think so.

Then why didn’t it to do so?

That’s not entirely clear. Apparently, it considered this case so distinctly local - so crisply confined to Flint, Michigan - that it felt that the case really, truly belonged in state court. Quoting from the Sixth Circuit, “the district court acknowledged that other class actions had been filed in the previous three years but agreed with the plaintiffs that this case was a ‘truly local controversy’ and remanded the case to state court.”

Defendants believed otherwise. They appealed to the Sixth Circuit and argued they properly removed the case to federal court under CAFA’s clear and unambiguous language. And the Sixth Circuit agreed. It reversed the district court and essentially told that court that it had to handle the case. Its rationale? Exactly what you’d expect: “The plain language of CAFA offers a simple answer to our inquiry. The local controversy exception will apply only if no other similar class action was brought against any of the defendants in the instant action during the three years preceding the filing of this case.... It is undisputed that five class actions were brought, each advancing very similar factual allegations[.] And each action sued at least one of the defendants currently in this suit. Applying the language of the exception to the facts before us, the local controversy exception cannot apply. The statutory language is clear and unambiguous. The federal court retains jurisdiction pursuant to CAFA.”

But what about the district court’s belief that this was really, truly a local controversy?

Let’s let the Sixth Circuit answer that: “It is true that the injuries were suffered by Flint residents in Flint, Michigan. In the colloquial sense, then, the controversy is ‘local.’ However, it is not local in the

way Congress contemplated in CAFA.... The language of CAFA defines by its own terms what qualifies as a local controversy, and those requirements are not met in this case.”

In other words, the statute means what it says.

The case is *Davenport v. Lockwood, Andrews & Newnam, Inc.*, United States Court of Appeals for Sixth Circuit, case no. 17-200, and the decision, issued April 25, 2017, can be found at <https://goo.gl/87syk4>.