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Blog Entry: Sixth Circuit Sends Flint Water Class Action to State Court Under CAFA's Local Controversy Exception

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On November 16, 2016, the Sixth Circuit held that a state law professional negligence class action against civil engineering companies arising out of the Flint, Michigan water crisis must be litigated in Michigan state court. Because the plaintiffs' proposed class contained more than two-thirds Michigan citizens, a local defendant, and injuries limited to those arising from Flint's water system, the case was "truly local in nature" and thus belonged in state court.

In *Mason, et al. v. Lockwood, Andrews, & Newnam, P.C., et al.,* the plaintiffs brought suit against Lockwood, Andrews & Newman, Inc. ("Lockwood") and its Michigan-based affiliate. Lockwood was hired by Flint for design engineering services in connection with rehabilitating Flint's water treatment plant to allow drinking water to be temporarily drawn from the Flint river. Following the now infamous Flint water crisis, eight Flint residents brought suit in state court alleging professional negligence.

Lockwood removed the case to federal court on the basis of diversity jurisdiction. In contesting removal, the plaintiffs argued that the "local controversy" exception to the Class Action Fairness Act ("CAFA") applied, which provides in part that a district court must decline jurisdiction if (1) greater than two-third of the members of the proposed class are citizens of the forum state; (2) at least one defendant is a defendant who is a citizen of the forum state and from whom significant relief is sought; and (3) principal injuries resulting from the alleged conduct were incurred in the forum state. The plaintiffs argued that the class consisted of Flint residents, that their injuries were suffered in Flint, and that Lockwood was a significant Michigan defendant. The district court agreed and granted the plaintiffs' motion to remand.

On appeal, the Sixth Circuit affirmed. First, the Sixth Circuit joined several sister Circuits and held that the party seeking to remand under an exception to CAFA bears the burden of proof. Second, the Sixth Circuit held that the plaintiffs were entitled to a "rebuttable presumption" that each resident class member was domiciled in Michigan. Although Lockwood argued that a "naked averment" of residence is insufficient to show citizenship ("citizenship" is required under the local controversy exception), the Sixth Circuit disagreed. It traced the history of Lockwood's proffered line of case law, finding it applicable where a federal court possesses only limited jurisdiction - and, therefore, there exists a presumption *against* federal jurisdiction. However, CAFA's local controversy exception "is not jurisdictional" and, according to the Sixth Circuit, the normal presumption against federal jurisdiction does not apply.

Finally, the Sixth Circuit agreed that Lockwood's alleged conduct formed a significant basis of the plaintiffs' claims. Although the plaintiffs sued three defendants, one of which was a Lockwood

related entity that actually entered into the contract with Flint, it was the Michigan-based Lockwood affiliate that formed the “very core” of the plaintiffs’ allegations.

The case is *Mason, et al. v. Lockwood, Andrews, & Newnam, P.C., et al.,* No. 16-2313 (6th Cir. Nov. 16, 2016).