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## APPELLATE SPOTLIGHT

### CAFA ruling friendly to plaintiffs

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A PRECEDENT-SETTING 3d U.S. Circuit Court of Appeals opinion took a broad view of when Class Action Fairness Act cases can move to state court from federal court.

The court analyzed two separate issues of first impression related to CAFA's so-called local controversy exception.

In a written opinion by Circuit Judge D. Brooks Smith released on March 26, a three-judge panel declared that the local controversy exception doesn't require every class member to assert a claim against the local defendant in order to exempt the case from federal jurisdiction. *Kaufman v. Allstate New Jersey Insurance Co.*, nos. 08-4911, 08-4912, 08-4913.

The court also clarified that a CAFA case can be moved to state court if the case meets only one—not both—of two tests of the so-called principal injuries provision.

Smith wrote that a case could move to state court if the principal injuries stemming from either the local defendant's alleged conduct or all the defendants' alleged conduct occurred in the state in which the case was filed.

"[The defendant] Liberty [Mutual Fire Insurance Co.]'s interpretation is at odds with the plain language of the provision," Smith wrote. "We need not inquire beyond that language."

#### Defining 'significant basis'

Smith wrote that CAFA's so-called significant basis provision in the local controversy exception requires that a case name at least one local defendant whose alleged conduct forms a significant basis for all class members' claims. It is not necessary that the entire class asserts claims against the local defendant, he said.

"The significant basis provision effectively calls for comparing the local defendant's alleged conduct to the alleged conduct of all the defendants," Smith wrote. "If the local defendant's alleged conduct is a significant part of the alleged conduct of all the defendants, then the significant basis provision is satisfied."

Smith also relied on an 11th Circuit ruling, which indirectly reached the same conclusion. *Evans v. Walter Indus. Inc.*, 449 F.3d 1159 (11th Cir. 2006). The 11th Circuit said that the plaintiffs failed to prove the local defendant's role in alleged local environ-

mental contamination.

The 3d Circuit remanded the case to the U.S. District Court for the District of New Jersey for reconsideration of the court's significant-basis analysis, which Smith wrote was erroneously based on "generic market share" numbers instead of the defendants' conduct. *Kaufman v. Allstate Insurance Co.*, No. 3:07-cv-06160 (D.N.J.).

#### State law invoked

The plaintiffs in the underlying dispute are consumers who bought automobile insurance from six defendant companies. The plaintiffs claim that the company's practices violate New Jersey law and insurance contracts because they don't compensate insured parties for the diminished value of automobiles

that are involved in accidents, only for the dollar value of the repairs.

The claims against the companies include breach of contract, breach of an implied duty of good faith and fair dealing and violation of the New Jersey Consumer Fraud Act.

The plaintiffs have since voluntarily dismissed three defendant companies. However, they are asking the court to order the defendants to do three things: compel the defendants to cover diminished-value claims; give the plaintiffs more informa-

tion about the companies' claims-processing procedures; and require the defendants to take these steps with future policies.

The 3d Circuit's interpretation of both CAFA provisions was based on a plain reading of the statute, said Eric D. Katz of Roseland, N.J.-based Mazie, Slater, Katz & Freeman, who argued the case on behalf of the plaintiffs.

"The ruling follows the limits of CAFA jurisdiction," Katz said. "The defendants were using CAFA as a blanket sword to get everyone into federal court, where they think they'll get a fairer shake. This opinion would limit CAFA jurisdiction to only those cases for which CAFA jurisdiction would be appropriate."

Meloney Cargil Perry, a Dallas litigation partner at Chicago-based Meckler Bulger Tilson Marick & Pearson who was one of two defense attorneys who argued the 3d Circuit case, declined to comment. Perry said she could not immediately reach her client, Geico Insurance Co., for permission to comment.

Mark Arnold, a St. Louis-based litigation partner who argued the case for Liberty Mutual, did not return a call for comment.



KATZ: Defendants used CAFA "as a blanket sword to get everyone into federal court."