

B&B REVIEW

Business Litigation Practice Group

UPDATE ON THE CLASS ACTION FAIRNESS ACT OF 2005

What's Inside . . .

Page 1

Burden of Proof: *Miedema v. Maytag Corp.*

CAFA'S Local Controversy Exception: *Evans V. Walter Industries, Inc.*

Page 2

CAFA'S Local Controversy Exception (cont.)

For Further Information
Contact . . .

Gregory C. Cook
205-226-3426 (Birmingham)
gcook@balch.com

G. Bartley Loftin, III
256-512-0113 (Huntsville)
gbloftin@balch.com

James Dartlin Meadows
404-760-3529 (Atlanta)
dmeadows@balch.com

James A. Byrum, Jr.
334-269-3159 (Montgomery)
jbyram@balch.com

Address Change . . .

If you no longer wish to receive this update or have an address change, please contact:

Nora Yardley
205-226-3476
nyardley@balch.com

I. INTRODUCTION

On February 18, 2005, President Bush signed, and Congress enacted, the Class Action Fairness Act ("CAFA"). Granting federal courts original jurisdiction over class actions in which there is minimal diversity and the amount in controversy exceeds \$5,000,000, CAFA has the potential to serve as an important weapon to defendants by allowing removal from unfriendly class action state courts. 28 U.S.C. § 1332 (d)(2). On the other hand, experience since CAFA's passage has shown that, in some states and for some cases, plaintiffs view federal court as a more favorable forum than state court and have used CAFA to file cases originally in federal court.

The Eleventh Circuit Court of Appeals has now issued two opinions dealing with CAFA. In one opinion, the court agreed with the majority of other federal courts and held that the removing defendant bears the burden of proof to establish the amount in controversy exceeds \$5,000,000. In the other opinion, the court held that the party resisting federal jurisdiction (typically the plaintiff) bears the burden of proof to establish that one of CAFA's exceptions to jurisdiction applies.

II. BURDEN OF PROOF: MIEDEMA V. MAYTAG CORP.

In *Miedema v. Maytag Corp.*, 450 F.3d 1322, 1330 (11th Cir. 2006), plaintiff filed a state court class action complaint, alleging that "various 'ranges/ovens' designed and manufactured by Maytag contained a defective motorized door latch assembly," allowing the ranges/ovens to release heat and damage other components in the appliances. The class included "all purchasers ... in the State of Florida."

Maytag then timely removed the action to federal court, including in its removal a declaration from its "informational analyst" who

concluded that 6,729 appliances were implicated in the suit, totaling a potential damage figure of \$5,931,971. After briefing and a discovery deposition of the analyst, the District Court remanded the action for failing to meet the amount in controversy and Maytag timely appealed (a right that is now available under CAFA).

The Eleventh Circuit affirmed the remand. The court noted that the prices used in determining the damages were the "most recent manufacturer's suggested retail price" and did not make clear whether the price reflected compensatory damages. Second, the court noted that Maytag's calculus of the total figure for the ranges/ovens implicated was based on a national average of registrations, which assumes that the average of Florida registrations of the ranges/ovens is identical (that is, Maytag had extrapolated from the number of registrations to reach the number of purchasers). Therefore, the court affirmed the remand based on the presiding principle that "doubts of jurisdiction are to be resolved in the favor of remand." The court expressly rejected the argument that the legislative history of CAFA indicated that Congress intended to reverse "the traditional, well-established rules that govern the placement of the burden of proof."

III. CAFA'S LOCAL CONTROVERSY EXCEPTION: EVANS V. WALTER INDUSTRIES, INC.

For controversies that are truly local in content, Congress provided an exception from CAFA's broad jurisdiction. 28 U.S.C.A. § 1332(d)(4). A district court must decline jurisdiction in a class action if: (1) more than two-thirds of the proposed plaintiff class are citizens of the state in which the action was originally filed and (2) at least one defendant (a) is a defendant from whom "significant relief" is sought, (b) is a defendant whose alleged conduct forms a

Visit Our Offices . . .

1901 Sixth Avenue North
Suite 2600
Birmingham, Alabama 35203

1710 Sixth Avenue North
Birmingham, Alabama 35203

2 Dexter Avenue
Montgomery, Alabama 36104

655 Gallatin Street
Huntsville, Alabama 35801

3535 Piedmont Road
14 Piedmont Center
Atlanta, Georgia 30305

1310 Twenty-Fifth Avenue
Gulfport, Mississippi 39501

401 East Capital Street
Suite 200
Jackson, Mississippi 39201

1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Visit our website
www.balch.com

Disclaimer and Copyright Information . . .

This publication is intended to provide general information. It is not intended as a solicitation, and in the event legal services are sought, no representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers. The listing of any area of practice does not indicate any certification of expertise in the area as listed. ©2006. Balch & Bingham LLP. All rights reserved.

“significant basis” for the claims asserted, and (c) is a defendant who is a citizen of the state in which the action was originally filed. This exception does not apply if there have been any similar class actions filed against any of the defendants during the preceding three years.

In *Evans v. Walter Industries, Inc.*, 449 F.3d 1159, 1164 (11th Cir. 2006), the plaintiffs filed a state court class action, naming eighteen defendants as well as a several fictitious defendants. The complaint alleged that operation of the defendants’ manufacturing facilities in the Anniston, Alabama area caused both property and personal injury to the class. The plaintiffs further alleged that the injuries were due to over eighty-five years of the defendants releasing various waste substances. When the defendants removed the case to a district court, plaintiffs filed a motion to remand, arguing the local controversy exception. The District Court held that the local controversy exception applied and remanded the action back to state court.

The defendants appealed the remand order and the Eleventh Circuit reversed. The court held that “when a party seeks to avail itself of an express statutory exception to federal jurisdiction granted under CAFA . . . the party seeking remand bears the burden of proof with regard to that exception.” The two issues disputed in *Evans* were whether the plaintiff class had shown (1) whether more than two-thirds of the members of the class were Alabama citizens, and (2) whether U.S. Pipe was “a defendant from whom ‘significant relief’” was sought by the class.

The Eleventh Circuit held that the plaintiffs offered little proof that the class included more than two-thirds Alabama citizens. While recognizing that this might be a difficult task because of the nature of the complaint (spreading over 85 years with thousands of unknown potential plaintiffs), the court held that this task was nonetheless a required one that the plaintiffs failed to meet.

The Eleventh Circuit likewise held that the plaintiffs failed to establish that U.S. Pipe was a significant defendant as defined by CAFA. Essentially, the complaint made no specific allegations against U.S. Pipe other than the fact of its operation of two facilities in Anniston. The court found no proof or sound reasoning that U.S. Pipe harmed the plaintiff class, and in fact, one of the U.S. Pipe facilities was closed for many of the identified years. Further, the facilities were located south of the area where most of the plaintiff class resided. Overall, because the court found that the plaintiff had not proved to its satisfaction that the local controversy exception should be invoked, the

case was reversed and remanded, and thus, the suit kept in the district court.

III. CONCLUSION

CAFA is a detailed statute, with many disparate provisions. It can be counted on to produce years of interpretative litigation. The two recent Eleventh Circuit opinions have provided some basic guidance and held, predictably, that the burden of proof for the jurisdictional requirements will remain with the proponent of jurisdiction (typically (but not always) the removing defendant). While the scrutiny applied to the defendants’ removal in *Miedema v. Maytag Corp* could be seen as very strict, defendants have been subject to such scrutiny for their removals for many years. Further, it will normally be relatively simple for the defendant to demonstrate the basics of CAFA jurisdiction: (1) minimal diversity, (2) 100 class members and (3) more than \$5 Million in controversy (excluding costs, fees, etc.). On the other hand, the *Evans* case appears to make resisting jurisdiction for plaintiffs much more difficult. Determining the percentage citizenship for the class appears to be a much more difficult task than the amount in controversy – particularly based upon the level of scrutiny applied by the Eleventh Circuit.