

PUBLICATION

A No-Win Situation: The Supreme Court Declines To Resolve CAFA Circuit Split

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The Class Action Fairness Act of 2005 (CAFA) represented a major overhaul of class action lawsuits and made the federal courts available for cases not involving a question of federal law. Among the effects, CAFA greatly increased federal courts' discretion to exercise diversity jurisdiction over class action suits. This was accomplished by relaxing how the amount in controversy is determined and through major changes to the geographic diversity requirements.

Prior to CAFA's enactment, at least one class member was required to assert a claim of at least \$75,000 for a federal court to exercise diversity jurisdiction over a case. While that requirement did not always prove problematic, many of today's class actions involve automobile recalls, cell phone fees, and convenience charges that do not come close to \$75,000 on an individual level. Class members and defendants in those cases could not proceed in federal court based on diversity jurisdiction alone. CAFA increased the amount in controversy requirement to \$5 million, but the requirement can now be met by combining all the class members' claims to reach the threshold.

CAFA also changed the requirement that all plaintiffs be geographically diverse, or citizens of different states, from all defendants to allow federal diversity jurisdiction to be exercised. If one plaintiff is diverse from one defendant, geographic diversity is met under CAFA.

The Supreme Court has not been shy about weighing in on CAFA jurisdiction issues in the past, such as whether a removing defendant must include evidence supporting the basis for removal or if a statement alleging grounds for removal is enough, so many assumed that the Court would address the latest issue head-on.

An Unanswered Question Results In A Circuit Split

Due to the relaxation of the requirements for diversity jurisdiction, many more class actions have made their way into federal court, either through filing there or by removal by defendants seeking an alternative forum to state court. One resulting anomaly is when a case is removed to federal court and the court later finds it does not have jurisdiction to hear the case, and the state court is also without jurisdiction for the same reason. The question then exists, as was presented to the Supreme Court in *Layne Energy Inc. et al v. Catron*, of whether the federal court may dismiss the case or must remand the case even if the state court does not have jurisdiction and will have to dismiss it at the state court level.

After the class action was removed to federal court in *Layne*, the sole named class representative admitted that he could not have been injured by the conduct alleged in the case and, therefore, did not have standing to be a member of the class. If the case was remanded, the state court would not have jurisdiction over the named plaintiff either, so the case would be dismissed by the state court and the remand is futile.

A circuit split has resulted over this issue. The two approaches of the different circuits are as follows:

The First, Fifth, and Ninth Circuits have found, and the Second Circuit has indicated that it would follow suit, that the federal district court judge is entitled to dismiss the case instead of remanding to state court when remand would be futile. The primary reason for what is termed the "futility exception" is to avoid a waste of judicial resources.

The Third, Fourth, Sixth, Seventh, Tenth and Eleventh Circuits have held directly opposite and rejected this "exception" based on the language of 28 U.S.C. § 1447(c). Section 1447(c) states in relevant part that "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." Although those six circuits have affirmed dismissals in cases where remand would be futile, those same circuits have held that they are prevented from recognizing the "exception" because the language of § 1447(c) mandates that "the case shall be remanded."

The Supreme Court's Decision Fails To Mend The Divide

In *Layne*, the petitioners recognized "a classic circuit split that the Supreme Court should settle." The petitioners asked the Court to reverse the Tenth Circuit's decision that once again affirmed that a district judge in that circuit must remand, and not dismiss, a suit even when the parties and the court agree that the sole named plaintiff lacks standing to bring the suit whether in state or federal court.

As the petitioners stated in their Petition for Writ of Certiorari to the Supreme Court, "Had this case been brought in the First, Fifth, or Ninth Circuits, this action would have been dismissed rather than remanded, and Defendants would not be forced to relitigate in state court a dispositive finding, which they already obtained from the district court, that Plaintiff had no standing or right to bring this lawsuit." Despite the opportunity to resolve this circuit split, the Supreme Court denied certiorari and chose not to do so, declining the opportunity to acknowledge a futility exception to § 1447(c) and perpetuating this circumstance where a case ends up in a no-win purgatory and wastes judicial resources, without the potential of a different outcome.