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11th Circ. Ruling Deepens 'Event Or Occurrence' Circuit Split

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April 28, 2020, 4:45 PM EDT

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In a March 17 opinion in Spencer v. Specialty Foundry Products Inc., the U.S. Court of Appeals for the Eleventh Circuit weighed in on a developing split among the circuits about how to apply the mass action local event exception of the Class Action Fairness Act, or CAFA.[1]

In vacating a district court order remanding a lawsuit to state court, the Eleventh Circuit followed the guidance of the Third and Fifth Circuits in concluding that the exception covers a continuous, related course of conduct culminating in one harm-causing event or occurrence.

The U.S. Court of Appeals for the Ninth Circuit, however, has held that the exception applies only to a single event or occurrence. The U.S. Supreme Court may thus be called on to address the issue.

Some background on CAFA helps frame the issue. CAFA states that a federal district court has original jurisdiction over putative class actions in which the amount in controversy exceeds $5 million in damages and "any member of a class of plaintiffs is a citizen of a State different from any defendant."[2]

A mass action, unlike a class action, is a civil action involving 100 or more persons whose claims are to be tried jointly because they involve common questions of law or fact, and the amount in controversy exceeds $75,000 for each claim.[3] CAFA's mass action provision states that a mass action shall be deemed to be a class action if it meets certain requirements.

But CAFA's mass action provision also includes a so-called local event exception, which provides that federal courts shall not have jurisdiction (at least via CAFA) over any civil action in which "all of the claims in the action arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State."[4]

Such actions would be subject to state court jurisdiction. CAFA permits removal of class actions and mass actions filed in state court for which jurisdiction would be proper in

federal court. The question before the court in Spencer was what constitutes an event or occurrence for purposes of this exception.

In Spencer, 230 foundry workers filed suit in the Circuit Court of Jefferson County against makers of allegedly toxic materials used at an Alabama foundry. The workers alleged that the cast metal parts they made using the defendants' materials released hazardous and carcinogenic chemical substances, and that the defendants failed to provide safe directions for their use, and failed to disclose known dangers from the products.

One of the defendants removed the case to federal court as a CAFA mass action. In response, the plaintiffs moved to remand the case to state court under CAFA's local event exception and the local controversy exception.

The Alabama federal district court did not address the local controversy exception, but agreed that the local event exception applied, and remanded the action to state court. The district court reasoned that the claims were "truly local" because the foundry was located in Alabama, the plaintiffs worked in Alabama, the alleged injuries occurred in Alabama and the sole purchaser of the defendants' products was the Alabama foundry.[5]

On interlocutory review, the Eleventh Circuit vacated the order to remand, finding that the local event exception did not apply because the allegations in the complaint did not constitute an event or occurrence. The Eleventh Circuit held that an event or occurrence refers to "a series of connected, harm-causing incidents that culminate in one event or occurrence giving rise to plaintiffs' claims."[6]

The court rejected both the plaintiffs' view that the local event exception applies to "any continuing set of circumstances in a single location," as well as the defendants' view that the local event exception "applies to only events or occurrences that take place at a singular moment in time."[7] In holding that the local event exception did not apply, the Eleventh Circuit found that the complaint did not allege a single culminating event that caused harm to the foundry workers, but instead a series of discrete incidents caused the harm.

Spencer was not the first decision to address the meaning of CAFA's local event exception. In 2012, in Nevada v. Bank of America, the Ninth Circuit concluded that the exception "applies only where all claims arise from a single event or occurrence."[8]

In that case, the State of Nevada brought an action in state court alleging that a mortgage lender "misled Nevada consumers about the terms and operation of its home mortgage modification and foreclosure processes."[9] The defendants removed the action to federal court under CAFA, asserting federal subject matter jurisdiction as either a class action or mass action.

The federal district court denied Nevada's motion to remand, finding it had jurisdiction over the action as a class action but not a mass action. On appeal, the Ninth Circuit found CAFA's mass action local event exception did not apply to Nevada's claims because the complaint alleged "widespread fraud in thousands of borrower interactions" that occurred at different times and locations.[10]

The Ninth Circuit has since extended its reasoning to other situations — reaffirming its view that an event or occurrence in the exception refers to a singular happening, and not to claims that involve "a continuing course of pollution, contamination, or conduct that occurs over a period of years."[11]

Just a year after Nevada, the U.S. Court of Appeals for the Third Circuit held that a "continuing set of circumstances" that "share some commonality and persist over a period of time" constitutes an event or occurrence under the local event exception.[12] In Abraham v. St. Croix Renaissance Group, the Third Circuit found that allegations that a defendant emitted hazardous substances onto its property fell within the local event exception.

In reaching its conclusion, the Third Circuit rejected the defendant's argument that the local event exception requires a single event or occurrence, which was not present in this case because "there were multiple events and occurrences over many years."[13]

The Third Circuit concluded that because there was no evidence of "separate and discrete incidents causing the emission of the various substances at any precise point in time," such as the defendant removing hazardous substances, this was not a case involving "multiple events or occurrences"; rather, the claims arose from an event or occurrence even though the emissions took place over a period of time and involved "multiple substances."[14]

And just a year after Abraham, the U.S. Court of Appeals for the Fifth Circuit adopted yet another approach to CAFA's local event exception by adopting elements of the interpretations by its sister circuits. In Rainbow Gun Club Inc. v. Denbury Onshore LLC, which involved allegations that the defendant had breached its duty to maintain a well that was drilled under certain leases, the court found that an event or occurrence exists when a pattern of conduct leads "to a single focused event that culminates in the basis of the asserted liability."[15]

Following the Third Circuit and rejecting the Ninth Circuit, the Fifth Circuit agreed that the local event exception is "not generally understood to apply only to incidents that occur at a discrete moment in time."[16]

But the Fifth Circuit also broke somewhat from the Third Circuit by holding that the exception was satisfied by "an ongoing pattern of conduct that was contextually connected, which when completed created one event consistent with the ordinary understanding and legislative history of the exclusion."[17] The court found that the negligent acts alleged by the plaintiffs culminated in a single event, i.e., the well failing.

The Eleventh Circuit's decision appears to be most in line with the Fifth Circuit. Indeed, the Eleventh Circuit explicitly deemed the Ninth Circuit's narrow test "too cramped," and noted that the Third Circuit's broader approach could use "guardrails."[18]

As yet, other courts of appeals have not addressed the local event exception. But it may be only a matter of time before they take a position on what constitutes an event or occurrence in the CAFA mass action context.

In the meantime, regardless of the jurisdiction, practitioners seeking to remove mass actions to federal court, as well as those hoping to keep things local, would be wise to follow continuing developments in this area and preserve arguments about the meaning of CAFA's local event exception. If the current split in the circuits persists, the Supreme Court may well decide to step in.

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[1] Spencer v. Specialty Foundry Prod. Inc., 953 F.3d 735 (11th Cir. 2020).

[2] 28 U.S.C. § 1332(d)(2).

[3] 28 U.S.C. § 1332(d)(11)(B)(i).

[4] 28 U.S.C. § 1332(d)(11)(B)(ii)(I).

[5] Spencer, 953 F.3d at 739.

[6] Id. at 740.

[7] Id.

[8] Nevada v. Bank of America, 672 F.3d 661, 668 (9th Cir. 2012).

[9] Id. at 664.

[10] Id. at 668.

[11] Allen v. Boeing Co., 784 F.3d 625, 632 (9th Cir. 2015).

[12] Abraham v. St. Croix Renaissance Group LLLP, 719 F.3d 270, 272-73 (3d Cir. 2013).

[13] Id. at 274.

[14] Id. at 280.

[15] Rainbow Gun Club Inc. v. Denbury Onshore LLC, 760 F.3d 405, 412 (5th Cir. 2014).

[16] Id. at 409.

[17] Id. at 413.

[18] Spencer, 953 F.3d at 742.