

64th

Mineral Law Institute

Discussion of Selected Federal Court Jurisdiction Issues in Oil and Gas Disputes

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MCGINNIS LOCHRIDGE

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Coverage of Presentation:

- Diversity Jurisdiction
- CAFA
- Outer Continental Shelf Lands Act
- Natural Gas Act





DIVERSITY JURISDICTION





AMOUNT IN CONTROVERSY





NORTHROP PROPERTIES
v.
CHESAPEAKE APPALACHIA





USERY
v.
ANADARKO PETROLEUM CORP.





SULLIVAN
v.
CHESAPEAKE LOUISIANA, LP





CLASS ACTION FAIRNESS ACT (“CAFA”)





Three Sweeping Changes:

- Expansion of Federal Diversity Jurisdiction
- Substantially relaxes Restrictions on the removal of class actions to federal court
- Establishes Set of guidelines to protect class members





CAFA GENERAL RULES





CITIZENSHIP UNDER CAFA





Class Actions Under CAFA

Federal Court has Jurisdiction if:

- 100 or more class members
- More than \$5 million is in controversy; AND
- Any member of Plaintiff Class is a citizen of state different from that of any Defendant





CAFA's "Balanced Diversity" Requirements:

"Complete Diversity" Not Required, ie. Plaintiff and Defendant Can Be Residents of Same State.

- Satisfied if any member of class is a citizen of different state from any defendant. Referred to as "Balanced Diversity."





Example

- Under “complete diversity”:
 - Plaintiff (La resident) files class action suit in state court against Defendant A (La. Resident) and Defendant B (Texas Resident)
 - Case not removable unless Defendant A was “fraudulently joined.”
- Under CAFA “Balanced Diversity”
 - Case is removable by either Defendant A or B if meets other CAFA requirements (100 or more class members, more than \$5 million in controversy).





CAFA's "Amount In Controversy" Requirement:

- Each Plaintiff Does Not Have to Meet The \$75,000 amount in controversy requirement.
- Amount in controversy is satisfied if the claims of all members when aggregated exceed \$5 million.
- Party seeking to establish federal jurisdiction has burden of proof to a "legal certainty" that amount in controversy exceeds threshold by a "preponderance of the evidence."





CAFA Relaxes Restrictions on Removal to Federal Court

- Defendant must still remove to federal court within 30 days but CAFA removes the 1 year time limit under the general removal statute for class actions.
- Consent of all defendants is not required.
- If district court remands case to state court, Defendant has a right to appeal. CAFA allows immediate, expedited appellate review of remand orders.





EXCEPTIONS TO CAFA





Four Mandatory Exceptions to CAFA

Court must decline jurisdiction:

- “Local Controversy”
- “Home State Controversy”
- “State Action”
- “Covered Security”





Burden of Proof on Exceptions

Burden of Proof Rests with Party Opposing Federal Court Jurisdiction

- As a result, Plaintiff has burden of proof in showing that case is not subject to CAFA under exception





LOCAL CONTROVERSY EXCEPTION





“Local Controversy” Exception

Court must decline jurisdiction if:

- Greater than 2/3rds of class are citizens of state where action filed.
- At least 1 Defendant is a citizen of state in which action filed and:
 - From whom “significant relief” is sought by the members; and
 - Whose alleged conduct forms a “significant basis” for the claims asserted.
- “Principal Injuries” were incurred in the state in which the action was filed.
- No other class action filed within 3 years that is similar against any of the defendants on behalf of class.





“Local Controversy” Exception

***ROBINSON V. CHEETAH TRANSPORTATION,
2006 WL 468820 (WD La)***





HOME STATE CONTROVERSY





“Home State Controversy” Exception

Court must decline jurisdiction if:

- 2/3rds or more of the class members are citizens of the state in which the suit was filed; and
- “primary defendants” are citizens of the state in which the suit was filed.





STATE-ACTION EXCEPTION





“State-Action” Exception

- Court must decline jurisdiction in which the “primary defendants” are states, state officials, or other governmental entities.
- Fifth Circuit has interpreted statute to require that all of the primary defendants must be states or other governmental entities in order for exception to apply.





“Covered Security/Corporate Governance” Exception

Exempts class actions that solely involve:

- Claims covering securities covered by the Securities Act of 1933 and Securities Exchange Act of 1934 or
- Claims that relate to the internal affairs or governance of a corporation that arises by virtue of the laws of the state in which such corporation is incorporated.
- Claims that relate to the rights, duties and obligations related to any security defined by the Securities Act and regulations.





“INTEREST OF JUSTICE” EXCEPTION





“Discretionary” Exception

“Interest of justice”

- Less than 2/3rds members and more than 1/3rd of members are citizens of state in which action filed
- Primary defendants are citizens of state in which action filed.
- Court shall consider totality of circumstances and consider factors enumerated.





Exceptions

GATTI V. STATE OF LOUISIANA (2011)





Exceptions

ROBERTSON V. CHEVRON (2016)







Comparison of Federal Jurisdiction in Diversity Class Actions

- Numerosity
 - Regular: FRCP 23(a)(1)--usually met with 40 or more class members.
 - CAFA: must be more than 100 class members.
- Citizenship
 - Regular: All class representatives and all defendants must be completely diverse.
 - CAFA: Any class member must be diverse from Any defendant
- Amount in Controversy
 - Regular: At least one named plaintiff had to have more than \$75,000 in controversy--discretion of court to hear other members' claims through supplemental jurisdiction.
 - CAFA: A total of more than \$5 million, exclusive of interests and costs must be in controversy.





Removal Rules Compared

- **Citizenship**
 - Conventional: Only out of state defendants can remove in diversity cases
 - CAFA: Any defendant can remove.
- **Consent**
 - Conventional: All defendants must consent to the removal.
 - CAFA: Consent of all defendants is not required.
- **Deadline**
 - Conventional: Must remove within 30 days of receiving removable pleading--but no longer than 1 year from commencement of action.
 - CAFA: No 1 year time limit.





CLASS CERTIFICATION





WAL-MART STORES, INC. v. DUKES





COMCAST CORP. v. BEHREND





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Political News

House Judiciary Committee Passes H.R. 985: Fairness in Class Action Litigation

In a sneak attack on consumers, the House Judiciary Committee approved the so-called "Class Action Killer" bill without any public hearings or debate.

EB Elizabeth Bradley on February 20, 2017





FEDERAL QUESTION JURISDICTION





OUTER CONTINENTAL SHELF LANDS ACT (“OCSLA”)





OCSLA

“Except as provided in subsection (c) of this section, the district courts shall have jurisdiction of cases and controversies arising out of, or in connection with (A) any operation conducted on the outer Continental Shelf which involves exploration, development , or production of the minerals, of the subsoil and seabed of the outer Continental Shelf, or which involves rights to such minerals, or (B) the cancellation, suspension, or termination of a lease or permit under this subchapter.”





WHAT CONSTITUTES AN OPERATION?





AMOCO PRODUCTION CO. V. SEA ROBIN





WHAT CONSTITUTES PRODUCTION, DEVELOPMENT, EXPLORATION?





OCSLA

Statute provides definitions of:

- “Exploration”
- “Development”
- “Production”

43 U.S.C. section 1331 (k)-(m)





WHAT ACTIONS “ARISE OUT OF” AN OCSLA OPERATION?





OCSLA

Fifth Circuit held action arose out of OCSLA:

- Amoco Production v. Sea Robin (take or pay contractual dispute)
- Laredo Offshore Constructors v. Hunt Oil (dispute over payment for construction of a platform that was to be affixed to the OCS).





OCSLA

Decisions where Court held OCSLA does not confer jurisdiction:

- Plains Gas Solutions v. Tennessee Gas Pipeline (breach of gas processing plant contract)
- Brooklyn Union Exploration v. Tejas Power (contractual price recalculation—no effect on physical production)





*BOARD OF COMMISSIONERS
v.
TENNESSE GAS PIPELINE CO.*





DEFELICE LAND COMPANY, LLC
v.
CONOCOPHILLIPS COMPANY, ET AL





OCSLA'S CHOICE OF LAW PROVISION





OCSLA

- Borrows state law to account for gaps in federal law. Section 1333(a)(2)(A).
- Three part analysis:
 - Controversy must arise on a situ covered by OCSLA (the subsoil, seabed, or artificial substructures permanently or temporarily attached thereto)
 - Federal maritime law must not apply on its own force;
 - The state law must not be inconsistent with federal law.





OCSLA

- Which state law to borrow?
 - Four types of evidence:
 - Geographic proximity;
 - Which coast the federal agencies consider the subject platform to be “off of”;
 - Prior court determinations; and
 - Projected boundaries.





NATURAL GAS ACT (“NGA”)





NGA'S CONFERRAL OF FEDERAL JURISDICTION





VIOLATIONS OF THE NGA





CONDEMNATION ACTIONS





FERC POWER





COMITY





CONCLUSION





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