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Jurisdiction question has many heads

By Michael R. Lied

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John Stell and Charles Williams Jr., on behalf of themselves individually and as class representatives, filed a putative class-action suit against Gibco Motor Express LLC. The plaintiffs alleged Gibco failed to pay its employees overtime wages at time and a half for all hours worked over 40 hours a week. This would be in violation of the Illinois Wage Payment and Collection Act and in breach of Gibco's employee handbook.

Gibco removed the matter to federal court. The plaintiffs moved to remand to state court, arguing that because this was a putative class action, Gibco could not remove the case pursuant to Section 1332(a) (traditional diversity jurisdiction).

Instead, the plaintiffs insisted, jurisdiction was present only if the jurisdictional requirements set forth in Section 1332(d)(2), otherwise known as the Class Action Fairness Act, were satisfied. The plaintiffs argued that Gibco failed to establish that the amount in controversy exceeded CAFA's jurisdictional requirement of \$5 million and that, therefore, the case should be remanded to state court.

CAFA established a new form of diversity-based, subject-matter jurisdiction for class actions with 100 or more class members, minimal diversity and a \$5 million aggregate amount in controversy. Despite the plaintiffs' arguments to the contrary, CAFA does not supplant traditional diversity jurisdiction; it supplements it.

Nothing in the text of Section 1332(d) purports to restrict the traditional diversity jurisdiction conferred under Section 1332(a). Absent such an express provision, the court could not conclude that CAFA was the exclusive means for establishing subject-matter jurisdiction over class actions.

The court found CAFA did not prevent federal courts from exercising jurisdiction over class actions that fall within the parameters of the traditional diversity jurisdiction provision found in Section 1332(a).

Rather, CAFA provides parties with an alternative to traditional diversity jurisdiction. Thus, the court could exercise jurisdiction over the case if the requirements of traditional diversity jurisdiction were met.

Class actions are removable under traditional diversity if there is complete diversity of citizenship between the class representatives and the defendants, that is, no class representative is a citizen of the same state as any defendant, and the required amount in controversy is met.

Here, complete diversity was present. The only issue was whether the amount in controversy was met.

The court rejected the contention that the plaintiffs' claims could be aggregated to meet the amount in controversy requirement. As a general rule, putative class members' individual damages cannot be aggregated to reach the required amount.

In assessing whether aggregation is permitted, the question was whether the putative class members' claims were "separate and distinct" or "common and undivided." Claims are common and undivided only when there is both a common fund from which the plaintiffs seek relief and the plaintiffs have a joint interest in that fund, such that plaintiffs' rights are affected by the rights of co-plaintiffs.

Here, there was no common fund, and there is no joint interest. Each putative class member could pursue a separate claim seeking to recover unpaid wages without implicating the rights of his or her co-plaintiffs. Accordingly, the claims were separate and distinct; a limited exception to the rule against aggregation did not apply.

The required amount in controversy is only met if at least one class representative has a claim that is worth more than \$75,000, exclusive of interest and costs. The amount in controversy is measured on the day the suit was removed. This includes attorney fees. Gibco, as the party invoking federal jurisdiction, had to set out the basis for jurisdiction and prove any contested factual allegation by a preponderance of the evidence.

The plaintiffs had to contest Gibco's estimate as to the amount in controversy. The plaintiffs contended that, at most, each plaintiff's damages amounted to approximately \$2,700. Given this assertion and Gibco's failure to refute it, the likelihood that any one of the representative plaintiffs had damages that exceeded \$75,000 was sufficiently remote to require Gibco to come forward with some evidence or argument to establish the plausibility of an inference that at least one member of the class could cross the \$75,000 threshold. Gibco did not.

Instead, Gibco focused on the potential recovery for multiple plaintiffs, future attorney fees and the fact that the complaint sought damages, as to the class, in excess of \$50,000. None of these arguments addressed the relevant question — whether the individual claims of either named plaintiff exceeded \$75,000.

The record reflected the damages for each class representative were, at most, \$2,700 and Gibco failed to demonstrate otherwise.

Plaintiffs' motion to remand was granted.

The takeaway is that in a class action, removal is possible both under traditional diversity jurisdiction or the CAFA, but the defendant has the obligation to establish that removal is proper.

The case is *John Stell and Charles Williams Jr. v. Gibco Motor Express LLC*, 2016 WL 2620178 (S.D. Ill.) (May 9, 2016).

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