

Blocking CAFA Remand: Lessons From A Prevailing Defendant

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The Class Action Fairness Act[1] was designed, at least in part, to allow defendants to remove to federal court class actions strategically filed by plaintiffs in sympathetic state court jurisdictions. This newfound ability for defendants to have a say in which venue hears their case fundamentally changed the class action litigation landscape, creating a whole new set of procedures to learn and navigate — and with them, a whole new set of strategies to employ and hurdles to clear.

In *Doyle v. OneWest Bank FSB*, a class action lawsuit originally filed in California Superior Court,[2] the named plaintiffs purported to represent a nationwide class allegedly harmed by lender-placed insurance. The case was removed to federal court under the CAFA on a theory of diversity jurisdiction, but after certain parties were severed and transferred, Geraldine Doyle amended her complaint to represent only a California class, and soon after filed a motion to remand the case back to state court.



Robyn C. Quattrone

She argued that because the class definition now included only California class members, the CAFA's exceptions stripped the federal district court of jurisdiction to hear this case. While the district court agreed, the U.S. Court of Appeals for the Ninth Circuit ultimately did not. The removal and remand saga in *Doyle* is but one example of the larger issues inherent in the ongoing interpretation of CAFA and the statute's attempt to provide expanded federal jurisdiction over large class actions.

Remanding Under The CAFA and Its Three Exceptions

While certain CAFA exceptions — the “local controversy” exception[3] and the “home-state controversy” exception[4] — are mandatory, that is, the district court must remand the case if the elements are satisfied, the “interest of justice” exception is at the district court's discretion.[5] A district court may decline to exercise jurisdiction if between one and two-thirds of the putative class members, as well as the primary defendants, are citizens of the state where the lawsuit was filed and remand is “in the interests of justice” when considering “the totality of the circumstances.”[6]

In opposing her remand motion, the *Doyle* defendants argued that (1) post-removal actions (such as amending a complaint) cannot divest a federal court of CAFA subject matter jurisdiction, (2) citizenship of the putative class members — a critical factor — must be determined as of the date the case became removable, and (3) anything that happens afterward, such as limiting the class definition to fit into a CAFA exception, is immaterial.

The district court disagreed. Despite acknowledging these arguments as “generally true,” the district court nevertheless found that it should “determine whether, after removal ... a case rightfully should be decided by state court.”[7] Despite that plaintiff failed to argue the “interest of justice” exception, the court, sua sponte, concluded that Doyle’s post-removal amendment of her class definition divested it of CAFA subject matter jurisdiction.[8]

Appealing a Remand Order Under CAFA

Normally, this ruling would have ended the inquiry, as remand orders generally are not appealable.[9] But, remand orders issued under CAFA removals are appealable (albeit not as a matter of right).[10] The appellants argued that under the governing Ninth Circuit law, citizenship of putative class members, as it relates to the applicability of the CAFA exceptions, must be assessed at the time the case became removable, not after.[11] Otherwise, CAFA removals would be rendered meaningless by crafty plaintiffs who simply amend their complaints post-removal to avoid federal jurisdiction.

Back to State Court

While the parties waited to see if the Ninth Circuit would hear the appeal, they headed back to state court after a nearly five-month hiatus. The defendants argued to the state court that, since motion practice had previously begun in federal court, the case should be stayed pending the Ninth Circuit’s decision. The state court disagreed, instead ordering the parties to engage in motions practice and limited class-based discovery — a ruling that led to the filing of a motion with the Ninth Circuit to stay or enjoin the state court proceedings.

With both filings now pending before the Ninth Circuit, and the parties still litigating in a state court with unconfirmed jurisdiction, the Doyle defendants were in the awkward position of litigating in two courts and engaging in class-based discovery before the pleadings were even tested via motions to dismiss. Further, there was no timetable for when to expect a ruling from the Ninth Circuit. While the Ninth Circuit is required to complete all action on an appeal no later than 60 days after the date on which the appeal was first filed,[12] the 60-day clock does not begin to run until the appellate court accepts the appeal.[13] Until that time, the Doyle parties were left to wait — and theoretically, they could have waited forever.

With that in mind, the Doyle defendants sought avenues to minimize their awkward position. Above all, this meant taking action (such as seeking a lengthened state court demurrer schedule) to buy time for the Ninth Circuit to rule before being forced to actually litigate in state court.

The Ninth Circuit Breaks Its Silence

After four long months — and seven months since the initial remand order — the Ninth Circuit granted the petition for permission to appeal under the CAFA, but denied the motion to stay or enjoin the state court proceedings pending its decision. This quasi-victory meant that the Doyle defendants would have to litigate in state court with the real possibility of repeating the whole process again in federal court. But it also meant that the 60-day clock had finally begun to tick.

And, as promised, within 60 days, the Ninth Circuit overturned the district court’s remand order and ruled in the defendants’ favor. Citing *Mondragon*, the Ninth Circuit held that “[f]or the purpose of considering the applicability of the exceptions to CAFA jurisdiction, the District Court should have

determined the citizenship of the proposed plaintiff class based on Doyle’s complaint ‘as of the date the case became removable.’”[14] Consistent with this disposition, the case was rightfully sent to federal court.

Lessons Learned

First, defendants should be wary of plaintiffs who seek to amend their complaint by narrowing their class definitions, but should know that Ninth Circuit precedent is on their side and that proper removals should stick. Plaintiffs, for their part, should be mindful when crafting complaints of jurisdictional concerns and not open themselves up to federal jurisdiction if they prefer state court.

Second, if your client seeks to appeal a remand order under the CAFA appeals process, be prepared to wait indefinitely for the 60-day clock to begin.

Third, the likelihood of having to wait should guide your strategic decisions. Rather than needlessly expending resources litigating in a state court that may ultimately be divested of jurisdiction, a defendant who appeals a remand order under CAFA would be wise to take actions that delay such litigation until a final ruling on the appropriate forum, such as moving the federal court of appeals or the state court to enjoin or stay the state proceedings or extend the state court case schedule and limit discovery. Not only will you save your client money from having to engage in duplicative motion practice (assuming your appeal is successful), but your chances of success at the pleading stage may increase if you can avoid a ruling on motions to dismiss in states with less lenient dismissal standards than *Iqbal/Twombly*.^[15] Therefore, the savvy defendant should work with co-defendants and plaintiffs to give the appellate court the time it needs to rule.

—By Robyn C. Quattrone, Dustin A. Linden and Stephen M. LeBlanc, BuckleySandler LLP

Robyn C. Quattrone is a partner in BuckleySandler's Washington, D.C., office. Dustin A. Linden is an associate in the firm's Los Angeles office. Stephen M. LeBlanc is an associate in the Washington office.

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[1] 28 U.S.C. § 1332 et seq.

[2] *Doyle v. OneWest Bank FSB*, No. BC513292 (Cal. Super. Ct. 2013), No. 13-05951 (C.D. Cal. 2014).

[3] 28 U.S.C. § 1332(d)(4)(A); see *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1022 (9th Cir. 2007).

[4] 28 U.S.C. § 1332(d)(4)(B); see *Serrano*, 478 F.3d at 1022-23.

[5] 28 U.S.C. § 1332(d)(3); see *Serrano*, 478 F.3d at 1022.

[6] 28 U.S.C. § 1332(d)(3).

[7] *Doyle*, No. 13-05951 (C.D. Cal. Jan. 8, 2014) (order granting plaintiff’s motion to remand).

[8] *Id.*

[9] See 28 U.S.C. § 1447(d).

[10] See 28 U.S.C. § 1453(c)(1) (“[A] court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand a class action to the State court from which it was removed if application is made to the court of appeals not more than 10 days after entry of the order.”) (emphasis added); 28 U.S.C. § 1453(c)(2) (“If the court of appeals accepts an appeal . . . the court shall complete all action on such appeal, including rendering judgment, not later than 60 days after the date on which such appeal was filed.”).

[11] Citing 28 U.S.C. § 1332(d)(7); see *Mondragon v. Capital One Auto Fin.*, 736 F.3d 880, 883 (9th Cir. 2013) (holding that for purposes of assessing jurisdiction under CAFA, citizenship must be assessed as of the date the case became removable, not at the time of remand).

[12] See 28 U.S.C. § 1453(c)(2).

[13] *Bush v. Cheaptickets, Inc.*, 425 F.3d 683, 685 (9th Cir. 2005).

[14] *Doyle v. OneWest Bank, FSB*, 764 F.3d 1097, 1098 (9th Cir. 2014) (quoting *Mondragon*, 764 F.3d at 883).

[15] *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007).