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NEWS & INSIGHTS

11TH CIRCUIT WEIGHS IN ON CLASS ACTION FAIRNESS ACT (CAFA) FOR MASS ACTIONS

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On March 17, 2020, the Eleventh Circuit Court of Appeals handed down its decision in ***Spencer v. Specialty Foundry Products, Inc.***, a case of first impression involving the "local occurrence" or "local event" exception to subject matter jurisdiction in mass actions under the Class Action Fairness Act. Lightfoot attorneys briefed and **argued** this appeal, in which the court vacated the district court's remand order and set an important new jurisdictional precedent. The following provides background on the *Spencer* case, explains how the decision fits in with CAFA mass action cases from across the country and discusses the ramifications of the Eleventh Circuit's newly adopted standard for the "local occurrence" exception.

First, a little background

CAFA generally grants expansive federal jurisdiction over *class actions*. District courts have original jurisdiction over class actions in which the amount in controversy exceeds $5,000,000 and one of several citizenship conditions is met, principally among them, minimal diversity, meaning any one defendant is a citizen of a state different than any one plaintiff. A *mass action* is defined in 28 § 1332(d)(11)(B)(i) as any civil action involving 100 or more plaintiffs whose claims are to be tried jointly and involve common questions of law and fact, all subject to the $75,000 amount in controversy requirement from § 1332(a). For purposes of subject matter jurisdiction, § 1332(d)(11)(A) says that *mass actions* are to be treated just like *class actions*.

As Lightfoot previously addressed in its **Top 10 Q&A for Product Liability Class Actions** series, CAFA *class actions* are subject to several exceptions found in §§ 1332(d)(3) through 1332(d)(10). But there are additional exceptions to CAFA's grant of subject matter jurisdiction for *mass actions*. At issue in *Spencer* was the "local occurrence" exception, found at § 1332(d)(11)(B)(ii)(I), which applies when "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."

The key language in the "local occurrence" exception is "an event or occurrence," and the questions most commonly before courts – as they were in *Spencer* – are what constitutes "an event or occurrence" and how courts should distinguish between claims that arise out of just one "event or occurrence" and those that, although linked by defendant and/or subject matter, constitute multiple "events" or "occurrences". It should surprise no one that federal courts around the country have answered these questions differently – and sometimes drastically so. Although district court cases abound, we will focus on the four appellate opinions interpreting the "local occurrence" exception that preceded the decision in *Spencer*.

Earlier Circuit decisions

The Ninth Circuit was first to address the issue in *Nevada v. Bank of America*, ruling that the statutory text and legislative history required that all claims must "arise from a *single* event or occurrence," meaning one discrete event of limited duration. See 672 F.3d 661, 668 (9th Cir. 2012). The *Nevada* court held that the "local occurrence" exception did not apply to allegations of fraud across thousands of lender-borrower interactions that happened at different times and locations.

The Third Circuit went next in *Abraham v. St. Croix Renaissance Group, LLLP*, which involved allegations that a single defendant failed to abate hazardous materials on property it purchased (a refinery site) and that dangerous chemicals had been dispersed by wind from that property onto the properties of over 500 individual plaintiffs. 719 F.3d 270, 272-73 (3d Cir. 2013). The Third Circuit agreed with Nevada that the statutory language is singular but found the Ninth Circuit's conception of "event or occurrence" too narrow, explaining that a "continuing set of circumstances" that "share some commonality and persist over a period of time" also satisfy the "local occurrence" exception. Because there was no evidence in the record of "separate and discrete incidents" altering the alleged emissions – such as the defendant removing chemicals from the refinery site or conducting new operations there that may have disturbed the allegedly hazardous substances – the Third Circuit held that the "local occurrence" exception applied. This was true even though the emissions took place over a lengthy period of time and involved "multiple substances [that] are alleged to have emanated from" the refinery site.

The Fifth Circuit provided yet another conception of the "local occurrence" exception in *Rainbow Gun Club, Inc. v. Denbury Onshore, LLC*, which involved 167 individuals, trusts and associations as plaintiffs, two defendants, and allegations the defendants negligently maintained an oil, gas and hydrocarbon exploration well, causing the well to fail prematurely. 760 F.3d 405, 407-08 (5th Cir. 2014). Recognizing the diverging analyses of the Ninth and Third Circuits, the Fifth Circuit ultimately framed its test differently, holding that the "local occurrence" exception is 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." The Fifth Circuit did not view the five different negligent acts alleged by the plaintiffs as dispositive, explaining that they had all "culminate[d] in the single event" – the well's failure – which served as the basis for both defendants' alleged liability.

The Ninth Circuit had another go at the "local occurrence" exception in *Allen v. Boeing Company*, where it adhered to its prior precedent (Nevada) and criticized the Third Circuit's broad characterization of "event or occurrence" as inconsistent with the common, ordinary understanding of those words. 784 F.3d 625, 628-31 (9th Cir. 2015). The Ninth Circuit also suggested that its analysis did not significantly differ from the Fifth Circuit's test, explaining that the Fifth Circuit's "approach is neither helpful to Plaintiffs nor necessarily contrary to *Nevada*." The *Allen* court concluded that the plaintiffs had "challenge[d] several distinct actions" by the defendants and therefore pled themselves out of the "local occurrence" exception.

The Eleventh Circuit weighs in

Into this fray stepped the Eleventh Circuit with *Spencer*. *Spencer* involves 229 individual plaintiffs, all former employees of the Grede Foundry in Bessemer, Alabama. The plaintiffs filed suit in Alabama state court complaining about the use of the defendants' products in two rooms at the foundry (the "core room" and the "foundry room"). Plaintiffs alleged, among other things, that the 10 named defendants and up to 450 fictitious defendants violated Alabama law by giving unsafe directions for the use of their products and failing to adequately warn of the dangers of using them. Although the plaintiffs claimed that all of their physical injuries manifested within the two-year statute of limitations (dating back to May 2016), the complaint and the affidavits plaintiffs later submitted indicated that the alleged misconduct occurred as far back as 2000.

The defendants removed the action, contending that plaintiffs' allegations met the definition of a *mass action*. Plaintiffs sought remand, arguing that their claims satisfied the "local occurrence" exception. The district court granted plaintiffs' motion, reasoning in part that plaintiffs' claims could be classified as local, environmental torts, which Congress had indicated should be excepted from CAFA's scope. The district court did not, however, attempt to determine whether plaintiffs' claims constituted "an event or occurrence" under the statute.

In *Spencer*, the Eleventh Circuit effectively adopted the Fifth Circuit's *Rainbow Gun Club* test, rejecting the idea that the "local occurrence" exception "applies to only events or occurrences that take place at a singular moment in time. But neither do we accept the Plaintiffs' view that the local event exception applies to any continuing set of

circumstances in a single location, regardless of when and how the harm came about. We conclude 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." *Spencer*, 2020 WL 1270276, No. 19-14427, at *3 (11th Cir. March 17, 2020). In reaching that result, the Eleventh Circuit characterized the Ninth Circuit's test (from *Nevada* and *Allen*) as "too cramped" while also suggesting that the Third Circuit's much-broader view of "event or occurrence" would benefit from better-defined "guardrails" (like the Fifth Circuit's insistence upon a single event that serves as a culminating, liability-triggering moment).

Applying this new standard to the case before it, the Eleventh Circuit quickly dispatched the idea that the *Spencer* complaint alleged just one "event or occurrence," explaining that, because the defendants' products were "used in different ways and caused different harms," "[s]ome of the products were used in the core room and some were used in the foundry," and the products were themselves different and used for different purposes, there could not be "one harm-causing event or occurrence." The court also pointed to plaintiffs' inability to identify one specific "culminating harm-causing event" and the fact that the complaint "alleges a string of events over time and later-resulting harm." Ultimately, the court found the plaintiffs' allegations lacking on three fronts: 1) no "connection among the Defendants"; 2) no "culminating event"; and 3) no "allegations that would reasonably constitute one 'event or occurrence.'" On this basis, the court vacated the ordering remanding the action to state court and remanded for further proceedings in the district court.

What next?

Spencer certainly is not the last word in CAFA mass action litigation. Although the Eleventh Circuit decisively affirmed the wisdom of *Rainbow Gun Club*, it did not clearly reject the Third Circuit's broader formulation of the "local occurrence" exception. Moreover, although the court did not find the Ninth Circuit's standard convincing, it did not say anything that would prohibit a future court of appeals from adopting a similar discrete-event standard. Thus, *Spencer* leaves room for another court of appeals to try and synthesize these three approaches … or for the Supreme Court to step in and resolve the apparent circuit split.

Lightfoot has a dedicated team of products liability lawyers who stand ready to defend our clients in class action and multidistrict litigation proceedings throughout the country. We are excited about the result in *Spencer* and look forward to expanding upon this success.

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