

2006-2007 CAFA ROUND-UP
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I. BURDEN OF ESTABLISHING FEDERAL JURISDICTION

All five federal circuits that have considered the issue have held that the party seeking removal to federal court bears the burden of establishing federal jurisdiction (some district court decisions had suggested the opposite).

- SECOND: DiTolla v. Doral Dental IPA of N.Y., LLC, 469 F.3d 271 (2nd Cir. 2006);
Blockbuster, Inc. v. Galeno, 472 F.3d 53 (2nd Cir. 2006)
THIRD: Morgan v. Gay, 471 F.3d 469 (3d Cir. 2006)
SEVENTH: Brill v. Countrywide Home Loans, Inc., 427 F.3d 446, 448 (7th Cir. 2005)
NINTH: Abrego v. Dow Chem. Co., 443 F.3d 676, 685 (9th Cir. 2006)
ELEVENTH: Miedema v. Maytag Corp., 450 F.3d 1322, 1328-29 (11th Cir. 2006); Evans v. Walter Indus., 449 F.3d 1159 (11th Cir. 2006)

II. BURDEN OF REMAND

Though a few district courts have held otherwise, all circuit courts that have decided the issue have held that once federal jurisdiction has been established, the party opposing jurisdiction bears the burden of proving that remand to state court is appropriate, i.e. that one of the exceptions to CAFA jurisdiction apply.

- FIFTH: Frazier v. Pioneer Americas LLC, 455 F.3d 542, 546 (5th Cir. 2006)
SEVENTH: Hart v. FedEx Ground Package Sys., 457 F.3d 675 (7th Cir. 2006)
NINTH: Serrano v. 180 Connect, Inc., 2007 U.S. App. LEXIS 3818 (9th Cir. Feb. 15, 2007)
ELEVENTH: Evans v. Walter Indus., 449 F.3d 1159 (11th Cir. 2006)

III. DATE CONTROVERSIES

A. Commencement at Filing or Removal?

Every circuit court to decide this issue has held that cases commence when they are initially filed, not removed.

- FIRST: Natale v. Pfizer, Inc., 424 F.3d 43 (1st Cir. 2006)
SEVENTH: Knudsen v. Liberty Mutual Insurance Co., 411 F.3d 805 (7th Cir. 2005)
NINTH: Bush v. Cheaptickets, Inc., 425 F.3d 683 (9th Cir. 2005)
TENTH: Pritchett v. Office Depot, Inc., 420 F.3d 1090 (10th Cir. 2005)

B. Relation Back

The most common issue in date controversy cases was whether an amended complaint filed post-CAFA (when the initial complaint was filed pre-CAFA) suffices to commence a new case for CAFA purposes. All four circuit courts to directly address the issue have held that whether an amended complaint commences a new action for CAFA purposes depends on whether the complaint relates back to the original complaint

under state law; if the complaint does “relate back” then it commences under the pre-CAFA date, if it does not “relate back” then the new, post-CAFA, filing date is its commencement date and CAFA applies.

- SIXTH: Hall v. State Farm Mut. Auto. Ins. Co., 2007 U.S. App. LEXIS 2072 (6th Cir. Jan. 29, 2007)
- SEVENTH: Santamarina v. Sears, 466 F.3d 570 (7th Cir. 2006); Phillips v. Ford Motor Co., 435 F.3d 785 (7th Cir. 2006), Schorsch v. Hewlett-Packard Co., 417 F.3d 748 (7th Cir. 2005); Knudsen v. Liberty Mutual Ins. Co., 411 F.3d 805 (7th Cir. 2005)
- EIGHTH: Plubell v. Merck & Co., 434 F.3d 1070 (8th Cir. 2006)
- TENTH: Prime Care of Northeast Kan., LLC v. Humana Ins. Co., 447 F.3d 1284 (10th Cir. 2006)

Applying this rule without explicitly stating it:

- FIRST: Natale v. Pfizer, Inc., 424 F.3d 43 (1st Cir. 2005)
- FIFTH: Braud v. Transp. Serv. Co., 445 F.3d 801 (5th Cir. 2006)
- NINTH: Bush v. Cheaptickets, Inc., 425 F.3d 683 (9th Cir. 2005)

There are a few federal cases suggesting, in dicta, that the analysis is more complex and that federal law might govern the relation back question.

- SEVENTH: Schillinger v. Union Pac. R.R. Co., 425 F.3d 330, 335 (7th Cir. Oct. 5, 2005)
- FIRST/Dist: Moniz v. Bayer A.G., 447 F. Supp. 2d 31, 25 (D. Mass. Aug. 14, 2006)
- FIFTH/Dist: Werner v. KPMG LLP, 415 F. Supp. 2d 688, 701 (S.D. Tex. Feb. 7, 2006)

C. New Defendants

Some courts have held that a new case not only commences when the case does not relate back under state law, but also when a new defendant is added (there is a new case as to that defendant), regardless of the relation back.

- FIFTH: Braud v. Transp. Serv. Co., 445 F.3d 801 (5th Cir. 2006)
- SEVENTH: Schillinger v. Union Pac. R.R., 425 F.3d 330 (7th Cir. 2005).

D. New/Substituted Plaintiff

Where new or substituted plaintiffs in the amended complaint do not add new claims, district courts have held that the amended complaint relates back to the pre-CAFA complaint.

- SECOND/Dist In re Methyl Tertiary Butyl Ether Prods. Liab. Litig., 2006 U.S. Dist. LEXIS 20575 (S.D.N.Y. April 17, 2006)
- SEVENTH/Dist In re GMC Dex-Cool Prods. Liab. Litig., 2006 U.S. Dist. LEXIS 74503 (S.D. Ill. Sept. 27, 2006); In re Sears, Roebuck & Co. Tools Mktg. & Sales Practices Litig., 2006 U.S. Dist. LEXIS 36323 (N.D. Ill. May 24, 2006)

IV. APPEALS

A. “Not Less Than Seven Days” Appeal Deadline

CAFA states that appeals from remand decisions must be made “not less than seven days after entry of the order.” 28 U.S.C. §1453(c)(1). This appears to be a typographical error, with the section actually meaning to state that appeals must be filed “not more than seven days” after entry of the remand order. All circuit courts to consider the issue have so held.

THIRD: Morgan v. Gay, 466 F.3d 276 (3d Cir. 2006)
NINTH: Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Servs., Inc., 435 F.3d 1140, 1146 (9th Cir. 2006).
TENTH: Pritchett v. Office Depot, Inc., 420 F.3d 1090, 1093 n.2 (10th Cir. 2005)
ELEVENTH: Miedema v. Maytag Corp., 450 F.3d 1322 (11th Cir. 2006)

B. 60-Day Appellate Decision Deadline

CAFA gives federal circuit courts sixty days to review remand orders brought up on appeal and accepted for review, 28 U.S.C. 1453(c)(2). A number of courts have briefly addressed the issue of when the 60 day deadline begins, generally holding that it begins when the appeal is accepted by the court, not filed by the parties.

SECOND: DiTolla v. Doral Dental IPA of N.Y., LLC, 469 F.3d 271 (2nd Cir. 2006)
FIFTH: Patterson v. Dean Morris, LLP, 444 F.3d 365 (5th Cir. 2006)
SEVENTH: Hart v. FedEx Ground Package Sys., 457 F.3d 675 (7th Cir. 2006)
NINTH: Amalgamated Transit Union v. Laidlaw Transit Services., Inc., 435 F.3d 1140, 1145 (9th Cir. 2006)
ELEVENTH: Evans v. Walter Indus., 449 F.3d 1159 (11th Cir. 2006)

V. CAFA EXCEPTIONS

A. Securities

Two 2006 cases read CAFA’s “securities exceptions” broadly, hence sending cases back to state court.

EIGHT/Dist: Williams v. Tex. Commerce Trust Co., 2006 U.S. Dist. LEXIS 39743 (W.D. Mo. June 15, 2006)
NINTH/Dist: Carmona v. Bryant, 2006 U.S. Dist. LEXIS 27767 (D. Idaho April 19, 2006)

B. Local Controversy

CAFA requires the remand to state court of very local controversies and provides district court discretion to remand somewhat local controversies. See 28 U.S.C. §§1332(d)(3) & (4). Recent decisions include:

- FIFTH/Dist: Berthelot v. Boh Bros. Constr. Co., L.L.C., 2006 U.S. Dist. LEXIS 57817 (E.D. La. July 19, 2006) (remand required)
- SEVENTH/Dist: City of Fairview Heights v. Orbitz, Inc., 2006 U.S. Dist. LEXIS 47085 (S.D. Ill. July 12, 2006) (remand not required although local controversy because of prior class action exception)
- TENTH/Dist: Seat v. Farmers Group, Inc., 2006 U.S. Dist. LEXIS 30575 (W.D. Okla. May 5, 2006) (not a local controversy because no local defendant)

VI. SATISFACTION OF THE AMOUNT IN CONTROVERSY

Jurisdictional amount issues under CAFA have generally been resolved according to the common rules (1) that the proponent of federal jurisdiction must demonstrate that the amount in controversy requirement is met “by a preponderance of the evidence,” and (2) that the case will be remanded only if it is “legally certain” that the recovery (from plaintiff’s perspective) or cost of complying with the judgment (from defendant’s) will be less than the jurisdictional floor. Recent decisions include:

- THIRD/Dist: Clean Air Council v. Dragon Int’l Group, 2006 U.S. Dist. LEXIS 52292 (M.D. Pa. July 28, 2006)
- SEVENTH/Dist: Buller v. Owner Operator Indep. Driver Risk Retention Group, Inc., 461 F. Supp. 2d 757 (S.D. Ill. July 27, 2006)
- EIGHTH/Dist: Wood v. Teris, LLC, 2006 U.S. Dist. LEXIS 51775 (W.D. Ark. July 26, 2006)
- ELEVENTH/Dist: Wheeler v. Allstate Floridian Indem. Co., 19 Fla. L. Weekly Fed. D 871 (N.D. Fla. April 26, 2006)

VII. PERMISSIVE AND MANDATORY REMAND

See CAFA Exception, §V(B), supra.

VIII. MISCELLANEOUS