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CLASS ACTION ALERT

DIVERSITY CLASS ACTIONS NOW REMOVABLE TO FEDERAL COURT EVEN IF ONLY ONE NAMED PLAINTIFF MEETS $75,000 REQUIREMENT

Exxon Corp. v. Allapattah Services, Inc., 125 S. Ct. 2611 (June 23, 2005)

The U.S. Supreme Court recently issued a ruling that has significant consequences for corporations involved in multiparty and class action litigation based on state law. In the consolidated case, *Exxon Mobil Corp. v. Allapattah Services, Inc.* and *Ortega v. Star-Kist Foods*, the Court resolved a circuit split regarding supplemental jurisdiction in diversity class actions. The Court ruled that so long as at least one named plaintiff has a claim in excess of $75,000, a federal court may exercise supplemental jurisdiction over all other class members with similar claims. The Court's ruling overrules precedent in at least two circuits and clarifies the law in at least four other circuits. Consequently, it is now easier for multiparty and class action cases to be heard in federal court, allowing companies more opportunities to escape hostile state courts.

THE JURISDICTIONAL QUESTION

Traditionally, federal courts have had diversity jurisdiction to hear state-law claims where all plaintiffs are citizens of different states from all defendants and where the amount in controversy exceeds a specified amount (currently $75,000). Previously, the Supreme Court had held that each plaintiff must separately meet the amount-in-controversy requirement. *Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939). In *Zahn v. International Paper*, 414 U.S. 291 (1973), the Court held that this also was true for class action suits; that is, only class members whose claims satisfied the dollar threshold could participate in the case.

Congress in 1990 passed the supplemental jurisdiction statute, 28 U.S.C. § 1367, which authorizes federal district courts to exercise diversity jurisdiction over state-law claims for which diversity jurisdiction would not otherwise exist, so long as those claims are "so related"

to other claims over which the court has jurisdiction that they "form part of the same case or controversy." The question in *Exxon* and *Ortega* was whether, under the supplemental jurisdiction statute, federal courts can now exercise jurisdiction in a diversity case in which the claims of only one named plaintiff satisfy the amount-in-controversy requirement. The Supreme Court held that federal courts *can* exercise such jurisdiction.

THE *EXXON* AND *ORTEGA* CASES

Exxon was a class action suit brought by 10,000 Exxon gas-station dealers who claimed that Exxon overcharged them on credit card transactions. The 11th Circuit exercised supplemental jurisdiction over the entire class even though not all of the named plaintiffs met the amount-in-controversy requirement. The court reasoned that the claims were sufficiently related under the supplemental jurisdiction statute and that the statute overruled *Zahn*.

The 1st Circuit reached the opposite conclusion in *Ortega*, a personal injury suit against Star-Kist by a girl and her family over injuries she suffered after she cut herself on an allegedly defective can of tuna fish. The court denied supplemental jurisdiction over the claims of the family members on the grounds that those claims were unlikely to meet the $75,000 amount-in-controversy requirement.

THE SUPREME COURT'S DECISION

The Supreme Court (5-4) upheld the 11th Circuit decision and overturned the 1st Circuit decision. Justice Kennedy, writing for the majority, concluded that the "only plausible reading" of the plain text of Section 1367 (the supplemental jurisdiction statute) is authorization of jurisdiction over all claims by diverse parties arising out of the same case or controversy. The dissenting opinion, written by Justice Ginsburg, relied on legislative history and argued that Section 1367 should be interpreted to be less disruptive of existing jurisprudence.

For defendants in several circuits, it is a good thing that the majority "disrupted" existing jurisprudence. Although the 1st Circuit in *Ortega* had claimed to "express no view" on whether its ruling applied to class actions, its analysis was inconsistent with that of the 11th Circuit in *Exxon*. The 1st Circuit's narrow view of the supplemental jurisdiction statute was shared by the 3rd, 8th and 10th Circuits. The latter two circuits had expressly applied this narrower view to class actions. In all of these circuits, the rule is now decidedly more favorable to defendants.

The 11th Circuit's decision in *Exxon* was consistent with the broad view taken by the 4th, 6th and 7th Circuits. The rule in those circuits has been validated and remains good law. The 5th and 9th Circuits, adopting a similar analysis, had held that unnamed class members need not meet the amount-in-controversy requirement, provided that the named class members do. However, they were not clear on whether *all* the named plaintiffs must satisfy this requirement. The 2nd Circuit had not ruled on the issue at all. This lack of clarity in several of the circuits has now been resolved.

In short, the rule is now uniform. If a federal court sitting in diversity has jurisdiction over the claims brought by *even one* named plaintiff, it has supplemental jurisdiction over claims by *all other* potential plaintiffs arising out of the same case or controversy, regardless of the value of their claims.

THE IMPACT FOR DEFENDANTS

On February 18, 2005, the Class Action Fairness Act of 2005 (CAFA), Pub. L. No. 109-2, 119 Stat. 4 (2005), was enacted. In general, that statute expanded the power of the federal courts to hear multistate class actions with "minimal diversity" (i.e., where *any* member of the plaintiff class is from a state different from any defendant) and involving 100 or more class members whose *aggregate* claims exceed $5 million. In such cases, the *Exxon* decision has no effect. Indeed, the Supreme Court noted in *Exxon* that CAFA had been passed, but that CAFA played no role in the decision.

But many class actions may not meet CAFA's requirements for removing a state-based class action to federal court. For example, if the aggregate claims are slightly *less* than $5 million, the case would not meet the requirements of the new statute even if one (or even many) of the plaintiffs has claims in excess of $75,000. As another example, CAFA does not help a defendant in class actions involving fewer than 100 persons. The *Exxon* decision provides a new basis for removal in such cases.

In addition, the law interpreting Section 1367 is now changed or clarified in a number of circuits. Defendants who are sued in the 8th and 10th Circuits are no longer bound to the narrow prior case law there. The rule in the 1st and 3rd Circuits now *clearly* applies to class actions. The rule in the 5th and 9th Circuits now *clearly* applies even if *only one* named plaintiff is suing for $75,000. And the void in 2nd Circuit case law has now been filled.

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