

Law360

August 12, 2013

Plaintiffs' Potential Pitfalls When Obtaining Fed. Forum

by Neil K. Gilman, Michael S. Levine and Christine Terrell

The U.S. District Court for the Northern District of Illinois recently ruled in *Addison Automatics Inc. v. Hartford Cas. Ins. Co.*, No. 13-cv-1922, (N.D. Ill. June 25, 2013), that the court lacked subject matter jurisdiction over a declaratory judgment action brought against an insurer by one plaintiff on its own behalf, where the outcome would have a clear impact on the entire putative class in an underlying class action pending against the insured.

This decision demonstrates the potential difficulty insurers can expect to encounter in obtaining a federal forum when a class action settlement includes an assignment of the defendant's rights against the insurer.

Background

In 2010, Addison Automatics Inc. filed a class action lawsuit against Domino Plastics Inc., asserting claims under the Telephone Consumer Protection Act (TCPA) and the Illinois Consumer Fraud Act (ICFA). Addison sought to represent a class of similarly situated plaintiffs.

Domino and the class reached a settlement, which included entry of a \$17.7 million judgment and assignment of Domino's claims to insurance proceeds under insurance contracts with Hartford Casualty Insurance Company and Twin City Fire Insurance Company.

Following entry of judgment, Addison filed a declaratory judgment action against the insurers, alleging that the insurers owed duties to defend and indemnify Domino in the class action suit. Addison alleged in its complaint against the insurers that it was seeking redress based on an assignment of Domino's rights to Addison, purportedly without regard any rights assigned to the other class members.

Removal and Remand

The insurers timely removed the declaratory judgment action to federal court. They asserted that the federal district court had subject matter jurisdiction based on the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2)(A). Addison moved to remand the case to state court.

Removal of any action to federal court requires, among other things, that the court have subject matter jurisdiction over the action. Where jurisdiction is based on diversity of citizenship, the requirements are typically strictly enforced.

Suits implicating CAFA, however, do not require strict diversity of citizenship. Rather, there must be more than 100 class members; there must be more than \$5 million at stake; and there must be "minimal diversity," meaning that any of the plaintiffs must have different state citizenship from that of any of the defendants.

Furthermore, in a case brought under CAFA, removal to federal court is permitted even if any of the defendants is a citizen of the state in which the case is brought.

As a preliminary matter, the Addison Automatics court observed that federal courts have "limited jurisdiction," which they are obligated to assess "at each stage of the proceedings" they oversee. Removal statutes that give federal district courts subject matter jurisdiction over cases filed in state courts are to be "strictly construed," as the U.S. Supreme Court has held in cases such as *Syngenta Crop Prot. Inc. v. Henson*, 537 U.S. 28 (2002).

In this action based on CAFA, the court recognized that CAFA was the "sole basis for federal jurisdiction asserted by" the insurers. The court concluded, therefore, that if the declaratory judgment action otherwise fit the rubric of a class action as defined by CAFA, subject matter jurisdiction would exist. Conversely, if the declaratory judgment action did not meet the criteria for a class action, there would be no jurisdiction, and the case would be remanded.

Addison brought suit against the insurers only on its own behalf, alleging explicitly in its complaint that it was not invoking Fed. R. Civ. P. 23 or its Illinois analogue. The insurers argued, nevertheless, that federal jurisdiction existed under CAFA because the benefits of a victory for Addison would "inure to the benefit of the entire [class]."

The insurers further argued that jurisdiction arose under CAFA because the rights of the insured, Domino, were assigned to the class as a whole such that Addison had no standing to assert those rights in the absence of a class proceeding. In support of their argument for subject matter jurisdiction, the insurers relied on *Travelers Prop. Cas. v. Good*, 689 F.3d 714 (7th Cir. 2012), where the Seventh Circuit explained how a class asserting assigned rights against an insurer could implicate federal jurisdiction under CAFA (even though the *Good* case itself did not implicate federal jurisdiction). *Id.* at 723.

The insurers' arguments were unavailing in light of the plain language of the complaint, which the court determined to "not assert a class action as defined under CAFA." The court reasoned that Addison's motives could not be considered in assessing jurisdiction. Central to that reasoning was the court's observation that "plaintiffs as masters of the complaint may include (or omit) claims or parties in order to determine the forum" (quoting *Garbie v. DaimlerChrysler Corp.*, 211 F.3d 407, 410 (7th Cir. 2000)).

Good likewise was unavailing, with the court finding *Good* to be "readily distinguishable" because the *Good* plaintiffs expressly brought suit against insurers on behalf of the entire underlying class.

The *Addison Automatics* court cautioned, however, that "Addison's strategic decision to file a claim only on its own behalf is not without risks" and acknowledged the potential merit in the insurers' argument that Addison may not have standing to enforce the underlying judgment on its own. But that issue, the court explained, would be a question for the state court to answer on remand.

The state court may also have to examine the rights of other class members vis-a-vis "their portions of the indemnification proceeds" and "whether and to what extent Addison [as the court-appointed class representative] (and its counsel) still owe duties to the [class]." Only the state court had jurisdiction to answer those questions.

To the extent Addison lacks standing to bring the declaratory judgment action on its own, then the suit may be removed to federal court after it is properly filed because the class that would have standing to file suit would also necessarily implicate CAFA, and therefore, the federal court would have jurisdiction upon removal.

Addison Automatics underscores the right of a plaintiff to choose the forum and substance of its lawsuit. The decision also highlights some of the pitfalls faced by plaintiffs more concerned with avoiding a federal forum than the merits of their case. While *Addison Automatics* may well find its way back to federal court on the merits, the decision should serve as a roadmap for insureds seeking to preserve the opportunity to adjudicate their coverage rights in a state forum.

The decision also provides guidance for settlement negotiations, particularly where the terms of settlement include the assignment of rights to proceed separately against the settling party's insurers.

--By Neil K. Gilman, Michael S. Levine and Christine Terrell, Hunton & Williams LLP

Neil Gilman is a partner in the Washington, D.C., office of Hunton & Williams. Counsel Mike Levine splits his time between the McLean, Va., and New York offices of the firm. Christine Terrell is an associate in the firm's McLean office.