IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
December 19, 2019
Lyle W. Cayce
Clerk

No. 19-90027

GEORGE RAYMOND WILLIAMS, MEDICAL DOCTOR, ORTHOPAEDIC SURGERY, A PROFESSIONAL MEDICAL, L.L.C.,

Plaintiffs – Petitioners,

v.

HOMELAND INSURANCE COMPANY OF NEW YORK,

Defendant – Respondent

Motion for Leave to Appeal
Pursuant to 28 U.S.C. § 1453
USDC No. 6:19-CV-288

Before JONES, HIGGINSON, and OLDHAM, Circuit Judges.

PER CURIAM:*

Petitioners originally filed a class action in Louisiana state court. Petitioners amended their complaint to include a new claim against the Respondent, Homeland Insurance Company of New York. Respondent timely removed to federal court. Petitioners moved to remand. The magistrate judge

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

made two recommendations. First, it "recommend[ed] a finding of subject matter jurisdiction based on diversity [jurisdiction] only as to [the claims]. . . against [Respondent]." Second, the magistrate judge recommended remanding certain state law claims based on our decision in *Williams v. Homeland Ins. Co. of N.Y.*, 657 F.3d 287, 289–90 (5th Cir. 2011). The district court adopted both recommendations.

Petitioners have sought permission to appeal the district court's order under the Class Action Fairness Act ("CAFA"). *See* 28 U.S.C. § 1453(c)(1). In the ordinary case, an "order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise." 28 U.S.C. § 1447(d). But CAFA created a limited exception. Section 1453(c)(1) provides that notwithstanding § 1447(d), "a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand." 28 U.S.C. § 1453(c)(1). In interpreting the discretion to grant or deny motions to appeal, this Court has held that Section 1453(c)(1) appeals are not limited to only those issues "unique or peculiar to CAFA"; at the same time, however, the purpose of § 1453(c) is to "facilitate the development" of interpretations of CAFA "without unduly delaying the litigation of class actions." *Alvarez v. Midland Credit Mgmt., Inc.*, 585 F.3d 890, 894 (5th Cir. 2009) (quotation omitted). To that end, the issues raised by the party seeking permission to appeal must be sufficiently linked to CAFA. *See Perritt v. Westlake Vinyls Co., L.P., 562 F. App'x 228, 230* (5th Cir. 2014) ("Section 1453(c) tethers our discretionary review to CAFA determinations."); *see also Berniard v. Dow Chemical Co.*, 481 F. App'x 859, 864 (5th Cir. 2010); *Wallace v. La. Citizens Prop. Ins. Corp.*, 444 F.3d 697, 700 (5th Cir. 2006) ("The application of § 1453(c)(1) is . . . limited to the context of CAFA.").

But Petitioners do not raise a CAFA-linked argument because the district court based its finding of jurisdiction on ordinary diversity jurisdiction. And Petitioners' briefing underscores this fact by relying upon the general removal statute, 28 U.S.C. § 1441, and discussing the appropriate procedures for removal and remand generally. *See* Pet'r Br. 12–15. In fact, Petitioners barely address CAFA or even this court's prior opinion on CAFA *in this case*. *See Williams*, 657 F.3d at 289–90.

Accordingly, Section 1453(c)(1) interlocutory appellate jurisdiction in this case would be inappropriate. *See Berniard*, 481 F. App'x at 860 ("We do not have jurisdiction to review the district court's decision to remand for lack of diversity jurisdiction"); *cf. Patterson v. Dean Morris, L.L.P.*, 448 F.3d 736, 741–42 (5th Cir. 2005).

IT IS ORDERED that the petitioner's opposed motion for leave to appeal under 28 U.S.C. § 1453 is DENIED.