

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

LISA GRIGGS, et al.,

Plaintiffs,

vs.

NEW DOMINION, LLC, et al.,

Defendants.

Case No.: CIV-17-942-F

Hon. Judge Stephen P. Friot

**PLAINTIFFS' MOTION TO REMAND
AND INCORPORATED MEMORANDUM OF LAW IN SUPPORT**

COME NOW Plaintiffs Lisa Griggs and April Marler, on behalf of themselves and all others similarly situated (together, "Plaintiffs"), and respectfully move for the immediate remand of this action to Logan County District Court pursuant to 28 U.S.C. § 1447. In support thereof, Plaintiffs state as follows:

1. Plaintiffs move for immediate remand because it is abundantly clear that removal was wrongful and this Court lacks subject matter jurisdiction.

2. This action was removed from Logan County District Court pursuant to the Class Action Fairness Act ("CAFA") on the sole basis that the caption on the first page of Plaintiffs' Petition mistakenly includes the name of a non-domestic entity (all of the Plaintiffs, class members, and all of the Defendants are Oklahoma citizens).

3. The body of the Petition makes clear that the non-domestic entity is not a party because it is neither named as a party in the Parties section of the pleading, nor is there a single allegation against the non-domestic entity in the body of the Petition.

4. The appearance of the non-domestic entity in the caption was, simply put, a scrivener's error.

5. Tenth Circuit precedent holds that the allegations in the body of a complaint, not the names in a caption, determine the parties to a lawsuit. *U.S. v. Washington*, 759 F.3d 1175, 1179 (10th Cir. 2014); *citing, Townsend v. State of Oklahoma ex rel. Oklahoma Military Dept.*, 760 F.Supp. 884, 888 (W.D. Ok. 1991); *see also, Greenwood v. Ross*, 778 F.2d 448, 452 (8th Cir. 1985); *citing, Blanchard v. Terry & Wright, Inc.*, 331 F.2d 467 (6th Cir.), cert. denied, 379 U.S. 831, 85 S.Ct. 62, 13 L.Ed.2d 40 (1964); 5 C. Wright & A. Miller, *Federal Practice and Procedure*, Civil § 1321 (1969).

6. Chesapeake Operating, L.L.C ("Chesapeake"), in removing this action, ignored this legal precedent.

7. The pertinent chronological history and additional reasons supporting remand are as follows:

a. On July 21, 2017, this action was filed in Logan County District Court and assigned the case number CJ-2017-174.

b. No summonses have been issued, and none of the named defendants have been served with a summons or the Petition.

c. By rule, Plaintiffs have 180 days to perform the service of process upon the named defendants. 12 Okl. St. Ann. § 2004 I.

d. As such, Plaintiffs have until January 17, 2018 to perform the service of process, absent a showing of good cause.

e. On September 1, 2017, Chesapeake removed this action to this Court. Chesapeake admits that it has not been served with the Petition or the summons. ¶5, Notice of Removal (Doc. 1).

f. Chesapeake's sole basis for removal is that Gastar Exploration, Inc. ("Gastar") is non-domestic and appears alongside the defendants listed in the Petition's caption. ¶13, *Id.*

g. At the time of Chesapeake's removal, Plaintiffs had not served the Petition because they wanted to amend their pleading and then have the summonses issued and conduct service of process.

h. Plaintiffs' intended amendment was to address the following:

(1) Substantively, and at the time of the removal, Plaintiffs were in the process of investigating two additional and substantial seismic episodes -- one that occurred just before the filing of the Petition and one that occurred thereafter. On July 14, 2017, a 4.2m earthquake hit near Stroud and there were 3.7m and 3.8m aftershocks shortly thereafter. Then, on August 2, 2017, a 4.4m (perhaps reduced to 4.2m) quake hit near Edmond. These were wastewater induced earthquakes that Plaintiffs need to address with an amendment to show the nature of the continuing harm, and also to fully describe the harm to Plaintiffs.

(2) Plaintiffs also intended to fix the scrivener's error in the caption even though the body of Petition makes clear that Gastar is

not a party. (Neither the Parties section nor the body of the Petition make any reference to, or allegations concerning, Gastar.)

8. Regardless of the scrivener's error, which was obvious from a reading of the body of the Petition, Chesapeake removed this action on the sole basis that Gastar is non-domestic and its name appears on the caption.

9. Under *U.S. v. Washington* and the law detailed above, Gastar is not a party in this action.

10. Chesapeake's removal was in obvious disregard of 10th Circuit precedent, and therefore, an award to Plaintiffs for their fees and costs is appropriate as Chesapeake lacked an objectively reasonable basis for removal. 28 U.S.C. § 1447(c); and, *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141, 126 S.Ct. 704, 163 L.Ed.2d 547 (2005).

WHEREFORE, Plaintiffs respectfully request an order remanding this action to the District Court of Logan County, Oklahoma; an award to Plaintiffs for their attorneys' fees and costs; and all other just and appropriate relief.

Dated: September 7, 2017

Respectfully Submitted,

/s/ William B. Federman

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was filed electronically on September 7, 2017 with the Court's ECF system, which in turn will automatically serve all counsel of record.

/s/ William B. Federman