

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

(1) LISA GRIGGS, and)
(2) APRIL MARLER, on behalf of)
themselves and all others similarly situated,)

Plaintiffs,)

v.)

Case No. CIV-17-942-R

(formerly Logan County

Case No. CJ-2017-174)

(1) NEW DOMINION, LLC,)
(2) TNT OPERATING COMPANY,)
(3) WHITE OPERATING COMPANY,)
(4) RAINBO SERVICE COMPANY,)
(5) GASTAR EXPLORATION, INC.,)
(6) DRYES CORNER LLC,)
(7) CHESAPEAKE OPERATING LLC,)
(8) DEVON ENERGY PRODUCTION)
COMPANY, LP,)
(9) SPECIAL ENERGY PRODUCTION)
CO, LP,)
(10) ORCA OPERATING COMPANY, LLC)
(11) WHITE STAR PETROLEUM, LLC,)
(12) EQUAL ENERGY US INC.,)
(13) ELDER CRAIG OIL AND GAS, LLC,)
(14) D&B OPERATING LLC,)
(15) M M ENERGY INC.,)
(16) DAKOTA EXPLORATION LLC,)
(17) WICKLUND PETROLEUM)
CORPORATION,)
(18) KIRKPATRICK OIL COMPANY,)
INC.,)
(19) TOOMEY OIL COMPANY INC.,)
(20) CHAPARRAL ENERGY LLC,)
(21) EASTOK PIPELINE LLC,)
(22) MID-CON ENERGY OPERATING)
LLC,)
(23) MIDSTATES PETROLEUM)
COMPANY, and)
(24) TERRITORY RESOURCES LLC, and)
(25) JOHN DOES 1 THROUGH 25,)

Defendants.)

DEFENDANT CHESAPEAKE OPERATING, L.L.C.’S NOTICE OF REMOVAL

Defendant Chesapeake Operating, L.L.C. (“COLLC”), pursuant to the Class Action Fairness Act (“CAFA”) (including 28 U.S.C. §§ 1332 and 1453), 28 U.S.C. § 1446, and LCvR 81.2, submits this Notice of Removal and notifies this Court that it is removing the above-captioned action, currently pending in the District Court of Logan County, Oklahoma to the United States District Court for the Western District of Oklahoma.¹ In support of this Notice of Removal, COLLC states as follows:

1. On January 12, 2016, Plaintiffs filed a Class Action Petition in the District Court of Logan County, styled *Lisa Griggs and April Marler v. Chesapeake Operating LLC, et al.*, Case No. CJ-2016-6. *See* 16-CV-138 [Dkt. No. 1-3]. The Petition sought certification of a plaintiff class, damages, punitive damages, attorney fees and other relief.

2. On February 16, 2016, the case was removed to the Western District of Oklahoma, CV-16-138-F [Dkt. No. 1].

3. Motions to Dismiss [Dkt. Nos. 17, 21, 23, 24] had been filed by the various defendants and Plaintiffs’ Motion to Remand [Dkt. No. 78] had been denied when Plaintiffs voluntarily dismissed the case on July 21, 2016. [Dkt. No. 79].

4. On July 21, 2017, a year to the day from Plaintiffs’ voluntary dismissal, Plaintiffs refiled the litigation in the District Court for Logan County, Case No. CJ-2017-

¹ No admission of fact, law or liability is intended by this Notice of Removal, and COLLC expressly reserves all defenses, affirmative defenses and motions otherwise available to them.

174 (attached hereto as Exhibit 1). The newly refiled complaint again names New Dominion, Chesapeake Operating LLC, and Devon Energy, drops SandRidge Exploration and Production (which has undergone Chapter 11 bankruptcy since the filing of the original complaint), and adds 19 other named defendants. The Class Petition seeks certification of a plaintiff class, damages, punitive damages and other relief.

5. COLLC has not yet been served with the Class Petition. As a result, the removal is timely.

6. COLLC is removing this case to the U.S. District Court for the Western District of Oklahoma, which is the district and division embracing the place where the State Court Action was filed.

7. In accordance with 28 U.S.C. 1446(d), COLLC is providing prompt written notice of the original Notice of Removal to all adverse parties and the clerk of the District Court of Logan County, Oklahoma.

8. As set forth below, this Court has subject matter jurisdiction over this case pursuant to the class action provisions of the Class Action Fairness Act (“CAFA”), 28 U.S.C. §§ 1332(d)(1)-(10), 1453. Removal is proper because the suit is a class action in which any member of a class of plaintiffs is a citizen of a state different from any defendant; the proposed class is comprised of at least 100 class members; and the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs. See 28 U.S.C. § 1332(d)(2)(A); *Blockbuster, Inc. v. Galeno*, 472 F.3d 53, 56 (2d Cir. 2006).

9. Pursuant to 28 U.S.C. § 1453(b), this matter “may be removed by any defendant without the consent of all defendants.”

10. Plaintiffs' Petition seeks damages, punitive damages, attorneys' fees and costs, and other additional relief under theories of private nuisance, strict liability for alleged ultra-hazardous activities, negligence and trespass. Exhibit 1 at ¶¶ 86-97, 65-68.² Plaintiffs allege Defendants have disposed of saltwater produced during oil and gas operations in such a manner as to increase the risk of earthquakes in certain areas of Oklahoma. *Id.* at ¶¶ 34-67.

11. This action was filed by two named Plaintiffs who allege to be citizens of Oklahoma. *Id.* at ¶¶ 4-5. Plaintiffs bring their claims pursuant to 12 O.S. § 2023 on behalf of themselves and a class of “citizens of Oklahoma...owning a home or business in Logan County, Payne County, Lincoln County, Oklahoma County, Canadian County, Kingfisher County, Garfield County or Noble County (hereafter the “Class Area”)...during the dates of seismic activity within the Class Area between March 30, 2014 to present...” Exhibit 1 at ¶ 70. Though COLLC denies that this lawsuit is properly maintained as a class action under Federal Rule 23, and reserves the right to challenge class certification, Plaintiffs have alleged a class action as that term is defined by 28 U.S.C. § 1332(d)(1).

12. In class actions covered by CAFA, the requisite diversity of citizenship is satisfied as long as there is “minimal diversity,” that is, so long as “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A); see *Blockbuster*, 472 F.3d at 58-59; *Griggs v. Chesapeake Operating LLC*, 16-CV-00138,

² The paragraphs in Plaintiffs' Petition run sequentially from 1 to 97; however, the next paragraph begins at 65 and that numbering is carried through to the end of the Petition. Consequently, there are two paragraphs number 65 thorough 71. Save this particular instance, the paragraph citations are to Plaintiff's first use of those numbers.

Order Denying Mot. Remand, Dkt. No. 78, at 3 (W.D. Okla. June 30, 2016) (“Devon’s allegation that at least one plaintiff class member is a citizen of a state other than Oklahoma or Delaware is sufficient” to demonstrate minimal diversity under CAFA).

13. CAFA minimum diversity is satisfied here. Plaintiffs purport to be citizens of Oklahoma. Exhibit 1 at ¶ 70. Defendant Gastar Exploration Inc. (“Gastar”) is organized under the laws of Delaware, with its principal place of business in Houston, Texas. *See* SEC Form 8-K (August 3, 2017), attached as Exhibit 2 (and available online at <http://secfilings.nasdaq.com/filingFrameset.asp?FilingID=12210655&RcvdDate=8/3/2017&CoName=GASTAR%20EXPLORATION%20INC.&FormType=8-K&View=html>) and SEC Form D (March 29, 2017), attached as Exhibit 3 (and available online at <http://secfilings.nasdaq.com/filingFrameset.asp?FilingID=11963093&RcvdDate=3/30/2017&CoName=GASTAR%20EXPLORATION%20INC.&FormType=D&View=html>).

14. Plaintiffs’ proposed class also comprises more than the minimum 100 members as required by 28 U.S.C. § 1332(d)(5)(B). The proposed class consists of “citizens of Oklahoma...owning a home or business in Logan County, Payne County, Lincoln County, Oklahoma County, Canadian County, Kingfisher County, Garfield County or Noble County (hereafter the “Class Area”)...during the dates of seismic activity within the Class Area between March 30, 2014 to present...” Exhibit 1 at ¶ 70. Plaintiffs further allege: “The Class Area includes several counties in Oklahoma where thousands of Oklahoma’s citizens reside in their homes and operate businesses. As such, the Class is sufficiently numerous and has members scattered over several counties so as to make joinder of all members of the Class in a single action impracticable.” *Id.* at ¶¶ 74-75.

Plaintiffs further allege: “Absent class action relief, the putative Class Members would be forced to prosecute hundreds of similar claims in different district court venues.” *Id.* at ¶ 83. Thus, the proposed class comprises more than minimum of 100 members.

15. Under CAFA, a minimally diverse class action is removable if the amount in controversy is greater than \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2). The claims of the individual class members “shall be aggregated” to determine whether that jurisdictional minimum has been met. 28 U.S.C. § 1332(d)(6).

16. In this case, the jurisdictional minimum is met based on the breadth and nature of the Plaintiffs' alleged claims, the size of the proposed class and the damages sought. Specifically, Plaintiffs seek damages on behalf of all Class members (which, as addressed above, includes at least “thousands,” Exhibit 1 at ¶ 74), for physical damages to real and personal property, market value losses to real property, emotional distress and punitive damages. *Id.* at ¶ 3. The physical damages alone – alleged by Plaintiffs to include (but not limited to) cracked foundations, walls, basements, separated chimneys, cabinets, door and window trim, and brick veneer, *id.* at ¶¶ 44, 49, 54 – for “thousands” of class members would exceed CAFA’s \$5,000,000 minimum. Independent market value losses for real property, if proven, would also likely exceed the jurisdictional minimum. Punitive damages, , if awarded, would similarly exceed \$5,000,000. Thus, the amount at issue plainly triggers CAFA jurisdiction.

17. Given that Plaintiffs allege a class action, have minimal diversity between the proposed class and at least one Defendant, propose a class of at least 100 members, and seek more than \$5,000,000 in damages, CAFA permits removal to this Court.

18. A true and correct copy of all process, pleadings and orders served on or by all Defendants are attached hereto.

19. Pursuant to LCvR 81.2, a copy of the docket sheet in Case No. CJ-2017-784 in the District Court of Logan County, State of Oklahoma, is attached hereto at Exhibit 4.

WHEREFORE, as the Court has jurisdiction over this action, COLLC respectfully requests this Court assume jurisdiction over this action and enter such other and further orders as may be necessary to accomplish the requested removal and promote the ends of justice.

s/Matthew C. Kane

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CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2017, I served the attached document U.S. Mail, first-class, postage prepaid, on the following:

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