

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

(1) LISA GRIGGS and)

(2) APRIL MARLER, on behalf of themselves and)
other Oklahoma citizens similarly situated,)

Plaintiffs,)

v.)

(1) NEW DOMINION LLC,)

(2) TNT OPERATING COMPANY, INC.,)

(3) WHITE OPERATING COMPANY,)

(4) RAINBO SERVICE COMPANY,)

(5) DRYES CORNER, LLC,)

(6) CHESAPEAKE OPERATING LLC,)

(7) DEVON ENERGY PRODUCTION)

COMPANY, LLC,)

(8) SPECIAL ENERGY PRODUCTION)

COMPANY, LLC,) Case No. CIV-17-1232-M

(9) ORCA OPERATING COMPANY, LLC,)

(10) WHITE STAR PETROLEUM, LLC,)

(11) EQUAL ENERGY US, INC.,)

(12) ELDER CRAIG OIL AND GAS, LLC,)

(13) D&B OPERATING, LLC,)

(14) MM ENERGY, INC.,)

(15) DAKOTA EXPLORATION, LLC,)

(16) WICKLUND PETROLEUM CORP.,)

(17) KIRKPATRICK OIL COMPANY, INC.,)

(18) TOOMEY OIL COMPANY, INC.,)

(19) CHAPARRAL ENERGY, LLC,)

(20) EASTOK PIPELINE, LLC,)

(21) MID CON ENERGY OPERATING, LLC,)

(22) MIDSTATES PETROLEUM CO., LLC,)

(23) TERRITORY RESOURCES, LLC, and)

(24) JOHN DOES 1 through 25,)

Defendants.)

DEFENDANT DEVON ENERGY PRODUCTION COMPANY, L.P.'S
NOTICE OF REMOVAL

Defendant Devon Energy Production Company, L.P. (“Devon”), pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453, the Class Action Fairness Act (“CAFA”), and Local Rule 81.2, hereby 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. In support of this Notice of Removal, Devon states as follows:

SUMMARY FOR REMOVAL

1. On October 24, 2017, Plaintiffs filed a Class Action Petition in the District Court for Logan County, Oklahoma, styled *Lisa Griggs, et al. v. New Dominion, LLC, et al.* (the “State Court Action”), seeking damages, punitive damages, and other additional relief. All papers served on Devon in the State Court Action, and all process, pleadings and orders in the State Court Action are attached hereto as Exhibits 1 through 33. The State Court Action docket sheet is attached hereto as Exhibit 34.

2. Devon was served with the Class Action Petition on October 26, 2017. This Notice of Removal was filed with this Court within 30 days of service of Plaintiffs’ Petition, as required by 28 U.S.C. § 1446(b).

3. As required by 28 U.S.C. § 1441(a), Devon 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.

4. In accordance with 28 U.S.C. 1446(d), Devon has given contemporaneous written notice of the original Notice of Removal to all adverse parties and the clerk of the District Court of Logan County, Oklahoma.

5. As set forth below, this Court has subject matter jurisdiction over this case pursuant to the class action provisions of CAFA, 28 U.S.C. §§ 1332(d)(1)-(10), 1453. Removal is proper because the suit is a class action in which a member of a class of plaintiffs is a citizen of a state different from any defendant; because the proposed class is comprised of at least 100 class members; and because 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).

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

NATURE OF THE CASE

7. Plaintiffs’ Petition seeks damages, punitive damages, and other additional relief under theories of strict liability for alleged ultra-hazardous activities, negligence, private nuisance, and trespass. Plaintiffs allege that 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. (Pet. ¶¶ 1, 34-45, 56-68.)

8. Plaintiffs allege that Defendants operate saltwater disposal wells near the sites of nine earthquake “clusters” between 2014 and 2017. (*Id.* at ¶¶ 60-68.) Plaintiffs allege that Defendants’ disposal operations caused each cluster of earthquakes. (*Id.*)

9. Notably, Plaintiffs have not sued all operators of salt water disposal wells near the named earthquake events. Instead, Plaintiffs have named as defendants only those operators that happen to be Oklahoma citizens.

10. Plaintiffs seek (1) compensatory damages for “personal property damages, physical damages, market losses, loss of use and enjoyment of real property, and for emotional harm,” (2) punitive damages, (3) pre-judgment and post-judgment interest, and (4) “all other relief to which Plaintiffs and the Class are entitled and that the Court deems just and proper.” (*Id.* at Prayer for Relief.)

REMOVAL IS PROPER UNDER THE CLASS ACTION FAIRNESS ACT

I. This Suit Is A Class Action Whose Parties Are Minimally Diverse.

11. The named Plaintiffs are individuals who allege that they are citizens of Oklahoma. (Pet. at ¶¶ 4-5.) Plaintiffs bring their claims pursuant to 12 O.S. § 2023 on behalf of themselves and a class defined as:

- a. Citizens of Oklahoma;
- b. owning a home or business in Logan County, Payne County, Lincoln County, Creek County, Oklahoma County, Canadian County, Kingfisher County, Garfield County, or Noble County (hereafter, the “Class Area”);
- c. during the dates of seismic activity within the Class Area between March 30, 2014 and through the present (the “Class Period”);
- d. excluded from the Class are all properties on lands where there is any federal oversight, such as Tribal or Indian lands; and,
- e. excluded from the Class are Defendants and their officers and directors, and the judge presiding over this action and his/her immediate family members.

(*Id.* at ¶ 71.)

12. Plaintiffs also “reserve the right to amend the definition of the Class if discovery and further investigation reveals that the Class should be expanded or otherwise modified.” (*Id.* at ¶ 72.)

13. Devon denies that this lawsuit is properly maintained as a class action under Federal Rule 23, and reserves the right to challenge class certification. However, Plaintiffs have alleged a class action as that term is defined by 28 U.S.C. § 1332(d)(1).

14. Though the named Plaintiffs, Devon, and the other Defendants appear to be citizens of Oklahoma, Plaintiffs' proposed class includes citizens of states other than Oklahoma. Plaintiffs defined the class according to two relevant and interrelated criteria—Oklahoma citizenship and property ownership within the Class Area—during the “dates of seismic activity ... between March 30, 2014 and through the present.” These criteria may be satisfied by individuals who, while citizens of Oklahoma during seismic activity occurring after March 30, 2014, were not Oklahoma citizens on the date Plaintiffs filed their Complaint. *Siloam Springs Hotel, L.L.C. v. Century Sur. Co.*, 781 F.3d 1233, 1239 (10th Cir. 2015) (“[I]t is clear the relevant time period for determining the existence of complete diversity is the time of the filing of the complaint.”) (citing *Whitelock v. Leatherman*, 460 F.2d 507, 514 n. 14 (10th Cir. 1972)).

15. Specifically, the proposed class includes people who: 1) were citizens of Oklahoma “during the dates of seismic activity” occurring between March 30, 2014 and present; 2) owned real property within the Class Area “during the dates of seismic activity” occurring between March 30, 2014 and present; 3) experienced a seismic event after March 30, 2014; and 4) became citizens of a state other than Oklahoma before Plaintiffs filed suit on October 24, 2017. These individuals qualify as “Citizens of Oklahoma ... owning a home ... during the dates of seismic activity within the Class Area,” and thus qualify as members of the proposed class. (Pet. at ¶ 71.)

16. For example, the class definition includes all citizens of Oklahoma affected by the January 25, 2015 Perry earthquake, but who have moved out of Oklahoma in the nearly three years since that earthquake event. (*Id.* at ¶ 66.) Such non-Oklahoma citizens satisfy the class definition because they were “Citizens of Oklahoma ... during the dates of seismic activity within the Class Area.” (*Id.* at ¶¶ 66, 71.)

17. In addition to including non-Oklahoma citizens by its plain terms, Plaintiffs’ class definition warrants a broad reading given its failure to specifically exclude non-Oklahoma citizens from the class. While the class definition specifically excludes from its ranks certain employees of Defendants, the judge assigned to this case and his or her family, and individuals owning lands “where there is any federal oversight, such as Tribal or Indian lands,” it does not specifically exclude citizens of states other than Oklahoma. (*Id.* at ¶ 71.) Plaintiffs could have restricted their class definition in this way, but chose not to do so. This failure to exclude non-Oklahoma citizens demonstrates that they are, in fact, part of Plaintiffs’ proposed class.

18. These former Oklahoma citizen class members are diverse from Devon, which is exclusively a citizen of Oklahoma because it is organized under the laws of Oklahoma and has its principal place of business in that state. (*Id.* at ¶ 12); *see also* 28 U.S.C. § 1332(c)(10) (“For purposes of [CAFA], an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.”).

19. For this reason, Plaintiff’s proposed class satisfies the minimal diversity requirement of CAFA, and this case may be removed to this Court.

II. This Suit Is A Class Action With The Aggregate Amount In Controversy Greater Than \$5,000,000.

20. 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).

21. Plaintiffs’ Petition satisfies CAFA’s jurisdictional minimum based on the breadth of Plaintiffs’ claims and the size of the proposed class. In particular, Plaintiffs seek damages on behalf of property and business owners who experienced at least one of dozens of seismic events that occurred in nine Oklahoma Counties between 2014 and 2017. Plaintiffs seek damages for “real and personal property damages, physical damages, market losses, loss of use and enjoyment of real property, and for emotional harm in an amount to be proven at trial.” (Pet. at Prayer for Relief.) Plaintiffs also seek punitive damages. (*Id.*)

22. According to the Complaint, two seismic events alone caused over \$2 million in damages to two buildings. (*Id.* at ¶ 94.) Plaintiffs further allege that another single earthquake “totaled the home of Johnny and Janice Bryant, and ha[s] caused more than \$400,000 in damages to government buildings of the Pawnee Nation.” (*Id.*)

23. Individually, Plaintiffs allege that they have “sustained extensive damage” to their homes valued “in the thousands of dollars.” (*Id.* at ¶¶ 49-50, 54-55.)

24. Given the allegedly high costs of property damage caused by Oklahoma earthquakes between 2014 and 2017 and the broad swath of property and business

owners covered by Plaintiffs' class definition, Plaintiffs seek well over \$5,000,000 in damages from Defendants.

CONCLUSION

25. Because Plaintiffs allege a class action, seek more than \$5,000,000 in damages, and minimal diversity exists between the proposed class and at least one Defendant, CAFA permits removal to this Court.

WHEREFORE, Defendant Devon requests that the above-captioned action, now pending in the District Court for Logan County, Oklahoma, be removed to the United States District Court for the Western District of Oklahoma, and that said U.S. District 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.

Respectfully submitted,

s/John J. Griffin, Jr.

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**ATTORNEYS FOR DEFENDANT DEVON
ENERGY PRODUCTION COMPANY, L.P.**

CERTIFICATE OF SERVICE

I certify that on the same date this Notice of Removal was filed in the United States District Court for the Western District of Oklahoma that a true and correct copy of said Notice of Removal was served by mailing, postage prepaid, to the following attorneys of record:

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and further that a copy of said Notice of Removal was delivered to the Logan County Court Clerk for filing, on the 16th day of November, 2017.

s/John J. Griffin, Jr.
