

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

LISA GRIGGS, et al.,	)	
	)	
Plaintiffs,	)	
	)	
-vs-	)	Case No. CIV-17-1232-F
	)	
NEW DOMINION, LLC, et al.,	)	(District Court of Logan County,
	)	Case No. CJ-2017-174)
Defendants.	)	

**ORDER**

Before the court is Plaintiffs’ Motion to Remand, filed November 20, 2017 (doc. no. 5). The briefing with respect to the motion is complete. Upon due consideration of the parties’ submissions, the court makes its determination.

On November 16, 2017, defendant, Devon Energy Production Company, L.P. (“Devon”), removed this civil action to this court from the District Court of Logan County, State of Oklahoma, pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d) and § 1453. The removal is the second removal of the case. The action was originally removed to this court by defendant, Chesapeake Operating, LLC (“Chesapeake”). *See, Lisa Griggs, et al. v. New Dominion, LLC, et al.*, Case No. CIV-17-942-F. In the Notice of Removal, Chesapeake alleged that removal was proper, in part, because CAFA’s “minimal diversity” requirement was satisfied in that plaintiffs were citizens of Oklahoma and defendant, Gastar Exploration, Inc., was a corporation organized under the laws of Delaware, with its principal place of business in Houston, Texas. Thereafter, plaintiffs filed a motion seeking to remand the action to the state court, positing that the inclusion of Gastar Exploration, Inc. as a defendant was a scrivener’s error. The court, upon review of

plaintiffs' class action petition, granted the motion. In so doing, the court concluded that Gastar Exploration, Inc., named only in the caption of the petition, was not a defendant to the action and thus, CAFA's minimal diversity requirement was not satisfied. *See*, Case No. CIV-17-942-F, Order (doc. no. 11).

In its Notice of Removal, Devon alleges:

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.

\* \* \* \*

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 . . . .

For this reason, Plaintiff[s'] proposed class satisfies the minimal requirement of CAFA, and this case may be removed to this Court.

Notice of Removal (doc. no. 1), ¶¶ 14, 18 and 19.

Plaintiffs acknowledge that after the court's remand of the case to the District Court of Logan County, they filed a First Amended Class Action Petition. However, they state that the only thing that changed with their amended pleading was the removal of Gastar Exploration, Inc. from the caption. They contend that the parties

and class definition did not change. Plaintiffs assert that the proposed class definition requires each absent class member to be a citizen of Oklahoma. Because this court has previously ruled that CAFA's minimal diversity requirement was not satisfied for this case, they urge the court to remand this case again to state court. They also request the court to award them attorney's fees and costs.

Devon, in response, argues that the prior removal of this action was on a different ground than that presented by Devon's Notice of Removal. Because the issue raised by Devon in its Notice of Removal has not been decided by the court, Devon contends that the court's prior order does not require remand of the action. Devon maintains that the class definition proposed by plaintiffs includes an Oklahoma citizen who owned a home in a relevant county during the dates of seismic activity but who has since become a citizen of another state. Devon attaches to its response affidavits of individuals who meet plaintiffs' class definition but who are not Oklahoma citizens as of the date of the filing of plaintiffs' petition. The existence of these individuals, Devon maintains, shows that plaintiffs have defined a class that is minimally diverse from Devon, justifying the court's exercise of subject matter jurisdiction over this action.

In reply, plaintiffs argue that Devon has asked the court to adopt a nonsensical reading of the class definition and ignore the citizenship requirement in both the caption and introduction of the First Amended Class Action Petition. Plaintiffs assert that the current class definition specifically requires that each member be a citizen of Oklahoma. Plaintiffs point out that other class actions with similar class definitions have been filed in state courts and those cases are proceeding in those courts.


Upon review, the court concludes that the class definition, as pleaded in the First Amended Class Action Petition, requires a class member to be an Oklahoma citizen. The court rejects Devon's reading of the class definition. Because each

class member must be an Oklahoma citizen and all defendants are Oklahoma citizens, the court concludes that the minimal diversity requirement for the exercise of jurisdiction under CAFA is not present. Therefore, this action must again be remanded to state court.

As to plaintiffs' request for attorney's fees and costs, the court finds the same should be denied. Although the court has ruled against Devon, the court cannot conclude that Devon's position with respect to removal was not objectively reasonable. *See, Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005) ("Absent unusual circumstances, courts may award attorney's fees under [28 U.S.C.] § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal.").

Accordingly, Plaintiffs' Motion to Remand (doc. no. 5) is **GRANTED**. Plaintiffs' request for attorney's fees and costs is **DENIED**. The above-entitled action is **REMANDED** to the District Court of Logan County, State of Oklahoma.

IT IS SO ORDERED this 28<sup>th</sup> day of December, 2017.

  
STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE