

court below, this case was styled *Lisa West, et al. v. ABC Oil Company, Inc., et al.*, District Court in and for Pottawatomie County, State of Oklahoma, Case No. CJ-2016-49. A jury demand has been made in the state court action.

2. Berexco was served with the Summons and Petition on February 22, 2016, and has filed this Notice of Removal before the expiration of thirty (30) days after service of the complaint (Petition) and summons. This notice is therefore timely pursuant to 28 U.S.C. § 1446(b). *See also* 28 U.S.C. § 1453(b) (providing that the one (1) year limitation under §1446(b) does not apply to class actions removed pursuant to the Class Action Fairness Act of 2005 (“CAFA”)).

3. Pursuant to LCvR 81.2, a copy of the state court docket sheet for the case is attached to this Notice as Exhibit 1. Pursuant to 28 U.S.C. § 1446(a) a true and correct copy of all process, pleadings, and orders served upon Berexco are attached hereto as Exhibits 2-6.

NO JOINDER NECESSARY

4. Under CAFA, any Defendant may remove a class action without the consent of other Defendants. *See* 28 U.S.C. § 1453(b). Accordingly, no consent to removal is required.

ALLEGATIONS OF THE COMPLAINT

5. This action is a putative class action against Berexco and a putative class of Defendants consisting of “hundreds of injection well operators” in Pottawatomie County and the surrounding counties, on behalf of a putative class of Plaintiffs consisting of “all persons having an insurable interest in real property in the Class Area.” Plaintiffs’ Petition, ¶¶ 62, 87, (“Petition”) attached as Exhibit 2. The Class Area is defined as “Pottawatomie

County and counties surrounding and touching it, to wit: Cleveland, Lincoln, McClain, Okfuskee, Oklahoma, Pontotoc and Seminole.” Petition ¶ 62. Plaintiffs allege that Defendants’ injection operations have induced seismic activity that has caused the Plaintiff class to purchase “earthquake insurance.” Petition ¶ 2. The purported evidentiary support cited in Plaintiffs’ Petition focuses on disposal of produced water into the Arbuckle formation. Petition ¶¶ 9, 39-41. Despite the fact that Berexco does not operate a single disposal well in the Class Area that injects or disposes of wastewater into the Arbuckle formation, Plaintiffs have named Berexco as a Defendant.

6. Plaintiffs seek temporary and permanent injunctive relief directing the Defendants to reimburse Plaintiffs for insurance premiums paid since 2011 in the Class Area, and to reimburse Plaintiffs for insurance premiums as they are incurred prospectively until Defendants can demonstrate that they are not causing earthquakes. Petition at p. 32. The putative class of Plaintiffs includes parties who have purchased insurance and parties who would like to purchase insurance. Petition ¶ 63.

7. Plaintiffs also seek to establish a class of Defendants comprised of all operators of injection wells in the Class Area who have operated an injection well since 2011. Petition ¶ 78. Berexco disputes Plaintiffs’ allegations, believes that Plaintiffs’ Petition lacks merit, and denies that Plaintiffs or the putative class members are entitled to the requested relief.

BASIS FOR REMOVAL

8. This Court has jurisdiction over this class action pursuant to CAFA, which grants district courts original jurisdiction over “any civil action in which the matter in

controversy exceeds the sum or value of \$5,000,000, exclusive of interests and costs, and is a class action in which . . . 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). As set forth below, this action satisfies each of the requirements of Section 1332(d)(2)(A) for original jurisdiction under CAFA and is therefore removable pursuant to 28 U.S.C. § 1441(a).

A. The Proceeding is a “Class Action” Under CAFA.

Although Berexco denies that this lawsuit is properly maintained and reserves the right to challenge class certification, Plaintiffs’ proposed class action meets CAFA’s definition of “class action.” *See* 28 U.S.C. § 1332(d)(1)(B). Plaintiffs’ action was filed under Oklahoma’s counterpart to Rule 23 of the Federal Rules of Civil Procedure, which authorizes an action to be brought by one or more representatives as a class action. *See* Okla. Stat. tit. 12, § 2023(A); 28 U.S.C. § 1332(d)(1)(B); Petition ¶ 61.

B. The Class is Composed of More than 100 Members.

Pursuant to Section 1332(d)(5)(B), the number of potential class members must total at least 100 for the Court to have jurisdiction under CAFA. Plaintiffs’ Petition alleges that “each of the eight counties included in the Class Area have thousands of individuals that are included in the class definition.” Petition ¶ 67. Accordingly, based on Plaintiffs’ allegation, the aggregate number of class members exceeds the required amount.

C. Diversity of Citizenship Exists.

Diversity of citizenship exists because at least one member of the putative class is a citizen of a state different from any Defendant. *See* 28 U.S.C. § 1332(d)(2)(A). The definition of the putative class in the Petition is incredibly broad. It includes “[a]ll persons having an insurable interest in real property in the Class Area from 2011 through the time the Class is certified, and thereafter while any injunctive relief granted remains in force.”

Petition ¶ 62. This would logically include all residential and commercial property owners, as well as all businesses, banks, and mortgage companies that have an insurable interest in real property. *See* Petition ¶¶ 62–64. The putative class would also include all “persons” who had an insurable interest in real property at any time since 2011 but have since divested themselves of the interest, and it includes all persons who will prospectively acquire an insurable interest in real property in the Class Area. *See* Petition ¶¶ 62–64. Logically, the class will include many non-resident businesses, banks, mortgage companies, and persons who were, at one time, Oklahoma residents but have since moved out of state. *See* Petition ¶¶ 62–64. It will also include out of state individuals and businesses who will acquire an insurable interest in real property in the Class Area in the future. *See* Petition ¶¶ 62–64. Given the broad definition of the putative class, it is reasonable to conclude that significant diversity will exist with respect to many Plaintiffs and Defendants.

Regardless, diversity exists with respect to Berexco and the named Plaintiffs. Plaintiffs Lisa West and Stormy Hopson are residents of Oklahoma. Petition ¶¶ 34–35. Upon information and belief, the residences referenced in the Petition are the Plaintiffs’ primary and permanent residences and, therefore, each named Plaintiff is domiciled in and a citizen of Oklahoma. *See Gilbert v. David*, 235 U.S. 561, 569 (1915). Under CAFA an unincorporated association, such as a limited liability company, “shall be deemed a citizen of the State where it has its principal place of business and that State under whose laws it was organized.” 28 U.S.C. § 1332(d)(10). Berexco is a Kansas limited liability company, organized under the laws of the State of Kansas with its principal place of business in Wichita, Kansas. Thus, according to Plaintiffs’ allegations in their Petition, CAFA’s diversity requirements are satisfied. *See* 28 U.S.C. § 1332(d)(2)(A).

D. The Amount in Controversy Exceeds \$5,000,000 in Aggregate.

On the face of the Petition, the Plaintiff class is comprised of thousands of members in each of the eight counties in the Class Area. Petition ¶ 62. Although Plaintiffs assert claims for negligence, ultra hazardous activity, nuisance and trespass, they are purportedly only seeking injunctive relief. Petition at p. 32.

In determining the amount in controversy, the Court must consider the cost of the requested injunctive relief to the Defendants. *See Lovell v. State Farm Mut. Auto. Ins. Co.*, 466 F.3d 893, 897 (10th Cir. 2006) (“The Tenth Circuit has followed what has commonly been referred to as the ‘either viewpoint rule’ which considers either the value to the plaintiff or the cost to defendant of injunctive and declaratory relief . . .”); *Valdez v. Metro. Prop. & Cas. Ins. Co.*, 867 F. Supp. 2d 1143, 1163–64 (D.N.M. 2012); *Cox v. Allstate Ins. Co.*, No. CIV-07-1449-L, 2008 WL 2167027, *3 (W.D. Okla. May 22, 2008) (noting that when plaintiffs seek injunctive relief, “the amount in controversy is measured by value of the object of the litigation [which is determined by] the pecuniary effect an adverse declaration will have on either party to the lawsuit.”) (internal citations omitted). Under CAFA, “the claims of individual class members shall be aggregated to determine whether the amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interests and costs.” 28 U.S.C. § 1332(d)(6).

In this case, Plaintiffs seek permanent injunctive relief requiring the Defendants to pay insurance premiums for all parties who have purchased insurance since 2011 and for all parties who will or want to purchase insurance for the foreseeable future while the requested injunction remain in place. Petition at p. 32. Plaintiffs’ Petition concedes that the value of the requested injunction to each member of the Plaintiff class is the value of their respective

insurance premiums. *See* Petition at p. 32. The value to the Defendant class overall would be the aggregated premiums. *See Lovell*, 466 F.3d at 897, fn. 4.

The Oklahoma Insurance Department reports that, for 2014 alone, insurance companies wrote \$16,436,804.00 in premiums for earthquake insurance in Oklahoma. 2015 Annual Report, Oklahoma Insurance Department, p. 178.¹ Plaintiffs are asking for insurance premiums from 2011 through an unspecified date in the future. Petition at p. 32. Further, it is evident that Plaintiffs' belief is that this financial burden on Defendants would be so great that a putative class of Defendants should be established to spread the cost. Petition ¶ 4. Plaintiffs state that arguably the named Defendants, or even a significant number of the putative class of Defendants, could not bear the ongoing financial consequences associated with earthquakes caused by injection wells. Petition ¶ 3. Plaintiffs go on to postulate that is "unclear if the entire industry will be able to bear the financial burdens associated with its decisions on how to operate disposal wells." Petition ¶ 3. Thus, it is clear that the aggregated value to the Plaintiff class or cost to the Defendant class would exceed CAFA's \$5,000,000.00 minimum.

CONCLUSION

For the reasons stated above, this action is within the original jurisdiction of this Court pursuant to 28 U.S.C. § 1332(d). Accordingly, this action is removable pursuant to 28 U.S.C. § 1441(a) and § 1453(b).

WHEREFORE, Defendant, Berexco, LLC, gives notice that the above-described action pending against it in the District Court of Pottawatomie County, Oklahoma, is removed to this Court.

¹Available at https://www.ok.gov/oid/documents/103015_2015_AnnualReport-RFS.pdf.

Respectfully submitted,

s/Eric L. Huddleston

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of March, 2016, a true and correct copy of the above and foregoing was sent via regular mail, postage prepaid, to the following counsel of record:

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I further certify that a true and correct copy of the above and foregoing was filed with the Pottawatomie County Court Clerk.

s/Eric L. Huddleston

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