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The Eleventh Circuit holds CAFA's local controversy provision does not preclude the exercise of federal question jurisdiction

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Takeaway: The Class Action Fairness Act ("CAFA") was enacted to broaden federal diversity jurisdiction over class actions. While CAFA's local controversy provision requires district courts to "decline to exercise [diversity] jurisdiction" over local class actions, it was not intended to restrict other bases for federal subject matter jurisdiction, such as federal question jurisdiction.

In *Blevins v. Askut*, No. 16-11585, 2017 WL 782288 (11th Cir. Mar. 1, 2017), the plaintiff filed a putative class action in Alabama state court against a doctor and several medical facilities, alleging the doctor recommended and performed unnecessary heart procedures. Because the plaintiff alleged claims under federal RICO, the defendants removed the case to federal court. The district court denied plaintiff's motion to remand and dismissed the RICO claims on the ground that plaintiff had failed to allege a cognizable RICO injury. The plaintiff appealed.

The Eleventh Circuit affirmed the district court's denial of the motion to remand, rejecting the plaintiff's arguments that CAFA's local controversy provision (1) precluded district courts from exercising jurisdiction over all local class actions or (2) otherwise vested state courts with exclusive jurisdiction over such class actions.

On the first point, the Eleventh Circuit observed that the local controversy provision – 28 U.S.C. § 1332(d)(4) – requires a form of abstention and thus does not abrogate federal jurisdiction. But more importantly, the provision only directs district courts to refrain from exercising *diversity* jurisdiction over local class actions under Section 1332(d)(2). In other words, while Section 1332(d)(2) expands a federal court's diversity jurisdiction over class actions with over $5 million at stake, § 1332(d)(4) (the local controversy provision) "proscribes the exercise of that [expanded] jurisdiction over local cases." 2017 WL 782288, at *3. Thus, the local controversy provision has no impact on class actions properly removed to federal court based on the existence of federal question jurisdiction.

On the second point, the Eleventh Circuit held that federal courts presumptively have federal question jurisdiction under Section 1331 over claims arising under federal statutes, and that there was nothing in the language of the local controversy provision showing that Congress intended to divest federal courts of federal question jurisdiction over local class actions. "In sum, CAFA's local-controversy provision does not require district courts to abstain from exercising federal-question jurisdiction over local class actions, and nothing in that provision indicates that Congress intended to divest district courts of

federal-question jurisdiction." *Id.*

On the merits, the Eleventh Circuit reversed the district court's dismissal of plaintiff's federal RICO claim, holding that payments for allegedly unnecessary heart procedures constituted "economic injuries" conferring standing under RICO – *i.e.*, injuries to "business or property" – rather than injuries flowing from personal injuries. In so ruling, the Court of Appeals followed its reasoning in *Ironworkers Local Union 68 v. AstraZeneda Pharmaceuticals, LP*, 634 F.3d 1352, 1363 (11th Cir. 2011), a case involving allegedly inappropriate prescriptions, which differentiated non-recoverable personal injury-related harm from recoverable RICO injury arising from "a physician's medically unnecessary or inappropriate prescriptions." 2017 WL 782288, at *4. The Eleventh Circuit explained: "These injuries do not flow from any personal injuries. Rather, as in *Ironworkers*, the payments themselves are economic injuries because they were for medically unnecessary procedures." *Id.*