
**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

Case No. 12-8114

St. Croix Renaissance Group, LLLP,

Petitioner,

v.

Eleanor Abraham, et al.,

Respondents.

From the District Court of the Virgin Islands

(D.C. No. 12-cv-0011)

District Judge: Hon. Harvey J. Bartle III

**PETITIONER'S REPLY
TO RESPONDENTS' OPPOSITION
TO THE MOTION TO STRIKE OR IN THE ALTERNATIVE
FOR LEAVE TO FILE A CROSS-ANSWER IN OPPOSITION
REGARDING
RESPONDENTS *DE FACTO* CROSS-PETITION
FOR REVIEW OF A CAFA REMAND ORDER
PURSUANT TO 28 U.S.C § 1453(c)(1)**

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January 11, 2013

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 Respondents now concede that they *did* file a cross-petition. With that concession, and Petitioner's reply here, Petitioner believes that there has been sufficient briefing on the matters in both directions on the conceded cross-issue and the two contested cross-issues -- and therefore *asks that the Court accept the briefing to date on the issues with no additional papers -- and proceed to a determination of the Petition for Leave to Appeal.*

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I. INTRODUCTION

Respondents concede that they *did* file a *de facto* cross-petition. Petitioner wished to establish that point here -- as it will have a procedural effect below.

For the reasons set forth herein, Petitioner believes that, with that concession, and the attendant briefs, there has been sufficient argument on the matters in both directions on the one conceded issue and the two contested issues. It therefore asks *that the Court accept the briefing to date on the issues with no additional papers -- and proceed to a determination of the Petition for Leave to Appeal.*

II PROCEDURAL HISTORY

On December 13, 2012, St. Croix Renaissance Group, L.L.P. ("SCRG") filed a petition seeking leave to appeal a CAFA remand order -- pursuant to 28 U.S.C. § 1453(c).

Rule 5, Federal Rules of Appellate Procedure, allows respondents to then submit either "an answer in opposition or a cross-petition."

(2) A party may file **an answer in opposition** or a **cross-petition** within 10 days after the petition is served.

However, instead of filing either an answer in opposition or a cross-petition, on December 21, 2012, respondents filed an "Opposition" which contained not only answers in opposition, but also addressed matters beyond the petition.¹ What they filed was, in effect, a *de facto* cross-petition.

On December 27, 2012, Petitioner then filed the instant motion to strike or for leave to file an answer in opposition as to the identified cross-petition Issues I, II and VI.

Respondents filed their opposition to the motion on January 10, 2013.

III. ARGUMENT

A. Respondents Concede that Section VI of Their "Opposition" is a Cross-Petition

At 2 of the opposition, Defendants concede that Section VI of their opposition is a cross-petition "to which Petitioner is allowed to respond."

¹ The portions of the opposition that *were* responsive to the petition were:

- III. The District Court Correctly Determined that it Lacked Removal Jurisdiction Under the Plain Language of CAFA
- IV. The District Court Correctly Found That Petitioner's Continuous and Ongoing Release of Toxins Is an "Event or Occurrence"
- V. The District Court's Decision to Remand is Supported by the Record

The portions of the opposition that are in the nature of a cross-petition are:

- I. This Court Lacks Jurisdiction to Review the Remand Order
- II. The Purposes of CAFA Are Not Served By Granting Federal Jurisdiction in this Local Matter
- VI. Alternatively, the "Local Controversy Exception" also applies and remand remains appropriate

Respondents respectfully maintain that this Court lacks jurisdiction to review the remand order by permission or otherwise. **Respondents will concede** that if this Court determines that it has jurisdiction to entertain the Petition, **Section VI of Respondents' Opposition is a cross-petition to which Petitioner is allowed to respond. (Emphasis added.)**

Section VI of their opposition dealt with the following issue: "VI. the 'Local Controversy Exception'. . .applies and. . .remand remains appropriate."

However, there is little more that can be said about that issue. Three times in its papers before the court below, Petitioner alleged it was a citizen of Massachusetts and specifically identified the *Hertz* nerve-center test as the appropriate test. Respondents responded twice thereafter, and had the ability to contest that with opposing affidavits or proof. However, as stated in prior briefs here, clearly elected not to do so.

Despite the fact that Petitioner did not carry the burden as to this exception, it did file an affidavit. If the Court will review the affidavit in support on that issue, it will see that there is no live dispute here -- all functions that could arguably be considered a nerve-center function were moved long, LONG before this suit was filed -- and the facility is moth-balled.

Thus, Petitioner does not ask the Court for further briefing on this matter.

B. Respondents Dispute that their Issues I (jurisdiction of this Court) and II (purposes of CAFA are not served by granting federal jurisdiction in this local matter) are Cross-Petitions

Having conceded that a cross-petition was filed and that a cross-answer in opposition is appropriate, Respondents then argue that their issues I and II were directly responsive to the Petition.

However, Petitioner's contentions with regard to Sections I and II are baseless. First, Section I of Respondents' Opposition concerns solely the issue of whether this court may review the remand order. This is a **jurisdictional question**. It is fundamental, that jurisdiction to entertain an appeal is the first question a Court must resolve. (Emphasis in the original.)

and

Second, Section II of Respondents' Opposition directly addresses the first issue of CAFA raised by Petitioner in its Petition. . . .Petitioner's first issue deals with CAFA and "mass actions". Respondents Section II is directly responsive to that issue.

Id. at 2-3. While this could be argued, at this point, both parties have pretty much gone over the jurisdictional arguments and their views on whether "Congress' intent in enacting CAFA 'mass action' provisions" was to limit them only to local cases.

IV. Conclusion

Thus, Petitioner -- without conceding any points -- withdraws any request for a further cross-answer in opposition as to the three identified cross-issues.

Respectfully submitted,

Dated: January 11, 2013

/s/

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CERTIFICATE OF SERVICE

A true and accurate copy of this Motion was served by ECF to counsel listed below who is an ECF filer, and email to Plaintiffs' counsel on the 11th of January, 2013, at the email address below:

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