

CAFA's Local Controversy Exception Requires Class Claims Against Local Defendant

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As we previously reported, in September 2017, a federal district court in Louisiana dismissed with prejudice as time-barred putative class action RICO and state racketeering claims related to alleged wrongful conduct by an agent in connection with annuities issued by Sun Life. See *Expect Focus*, Volume IV, Dec. 2017.

Robertson v. Sun Life Financial, commenced in state court in 2008, arose after the plaintiff, an annuity owner, noticed fraudulent withdrawals from his Sun Life annuity account. He asserted state common law claims predicated on a theory that the insurer negligently breached the annuity contract by failing to follow certain industry standards, thereby failing to prevent the wrongful conduct. There was a concurrent criminal proceeding against one of the civil defendants, Matthew Pizzolato, the son of one of Sun Life's agents. Pizzolato pleaded guilty to multiple counts of mail fraud and other offenses related to the fraudulent withdrawal and was sentenced to a 30-year prison term in 2010.

During the civil litigation, the plaintiff amended his petition several times, culminating in a fourth amended petition asserting new federal and state racketeering putative class action claims, alleging that Sun Life was liable for Pizzolato's fraudulent activity because it either conducted or acquired a racketeering enterprise through which its agent and Pizzolato created and used individual retirement accounts to steal from customers' accounts. Sun Life then removed the case to federal court based on federal question jurisdiction and subject matter (Class Action Fairness Act) jurisdiction. After the district court dismissed the federal and state racketeering claims, the plaintiff filed a remand motion, seeking to prosecute his remaining state court claims in state court. However, in a January 2018 ruling, the district court rejected the effort.

The court was unpersuaded by the plaintiff's effort to place the case within CAFA's local controversy exception by pointing to the existence of a "significant local defendant," Louisiana citizen Pizzolato. First, the district court agreed that Pizzolato's conduct "forms a significant basis for the class claims" as, *inter alia*, his conduct "appears to have affected all members of the putative class." However, the plaintiff failed to meet his burden to demonstrate the exception applied because he failed to show that Pizzolato "is a defendant 'from whom significant relief is sought by members of the plaintiff class.'" Specifically, the class allegations were directed at "the Racketeering Defendants." Pizzolato, however, while mentioned several times in the complaint, "[was] not named as one of the Racketeering Defendants and [did] not appear to be the target of the class claims." The court also noted that "[u]nder Louisiana law, an action is abandoned when the parties fail to take any step in its prosecution," and in this case, it had been over three years since the complaint was filed and Pizzolato was never served.