

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

Case No. 13-1725

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

**APPELLANT'S MOTION FOR A STAY OF THE
ISSUANCE OF DECISION AND ENLARGEMENT OF TIME
PURSUANT TO 28 U.S.C. § 1453(c)(3)(B)**

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May 13, 2013

I. Introduction

Pursuant to 28 U.S.C. § 1453(c)(3)(B), Appellant hereby requests that the Court stay the release of its decision in this matter -- and enlarge the time set under § 1453(c)(2) for issuing that decision, for a period of ten (10) days. Those sections provide:

(c) Review of Remand Orders.—

(1) In general.— Section 1447 shall apply to any removal of a case under this section, except that notwithstanding section 1447 (d), a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand a class action to the State court from which it was removed if application is made to the court of appeals not more than 10 days after entry of the order.

(2) Time period for judgment.— If the court of appeals accepts an appeal under paragraph (1), **the court shall complete all action on such appeal, including rendering judgment, not later than 60 days after the date on which such appeal was filed**, unless an extension is granted under paragraph (3).

(3) Extension of time period.— The court of appeals may grant an extension of the 60-day period described in paragraph (2) if—

(A) all parties to the proceeding agree to such extension, for any period of time; or

(B) such extension is for good cause shown and in the interests of justice, for a period not to exceed 10 days.

(4) Denial of appeal.— If a final judgment on the appeal under paragraph (1) is not issued before the end of the period described in paragraph (2), including any extension under paragraph (3), the appeal shall be denied. (Emphasis added.)

Appellant believes that a stay and enlargement of time is warranted for good cause as set forth herein and is in the interests of justice.

II. Procedural Posture

On March 14, 2013, this Court allowed an appeal of certain issues pursuant to 28 U.S.C. § 1453. Under that section, if a final determination does not issue or a motion filed, by operation of law the "the appeal shall be denied."

III. Argument

1. Erie Indemnity

First, on April 10, 2013, a motion for a stay of determination was filed with this Court in 13-1415, *Erie Indemnity v. Erie Insurance*. That case would have otherwise had to have been decided (under the same CAFA procedural statute) prior to May 13, 2013. However, the Court granted that motion and stayed issuance of that decision until May 16, 2013. Appellant *hopes* that part of that decision can be further argued to the Court in this matter under Rule 28(j).

2. Senate Committee Report

Second, Appellant wishes to supplement with a brief argument as to a matter discussed by the Court at oral argument. In that regard, the Court stated:

Judge Smith: If legislative history is once removed, what you're talking about is at least two or three times removed. The thing that you want to talk about, legislative history, although it supports what you say, the trouble is this legislative history came out, as legislative history sometimes does, a good two weeks after the vote was taken.

Appellees cited to an 11th Circuit case which contains the proposition that the Senate Committee's Report was in the hands of the full Senate prior to the vote on

S.5. Appellee's Opposition at 16:

Committee reports remain the most authoritative source for establishing Congress's intent, and there is nothing in CAFA's pre-enactment history that contradicts the Report. *See Zuber v. Allen*, 396 U.S. 168, 186 (1969); *Lowery v. Ala. Power Co.*, 483 F.3d 1184, 1205-06 (11th Cir. 2007).

In its Reply Appellant did note at page 14 (footnote 10):

But cf. Lowery v. Ala. Power Co., 483 F.3d 1184, 1206 n. 50 (11th Cir. 2007) (incorrectly reading the "Committee Reports" notes in the Congressional Record (S978, February 3, 2005) as to the Committee's reporting out *of the S.5 bill* on February 3, 2005, to mean that the Committee's Report regarding S.5 was sent to the Senate then—despite the fact that the report was not distributed (without signature dates) until February 28th. The Senate Report itself confirms, at 3, that the mark-up of S.5 was completed and reported out on February 3rd, not the report.)

Appellant has been reminded -- and wishes to submit additional information to the Court pursuant to Rule 28(j), that another court has addressed this exact issue, and noted the fact that a person present at the time confirms this fact.

3. Earlier attempt to amend S.5 for "environmental exception"

At the oral argument, the Court noted that the minority reference to the fact that there had been an attempt to add tan "environmental" exception to the "single event/occurrence exception."

Hartmann: I know that you want to stick to the pure wording but I will tell you that in 2005 when this was passed, the minority attempted p.6

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to have the statute amended, particularly to add continuing environmental torts.

Hartmann: When they didn't put it in, the minority railed mightily, at 89 of the Senate report, saying that failing to carve out an exception to S.5 to protect the environment, for just what Your Honor is discussing...

Judge Smith: If legislative history is once removed, what you're talking about is at least two or three times removed. The thing that you want to talk about, legislative history, although it supports what you say, the trouble is this legislative history came out, as legislative history.

Appellant wishes to make an additional argument under Rule 28(j) with regard to this matter as well.

V. Conclusion

A ten day period does not prejudice or affect the rights of the Appellees, and the additional information may assist the Court in reaching its determination. The interests of justice are served by clarity as to the legal issue involved and not wasting the time and efforts of the Court and counsel.

Respectfully submitted,

Dated: May 13, 2012

/s/

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CERTIFICATE OF SERVICE

A true and accurate copy of this Motion was filed by ECF and email to Plaintiffs'-Appellee's counsel on the 13th of May, 2012, at the email address below:

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