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## Inter-Circuit Judicial Splits Surrounding the Class Action Fairness Act's "Local Single Event" Exception—A Proposal to Resolve the Confusion

Odalys Vielma  
*St Mary's University*

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## COMMENT

# INTER-CIRCUIT JUDICIAL SPLITS SURROUNDING THE CLASS ACTION FAIRNESS ACT’S “LOCAL SINGLE EVENT” EXCEPTION—A PROPOSAL TO RESOLVE THE CONFUSION

ODALYS VIELMA\*

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\* Candidate for Doctor of Jurisprudence, St. Mary’s University School of Law, 2022. The author wishes to thank her parents, Alicia Villarreal and Jesus Vielma, for their support and guidance.

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## I. INTRODUCTION

In 2016, hundreds of residents of Africatown, Alabama, developed harmful health problems, such as cancer, infertility, heart disease, and adverse skin conditions.<sup>1</sup> The Africatown residents later discovered that Dioxins, Furans, and other related chemicals caused their health problems.<sup>2</sup> The International Paper Company property, located a few miles from the town, allegedly released these toxins, which contaminated the plaintiffs' air, soil, and water.<sup>3</sup> In 2017, two hundred forty-eight individuals brought an action against the International Paper Company and Bay Area Contracting, Inc.<sup>4</sup> The plaintiffs asserted twenty-three different state-law claims ranging from trespass to assault.<sup>5</sup> The plaintiffs sought compensatory damages for personal injuries with punitive damages and injunctive relief.<sup>6</sup> The International Paper Company and Bay Area Contracting, Inc., filed a motion to remove the action to federal court.<sup>7</sup> The companies asserted the suit

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1. *Adams v. Int'l Paper Co.*, No. CV 17-0105-WS-B, 2017 WL 1828908, at \*1 (S.D. Ala. May 5, 2017); Pl.'s Pet. for Damages and Injunctive Relief for Class Action Relief for All Similarly Situated Persons at 14, *Ashworth v. Int'l Paper Co.*, No. 2:20-cv-00053, 2020 WL 4043186 (W.D. La. Jan. 13, 2020), ECF No. 1.

2. *Adams*, 2017 WL 1828908, at \*1.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

qualified as a “mass action” under the mass action provision of the Class Action Fairness Act (CAFA).<sup>8</sup> Under this provision, a claim that qualifies as a “mass action” is afforded a broad grant of federal jurisdiction upon meeting minimal diversity requirements.<sup>9</sup> However, the plaintiffs in *Adams v. International Paper Company*,<sup>10</sup> preferring to litigate in state court, submitted a motion challenging the removal.<sup>11</sup> The plaintiffs argued that even if their claim qualified as a “mass action,” an exception to the mass action provision applied, relieving their claim of federal jurisdiction under CAFA.<sup>12</sup> This exception is known as the “local single event exception.”<sup>13</sup> Under this exception, a mass action does not exist if “all of the claims in the action arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State.”<sup>14</sup> The defendants allege that the terms “event” or “occurrence” constitute “a truly singular happening as opposed to an action for continuing pollution over decades.”<sup>15</sup> The plaintiffs argued the “event or occurrence” language need not constitute a “truly singular happening” and can include a claim of decade-long pollution.<sup>16</sup> The district court spent the majority of the opinion attempting to untangle the “event or occurrence” language of the exception.<sup>17</sup>

This phenomenon is a common theme emerging from the local single event exception.<sup>18</sup> Recently, the Third, Ninth, Fifth, and Eleventh Circuits have interpreted the vague language in CAFA’s local single event

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8. *Id.* at \*1; 28 U.S.C. § 1332(d)(11)(A).

9. *Id.*; see also Guyon Knight, *The CAFA Mass Action Numerosity Requirement: Three Problems with Counting to 100*, 78 FORDHAM L. REV. 1875, 1877 (2010) (discussing the broad grant of federal jurisdiction given to mass actions under CAFA).

10. *Adams v. Int’l Paper Co.*, No. CV 17-0105-WS-B, 2017 WL 1828908 (S.D. Ala. May 5, 2017).

11. *Id.* at \*2.

12. *Id.*

13. See, e.g., *Allen v. Boeing Co.*, 784 F.3d 625, 634 (9th Cir. 2015) (referring to 28 U.S.C. § 1332(d)(11)(B)(ii)(I) as the “local single event exception”).

14. 28 U.S.C. § 1332(d)(11)(B)(ii)(I).

15. *Adams*, 2017 WL 1828908, at \*6.

16. *Id.*

17. *Id.* at \*5–8.

18. See Mallory A. Gitt, *Removal Jurisdiction Over Mass Actions*, 90 WASH. L. REV. 453, 454 (2015) (“[T]he mass action provision has become the subject of intense litigation.”); see also *Bonin v. Sabine River Auth. of La.*, 961 F.3d 381, 386 (5th Cir. 2020) (examining conflicting interpretations of the “event or occurrence” language of the local single event exception); *RCHFU, L.L.C. v. Marriott Vacations Worldwide Corp.*, No. 16-CV-01301-PAB-GPG, 2018 WL 1045164, at \*2–3 (D. Colo. Feb. 26, 2018) (interpreting the vague language in the local single event exception).

exception.<sup>19</sup> However, these circuits disagree on one interpretation, thereby creating a three-way circuit split on the issue.<sup>20</sup> This circuit split has created confusion, inconsistent results, and many other issues for litigants.<sup>21</sup>

This Comment will first discuss the history of the mass action and CAFA. Second, this Comment will discuss and examine the various interpretations adopted by the Third, Ninth, Fifth, and Eleventh Circuits. Lastly, this Comment will propose a clear and uniform standard to guide courts in applying local single event exceptions. Specifically, this Comment proposes the adoption of the standard held by the Fifth and Eleventh Circuits.

## II. HISTORY OF CLASS ACTIONS AND CAFA

### A. *Class Action History*

Class actions are lawsuits aggregating the claims of numerous plaintiffs or defendants.<sup>22</sup> The legislature created class actions to prevent problems in multiparty lawsuits, such as inconsistent outcomes and waste of economic resources.<sup>23</sup> Before enacting CAFA, the Advisory Committee on the

19. See *Abraham v. St. Croix Renaissance Grp., L.L.P.*, 719 F.3d 270, 274 (3d Cir. 2013) (discussing the Third Circuit's interpretation of the "event or occurrence" language); *Allen v. Boeing Co.*, 784 F.3d 625, 628 (9th Cir. 2015) (discussing the Ninth Circuit's interpretation of the "event or occurrence" language); *Rainbow Gun Club, Inc. v. Denbury Onshore, L.L.C.*, 760 F.3d 405, 408 (5th Cir. 2014) (discussing the Fifth Circuit's interpretation of the "event or occurrence" language); *Spencer v. Specialty Foundry Prods. Inc.*, 953 F.3d 735, 738–39 (11th Cir. 2020) (discussing the Eleventh Circuit's interpretation of the "event or occurrence" language).

20. See *Abraham*, 719 F.3d at 280 (adopting a broad interpretation to the exception); *Allen*, 784 F.3d at 637 (adopting a narrow interpretation of the exception); *Rainbow Gun Club, Inc.*, 760 F.3d at 413 (adopting a reasonable interpretation of the exception); *Spencer*, 953 F.3d at 744 (adopting the interpretation of the Fifth Circuit).

21. See *Bonin*, 961 F.3d at 386 (arguing the "event or occurrence" language does not apply to a flooding incident causing damage in two different states); *RCHFU, L.L.C.*, 2018 WL 1045164, at \*2–3 (concluding harms resulting from a "trading program" qualify as an "event" or "occurrence").

22. See Class Action Fairness Act, Pub. L. No. 109-2, 119 Stat. 4 (codified as amended at 28 U.S.C. § 1332) ("Congress finds . . . [c]lass action lawsuits are an important and valuable part of the legal system when they permit the fair and efficient resolution of legitimate claims of numerous parties by allowing the claims to be aggregated into a single action against a defendant that has allegedly caused harm."); see also Samuel Issacharoff, *Preclusion, Due Process and the Right to Opt Out of Class Actions*, 77 NOTRE DAME L. REV. 1057, 1058 (2002) ("A class action is simply . . . a state-created procedural device . . . to provide closure and repose across the aggregated individual claims.").

23. See Pub. L. No. 109-2, 119 Stat. 5 ("[S]tate and local courts are (A) keeping cases of national importance out of Federal court; (B) sometimes acting in ways that demonstrate bias against out-of-State defendants; and (C) making judgments that impose their view of the law on other States and bind the rights of the residents of those States."); see also *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344

Federal Rules of Civil Procedure adopted Rule 23 (Rule 23) of the Federal Rules of Civil Procedure to regulate multiparty lawsuits.<sup>24</sup> Rule 23 of the Federal Rules of Civil procedure has four prerequisites to class action certification.<sup>25</sup> The first condition requires the class to be “so numerous that joinder of all members is impracticable . . . .”<sup>26</sup> The second condition requires the class to demonstrate “questions of law or fact common to the class . . . .”<sup>27</sup> The third condition requires the representative parties to have claims or defenses “typical . . . of the class . . . .”<sup>28</sup> The fourth condition requires the representatives to “fairly and adequately protect the interests of the class.”<sup>29</sup> Unfortunately, the adoption of Rule 23 did little to resolve the various problems resulting from class actions.<sup>30</sup> These problems continued until 2005, when Congress enacted CAFA to alleviate mass litigation issues.<sup>31</sup>

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(7th Cir. 1997) (“The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights.”); H. Hunter Twiford, III et al., *CAFA’s New “Minimal Diversity” Standard for Interstate Class Actions Creates a Presumption that Jurisdiction Exists, with the Burden of Proof Assigned to the Party Opposing Jurisdiction*, 25 MISS. C. L. REV. 7, 8 (2005) (discussing common problems of class actions before the enactment of CAFA).

24. FED. R. CIV. P. 23; see also Russell Rapoport, *Federal Rule 23 Class Actions: The Manageability Problem*, 4 SW. U. L. REV. 112, 112 (1972) (“The inherent complexities and rigidities involved . . . proved inadequate, so the original federal device for permitting class actions was redrafted . . . . The result was Federal Rule of Civil Procedure 23.”); Benjamin Kaplan, *Continuing Work of the Civil Committee: 1966 Amendments of the Federal Rules of Civil Procedure (I)*, 81 HARV. L. REV. 356, 390–95 (1967) (discussing the history and purpose of Rule 23).

25. FED. R. CIV. P. 23(a).

26. FED. R. CIV. P. 23(a)(1).

27. FED. R. CIV. P. 23(a)(2).

28. FED. R. CIV. P. 23(a)(3).

29. FED. R. CIV. P. 23(a)(4).

30. See Marcel Kahan & Linda Silberman, *The Inadequate Search for “Adequacy” in Class Actions: A Critique of Epstein v. MCA, INC.*, 73 N.Y.U. L. REV. 765, 774 (1998) (“Although class actions have the potential for leading to the efficient resolution of legal disputes, their deficiencies, even in the single court setting, are well-known.”); Alexandra Lahav, *Fundamental Principles for Class Action Governance*, 37 IND. L. REV. 65, 66 (2003) (“The form of governance provided by Rule 23, governance by representative parties, is both vague in theory and ignored in practice.”).

31. See S. Rep. No. 109–14, at 5 (2005) (“By now, there should be little debate about the numerous problems with our current class action system. A mounting stack of evidence reviewed by the Committee demonstrates that abuses are undermining the rights of both plaintiffs and defendants.”); Lahav, *supra* note 30, at 66 (proposing an “alternative regime of governance” for class actions that solves the various problems of Rule 23); Edward F. Sherman, *Class Actions After the Class Action Fairness Act of 2005*, 80 TUL. L. REV. 1593, 1594–95 (2006) (“CAFA, some six years in the making, was originally directed at prominent abuses in class action practice such as unreadable notices to class members and settlements that resulted in large fees to attorneys with little benefit to class members.”).

### B. Diversity Jurisdiction of Class Actions Before CAFA

Prior to enacting CAFA, federal courts could not hear class action lawsuits unless they qualified for either federal question jurisdiction or complete diversity jurisdiction.<sup>32</sup> However, many class actions do not qualify for federal question jurisdiction, since they typically involve state law claims.<sup>33</sup> As such, complete federal diversity jurisdiction was the only gateway to federal court for many class action lawsuits.<sup>34</sup> U.S.C. § 1332(a) limits “complete diversity jurisdiction” to cases involving “citizens of different [s]tates,” where “the [amount] in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs . . . .”<sup>35</sup> The “Complete Diversity Standard” means that no plaintiff may be a citizen of the same state as any of the defendants.<sup>36</sup> Thus, federal diversity jurisdiction for class actions required complete diversity and satisfaction of the amount-in-controversy requirement by each of the class members’ claims.<sup>37</sup> Such stringent requirements meant that many class actions did not qualify for

32. See *Zahn v. Int’l Paper Co.*, 414 U.S. 291, 294–95 (1973) (discussing the difficulties class actions faced in establishing diversity jurisdiction before the adoption of CAFA); see also Twiford, III et al., *supra* note 23, at 8 (“Among other things, CAFA amended 28 U.S.C. § 1332, which prior to CAFA allowed for complete-diversity jurisdiction only.”).

33. *Id.*

34. See Elizabeth J. Cabraser, *The Consequences of CAFA: Challenges and Opportunities for the Just, Speedy, and Inexpensive Determination of Class and Mass Actions*, 13 SEDONA CONF. J. 181, 184 (2012) (discussing how the majority of class actions looked to diversity jurisdiction to obtain access to federal court); Twiford, III et al., *supra* note 23, at 12 (“Complete-diversity jurisdiction under section 1332(c) historically has provided limited access to the federal courts for that small group of class actions whose litigants met those jurisdictional requirements.”).

35. 28 U.S.C. § 1332; see also *Grynberg v. Kinder Morgan Energy Partners, L.P.*, 805 F.3d 901, 905 (10th Cir. 2015) (“Diversity jurisdiction requires complete diversity—no plaintiff may be a citizen of the same state as any defendant.”); Twiford, III et al., *supra* note 23, at 8, 10 (discussing the complete diversity standard).

36. See *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 89 (2005) (“[W]e have read the statutory formulation ‘between . . . citizens of different States’ to require complete diversity between all plaintiffs and all defendants.”); see Twiford, III et al., *supra* note 23, at 8 (comparing the complete diversity standard to the minimal diversity standard); *Grynberg*, 805 F.3d at 905.

37. See Marc S. Werner, *The Viability and Strategic Significance of Class Action Alternatives Under CAFA’s Mass Action Provisions*, 103 GEO. L.J. 465, 469 (“Prior to CAFA’s enactment, class actions brought under state law . . . call[ed] for complete diversity (or the absence of *any* nondiverse named parties) and the individual satisfaction of the amount-in-controversy requirement by the claims of each class member.”); Stephen B. Burbank, *The Class Action Fairness Act of 2005 in Historical Context: A Preliminary View*, 156 U. PA. L. REV. 1439, 1495 (2008) (“Because most tort law is state law, those seeking to bring mass tort class actions in federal court are required to satisfy the requirements of diversity jurisdiction.”).

federal diversity jurisdiction.<sup>38</sup> Further, the “Complete Diversity Standard” was often manipulated by attorneys who preferred to litigate in state court.<sup>39</sup> Congress sought to fix these problems and restore the “intent of the framers of the United States Constitution” by expanding federal court access to certain class actions.<sup>40</sup> Congress established a minimal diversity standard under CAFA and opened the federal courts to mass litigation lawsuits unable to obtain federal diversity jurisdiction under the complete diversity requirements of Section 1332.<sup>41</sup>

### C. Diversity Jurisdiction After CAFA

CAFA was adopted in 2005 to ensure “fair and prompt recoveries for class members with legitimate claims,” “restore the intent of [those who drafted the] Constitution by [expanding] Federal court [jurisdiction over interstate class actions],” and “benefit society by encouraging innovation and lowering consumer prices.”<sup>42</sup> CAFA defines a class action as “any civil action filed under Rule 23 of the Federal Rules of Civil Procedure or similar

38. See Twiford, III et al., *supra* note 23, at 8 (discussing how class actions lawsuits rarely obtained federal diversity jurisdiction because of the stringent complete diversity standards).

39. See S. Rep. No. 109–14, at 10 (2005) (discussing how procedural rules had “the unintended consequence of keeping most class actions out of federal court” and “enable[d] plaintiffs’ lawyers who prefer to litigate in state courts to . . . avoid removal of large interstate class actions”); see also Twiford, III et al., *supra* note 23, at 8 (“Congress drastically liberalized the inherent constraints under the Complete Diversity Standard that previously prevented interstate class actions from being filed in, or removed to, federal court.”); Jefferey L. Roether, *Interpreting Congressional Silence: CAFA’s Jurisdictional Burden of Proof in Post-Removal Remand Proceedings*, 75 *FORDHAM L. REV.* 2745, 2745 (2007) (“According to the Senate Judiciary Committee, abuses of the class action device by aggressive lawyers and lenient state judges have ‘undermine[d] the national judicial system, the free flow of interstate commerce, and the concept of diversity jurisdiction . . .’”).

40. S. Rep. No. 109–14, at 29 (2005); see also Twiford, III et al., *supra* note 23, at 9 (“Among other things, in Section 2 of the Act . . . Congress stated that prior abuses in class actions undermined the concept of diversity jurisdiction as intended by the Framers of the United States Constitution . . .”); Howard M. Erichson, *CAFA’s Impact on Class Action Lawyers*, 156 *U. PA. L. REV.* 1593, 1593 (2008) (“Congress dramatically expanded federal jurisdiction with the Class Action Fairness Act of 2005 (CAFA) . . .”).

41. See Twiford, III et al., *supra* note 23, at 9 (“Congress intended to extend federal jurisdiction over interstate class actions which, prior to CAFA’s enactment, could not be maintained in or removed to federal court under the existing—and restrictive—Complete Diversity Standard.”); see also Cabraser, *supra* note 34, at 1476 (“The admitted goal of congressional class action ‘reform’ is to save class actions by destroying them as viable state court proceedings and transferring them . . . to the federal system . . .”).

42. S. Rep. No. 109–14, at 29 (2005); see also Twiford, III et al., *supra* note 23, at 9, 17 (“Also in Section 2 of CAFA, Congress stated that one purpose of the Act is to ‘restore the intent of the framers of the United States Constitution by providing for Federal court consideration of interstate cases of national importance under diversity jurisdiction.’”).



state statute or rule of judicial procedure authorizing an action to be brought by [one] or more representative persons . . . .”<sup>43</sup> CAFA amended Section 1332 to include Subsection D, which created the “minimal diversity” standard.<sup>44</sup> The “minimal diversity standard” gives federal courts jurisdiction over class actions involving 100 or more individual class members when the amount in controversy exceeds \$5 million.<sup>45</sup>

### 1. Removal Jurisdiction Under CAFA

By expanding federal jurisdiction over class actions, CAFA also expanded removal jurisdiction over class actions.<sup>46</sup> Removal jurisdiction allows litigants to remove a case from state court to federal court when the lawsuit has original jurisdiction, either through diversity or federal question jurisdiction.<sup>47</sup> Before CAFA, litigants could not remove their cases to federal court unless they met the stringent federal jurisdiction requirements.<sup>48</sup> Congress sought to amend this problem and prevent lawyers from asserting claims against an in-state defendant to avoid removal.<sup>49</sup> CAFA’s new removal statute, 28 U.S.C. § 1453, makes removal more accessible and allows the removal of a class action “without regard to whether any defendant is a citizen of the State in which the action is brought . . . .”<sup>50</sup>

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43. 28 U.S.C. § 1332(d)(1)(B); FED. R. CIV. P. 23(a).

44. Twiford, III et al., *supra* note 23, at 14.

45. 28 U.S.C. § 1332(d)(11)(B)(i).

46. *See* Roether, *supra* note 39, at 2761 (“CAFA naturally expanded a class action defendant’s opportunities to remove a state class action to federal court.”); Emery G. Lee III. & Thomas E. Willging, *The Impact of the Class Action Fairness Act on the Federal Courts: An Empirical Analysis of Filings and Removals*, 156 U. PA. L. REV. 1723, 1751 (2008) (discussing how “the number of diversity class actions filed in or removed to federal courts” nearly doubled after the adoption of CAFA); Cabraser, *supra* note 34, at 189 (“28 U.S.C. § 1453 now provides for removal rights coextensive with the expanded diversity jurisdiction rules . . . .”).

47. 28 U.S.C. § 1441(a); *see also* Sidney Powell & Deborah Pearce-Reggio, *The Ins and Outs of Federal Court: A Practitioner’s Guide to Removal and Remand*, 17 MISS. C. L. REV. 227, 227 (1997) (“In essence, § 1441(a) provides that a case may be removed from state to federal court only when it could have been brought in federal court in the first place.”).

48. *See* Twiford, III et al., *supra* note 23, at 8 (discussing removal jurisdiction of class actions before CAFA).

49. Roether, *supra* note 39, at 2761; *see also* Erichson, *supra* note 40, at 1593 (“CAFA . . . was born amidst snide remarks about lawyers’ inventing lawsuits and manipulating the system to enrich themselves at others’ expense.”).

50. 28 U.S.C. § 1453(b); *see also* Roether, *supra* note 39, at 2761 (“Therefore, CAFA now allows the removal of a class action ‘in accordance with section 1446 . . . .’”).

## 2. Mass Actions Under CAFA

CAFA further revolutionized mass litigation lawsuits by expanding federal court access to include mass actions.<sup>51</sup> Mass actions are non-class aggregate litigation, that is, a “single lawsuit that encompasses claims or defenses held by multiple parties or represented persons.”<sup>52</sup> Congress discovered that mass actions were “class actions in disguise[,]” since the problems that CAFA intended to eliminate were also present in mass actions.<sup>53</sup> As such, Congress created the mass action provision of CAFA, which deems a mass action a class action under 28 U.S.C. § 1332(d)(11)(A) and is thus afforded a broad grant of federal jurisdiction.<sup>54</sup> Further, since CAFA classifies mass actions as class actions, CAFA naturally extends its removal statute to mass actions.<sup>55</sup> CAFA defines a mass action as “any civil action [where] . . . [the] claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs’ claims involve common questions of law or fact . . . .”<sup>56</sup>

However, CAFA provides an exception to this provision.<sup>57</sup> The exception states that a mass action does not exist if “all of the claims in the action arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that state.”<sup>58</sup> On meeting this exception, a lawsuit will lose

51. *See* Twiford, III et al., *supra* note 23, at 8 (discussing the addition to Section 1332(d) which created the minimal diversity standard for class actions and mass actions); Knight, *supra* note 9, at 1877 (discussing CAFA’s mass action provision and the expansion of federal jurisdiction under the Act).

52. PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION § 1.02(a) (Proposed Final Draft 2009); *see also* Knight, *supra* note 9, at 1879 (“In simplest terms, aggregate litigation ‘is a single lawsuit that encompasses claims or defenses held by multiple parties or represented persons.’”).

53. S. Rep. No. 109-14, at 47 (2005); *see also* Knight, *supra* note 9, at 1877 (“[A]ccording to Congress, the evils inherent in class actions that CAFA hoped to eliminate were equally present in mass actions.”).

54. 28 U.S.C. § 1332(d)(11)(A); *see also* Knight, *supra* note 9, at 1877 (“Congress’s prescription for mass actions was the same that they applied to class actions: a broad grant of federal jurisdiction over this breed of nonclass aggregate litigation.”); Linda S. Mullenix, *Class Actions Shrugged: Mass Actions and the Future of Aggregate Litigation*, 32 REV. LITIG. 591, 607 (2013) (“[B]ecause state court mass actions consolidated under joinder or other procedural mechanisms were viewed as masquerading class actions, CAFA’s mass action provisions were intended to treat them as class actions for CAFA purposes.”).

55. 28 U.S.C. § 1446(b); *see* Mullenix, *supra* note 54, at 607 (“[M]ass actions were subjected to CAFA’s class diversity jurisdiction requirements and were provided with a parallel removal provision.”).

56. 28 U.S.C. § 1332(d)(11)(B)(i) (2018).

57. *Id.* § 1332(d)(11)(B)(ii)(I).

58. *Id.*

federal jurisdiction and be remanded to state court.<sup>59</sup> This is the “local single event exception,” which has created a split among the circuits as to its proper application.<sup>60</sup> Specifically, the critical language in the local single event exception (“an event or occurrence”) has caused a dramatic circuit split over what constitutes “an event or occurrence” justifying remand<sup>61</sup>

### 3. Circuit Splits Generally

Circuit splits occur when federal courts “disagree about the answer to the same legal question.”<sup>62</sup> Courts generally disfavor circuit splits because they cause wide-ranging issues, such as inconsistent outcomes, inequitable results, and forum shopping.<sup>63</sup> Recently, the Third, Ninth, Fifth, and Eleventh Circuits created a three-way circuit split by disagreeing on how to interpret the vague language in CAFA’s local single event exception.<sup>64</sup>

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59. *Id.*

60. *See Abraham v. St. Croix Renaissance Grp., L.L.P.*, 719 F.3d 270, 280 (3d Cir. 2013) (establishing the Third Circuit interpretation of an “event or occurrence”); *Nevada v. Bank of America*, 672 F.3d 661, 668 (9th Cir. 2012) (establishing the Ninth Circuit interpretation of an “event or occurrence”); *Allen v. Boeing Co.*, 784 F.3d 625, 630 (9th Cir. 2015) (confirming the Ninth Circuit interpretation, created in *Nevada v. Bank of America*); *Rainbow Gun Club, Inc. v. Denbury Onshore, L.L.C.*, 760 F.3d 405, 409 (5th Cir. 2014) (establishing the Fifth Circuit interpretation of an “event or occurrence”); *Spencer v. Specialty Foundry Prods. Inc.*, 953 F.3d 735, 742–43 (11th Cir. 2020) (establishing the Eleventh Circuit interpretation of an “event or occurrence”).

61. *See Abraham*, 719 F.3d at 280 (establishing the first interpretation of the “event or occurrence” language); *Allen*, 784 F.3d at 630 (rejecting the interpretation of the Third Circuit); *Rainbow Gun Club, Inc.*, 760 F.3d at 408, (rejecting the interpretation of the Third and Ninth Circuit); *Spencer*, 953 F.3d at 742–43 (endorsing the interpretation of the Fifth Circuit).

62. Ruth A. Moyer, *Disagreement About Disagreement: The Effect of a Circuit Split or “Other Circuit” Authority on the Availability of Federal Habeas Relief for State Convicts*, 82 U. CIN. L. REV. 831, 831 (2014); *see also* Jonathan M. Cohen & Daniel S. Cohen, *Iron-ing out Circuit Splits: A Proposal for the Use of the Irons Procedure to Prevent and Resolve Circuit Splits Among United States Courts of Appeals*, 108 CALIF. L. REV. 989, 990 (2020) (defining circuit splits as “cases in which two or more courts of appeals have decided the same legal issue differently”).

63. *See* Cohen & Cohen, *supra* note 62, at 990 (“Circuit splits undermine the uniformity, consistency, and predictability of federal law.”); *see also* Henry J. Friendly, *Indiscretion About Discretion*, 31 EMORY L.J. 747, 758 (1982) (arguing uniform application of the law is “the most basic principle of jurisprudence”).

64. *See Abraham*, 719 F.3d at 277 (adopting a broad interpretation to the exception); *Allen*, 784 F.3d at 630 (adopting a narrow interpretation of the exception); *Rainbow Gun Club, Inc.*, 760 F.3d at 409 (adopting a reasonable interpretation of the exception); *Spencer*, 953 F.3d at 742–43 (adopting the interpretation of the Fifth Circuit).

## III. THE CIRCUIT SPLIT

A. *Abraham v. St. Croix Renaissance Group: A Third Circuit Interpretation*

In *Abraham v. St. Croix Renaissance Group*,<sup>65</sup> more than 450 residents of the island of St. Croix brought suit against St. Croix Renaissance Group (SCRG), the owner of an alumina refinery.<sup>66</sup> The plaintiffs alleged that SCRG's failure to properly store hazardous industrial byproducts on the site over a period of ten years caused the plaintiffs' injuries and property damages.<sup>67</sup> SRG removed the lawsuit to federal court by claiming federal diversity jurisdiction under the mass action provision of CAFA.<sup>68</sup> The plaintiffs moved to remand their case to state court, claiming that the district court lacked federal subject-matter jurisdiction because the local single event exception precluded the suit from the definition of a "mass action."<sup>69</sup>

The Third Circuit gave the words "event" or "occurrence" their ordinary meaning.<sup>70</sup> The court held that neither "event" nor "occurrence" is used solely to refer to a "specific incident that can be definitively limited to an ascertainable period of minutes, hours, or days."<sup>71</sup> The court reasoned the words "event" and "occurrence" do not commonly refer to an isolated moment in time.<sup>72</sup> Therefore, there is no reason to conclude that Congress intended to limit the phrase "event or occurrence" in Section 1332(d)(11)(B)(ii)(I) to something that happened at a discrete moment in time.<sup>73</sup> Ultimately, the Third Circuit held, for purposes of the local single event exclusion, an event or occurrence constitutes "circumstances that share some commonality and persist over a period of time."<sup>74</sup>

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65. *Abraham v. St. Croix Renaissance Grp., L.L.L.P.*, 719 F.3d 270 (3d Cir. 2013).

66. *Id.* at 273.

67. *Id.*

68. *Id.* at 273, 275.

69. *Id.* at 273.

70. *Id.* at 277.

71. *Id.*

72. *Id.* at 278.

73. *Id.* at 277–78.

74. *Id.* at 277.

B. Nevada v. Bank of America *and* Allen v. The Boeing Company:  
*A Ninth Circuit Interpretation*

In *Nevada v. Bank of America*,<sup>75</sup> the State of Nevada filed a *parens patriae* lawsuit against Bank of America Corporation for allegedly violating the Nevada Deceptive Trade Practices Act by misleading consumers about the “terms and operation of its home mortgage modification and foreclosure processes . . . .”<sup>76</sup> Nevada also alleged that Bank of America violated an existing consent judgment from a prior case between the parties.<sup>77</sup> Bank of America removed the case to federal district court, claiming federal subject matter jurisdiction under the “mass action” provision of CAFA.<sup>78</sup> This court held that the “event or occurrence” exception “applies only where all claims arise from a *single* event or occurrence.”<sup>79</sup> Since this case involved widespread fraud in thousands of borrower interactions, the court held that the action did not come within the “event or occurrence” exception.<sup>80</sup>

Three years later, in *Allen v. The Boeing Company*,<sup>81</sup> plaintiffs sued The Boeing Company (Boeing) and Landau Associates (Landau) in state court, alleging that “Boeing released toxins into the groundwater around its facility” for over forty years.<sup>82</sup> The plaintiffs further alleged Landau was “negligent in its investigation and remediation of the pollution” for over a decade.<sup>83</sup> Boeing removed to federal district court, alleging federal jurisdiction based on diversity and the “mass action” provision of CAFA § 1332(d)(11)(B).<sup>84</sup> “The district court remanded the case to state court holding that (1) Landau was not fraudulently joined, and thus there was not complete diversity, and (2) Plaintiffs’ action came within the local single event exception[,]” thus revoking federal jurisdiction<sup>85</sup>

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75. *Nevada v. Bank of America*, 672 F.3d 661 (9th Cir. 2012).

76. *Id.* at 664.

77. *Id.*

78. *Id.* at 664–65.

79. *Id.* at 668 (emphasis in original); *see also* Lafalier v. Cinnabar Serv. Co., Inc., 2010 WL 1486900, at \*4 (N.D. Okla. Apr. 13, 2010) (“[C]ourts have consistently construed the ‘event or occurrence’ language to apply only in cases involving a single event or occurrence, such as an environmental accident, that gives rise to the claims of all plaintiffs.”).

80. *Nevada*, 672 F.3d at 670.

81. *Allen v. Boeing Co.*, 784 F.3d 625 (9th Cir. 2015).

82. *Id.* at 627.

83. *Id.*

84. *Id.*

85. *Id.*

In *Allen*, the Ninth Circuit declined to follow the Third Circuit's definition of "event or occurrence" as stated in *Abraham*.<sup>86</sup> The *Allen* court stated several reasons for straying from the *Abraham* interpretation and adopting the interpretation of *Nevada*.<sup>87</sup> First, the court held that the terms "event" or "occurrence" normally refer to a singular happening.<sup>88</sup> Second, the *Allen* court stated that giving "event or occurrence" a broader definition is inconsistent with the overall structure of CAFA.<sup>89</sup> The *Allen* court ultimately held that the "exception would apply only to a truly local single event with no substantial interstate effects."<sup>90</sup>

C. *Rainbow Gun Club, Inc. v. Denbury Onshore, L.L.C.: A Fifth Circuit Interpretation*

In *Rainbow Gun Club, Inc. v. Denbury Onshore, L.L.C.*,<sup>91</sup> one hundred sixty-seven plaintiffs entered into oil, gas, and mineral leases with Denbury Onshore that allowed Denbury to explore for oil, gas, and hydrocarbons.<sup>92</sup> The plaintiffs brought suit in Louisiana state court, alleging that Denbury had breached its duty to act as a reasonable operator of the well by allowing water to enter the gas reservoir, thus reducing the productivity of the well.<sup>93</sup> Denbury removed to federal court under the mass action provision of CAFA.<sup>94</sup> However, the district court found the plaintiffs' claims arose from an "event or occurrence" and met all other requirements of the local single event exception, thus, precluding federal jurisdiction.<sup>95</sup>

Denbury appealed, arguing that the local single event exception only applied to events that occur at a "discrete moment in time."<sup>96</sup> The court of appeals recognized that the statute's language, its legislative history, the ordinary meaning of the terms, and the Third Circuit's compelling analysis in *Abraham* supported the plaintiff's proposition that the single event or occurrence need not occur at a discrete moment in time.<sup>97</sup> The court

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86. *Id.* at 630.

87. *Id.*

88. *Id.* at 631.

89. *Id.*

90. *Id.* at 632 (emphasis in original).

91. *Rainbow Gun Club, Inc. v. Denbury Onshore, L.L.C.*, 760 F.3d 405 (5th Cir. 2014).

92. *Id.* at 407.

93. *Id.*

94. *Id.*

95. *Id.* at 408.

96. *Id.* at 412.

97. *Id.*

ultimately found an “event or occurrence” can be defined by “a pattern of conduct in which the pattern is consistent in leading to a single focused event that culminates in the basis of the asserted liability.”<sup>98</sup>

D. *Spencer v. Specialty Foundry Products Inc.: An Eleventh Circuit Interpretation*

In *Spencer v. Specialty Foundry Products Inc.*,<sup>99</sup> two hundred thirty plaintiffs worked at the Grede Foundry in Bessemer, Alabama.<sup>100</sup> Plaintiffs claimed the defendant exposed them to hazardous chemicals released and formed at the foundry.<sup>101</sup> The foundry went out of business, so plaintiffs filed suit against ten defendants who “manufactured, sold, supplied, and distributed the products” the plaintiffs believe harmed them.<sup>102</sup> “One defendant removed the case to federal court, citing the” mass action provision of CAFA as the basis for removal.<sup>103</sup> The “[p]laintiffs moved to remand the case back to state court[,]” arguing that the local single event exception applied because the harm caused by the defendants “was a continuing tort located solely within the foundry.”<sup>104</sup> The district court “granted their motion, finding that the [p]laintiffs’ action falls within the local single event exception of CAFA[] . . . .”<sup>105</sup> The defendants appealed, arguing that the local single event exception “applies to only events or occurrences that take place at a singular moment in time[,]” and that plaintiffs’ claims were too “disparate and disconnected” to qualify.<sup>106</sup>

The *Spencer* court viewed the Ninth Circuit’s interpretation of the exception as “too cramped.”<sup>107</sup> Instead, the *Spencer* court agreed with the Third and Fifth Circuits that the plain meanings of “event” and “occurrence” is “not generally understood to apply only to incidents that occur at a discrete moment in time.”<sup>108</sup> However, the court refused to adopt the Third Circuit interpretation in *Abraham*, reasoning that the “Third Circuit’s analysis would benefit from guardrails for applying the local

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98. *Id.*

99. *Spencer v. Specialty Foundry Products Inc.*, 953 F.3d 735 (11th Cir. 2020).

100. *Id.* at 737.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.* at 737, 739.

105. *Id.* at 737.

106. *Id.* at 740.

107. *Id.* at 742.

108. *Id.*

[single] event exception.”<sup>109</sup> The court preferred the interpretation adopted by the Fifth Circuit in *Rainbow Gun Club*, which requires “the defendants’ actions to be contextually connected and to culminate in one, distinct harm-causing event or occurrence . . . .”<sup>110</sup> The Eleventh Circuit reasoned that the Fifth Circuit’s interpretation is “best equipped to decide which cases are truly local and which should remain in federal court.”<sup>111</sup>

The Eleventh Circuit concluded that “‘an event or occurrence’ refers to a series of connected, harm-causing incidents that culminate in one event or occurrence giving rise to plaintiffs’ claims.”<sup>112</sup> Therefore, the court held that “[b]ecause the Plaintiff’s complaint does not allege a continuous, related course of conduct culminating in one harm-causing event or occurrence, it does not fall within the local event exception.”<sup>113</sup>

### 1. Impact of the Circuit Split and a Need for Resolution

The three-way split created by the Third, Fifth, Ninth, and Eleventh Circuits’ interpreting the “event” or “occurrence” language from the local single event exception has caused many negative impacts for litigants.<sup>114</sup> First, the split creates a lack of coherence in applying the exception and has created confusion for litigants and attorneys.<sup>115</sup> Since only four circuits have weighed in on the issue, other circuits will eventually adopt one of the four established interpretations or create their own. Litigants in these circuits will face uncertainty in their claims and will not know if they are entitled to federal jurisdiction until the respective circuit adopts an interpretation.<sup>116</sup>

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109. *Id.*

110. *Id.*

111. *Id.* at 743.

112. *Id.* at 740.

113. *Id.* at 744.

114. See Kirsten Z. Myers, *Removing the Mass Misperception: A Consideration of Mass Environmental Torts and Removal Jurisdiction Under the Class Action Fairness Act*, 51 VAL. U. L. REV. 161, 186 (2016) (“A vague standard for removal jurisdiction, under the CAFA, aggravates many policy areas of tort law by failing to use liability as a means to deter accidents.”) (citation omitted).

115. See *Lowery v. Ala. Power Co.*, 483 F.3d 1184, 1198 (11th Cir. 2007) (“CAFA’s mass action provisions present an opaque, baroque maze of interlocking cross-references that defy easy interpretation . . . .”); *Bonin v. Sabine River Auth. of La.*, 961 F.3d 381, 386 (5th Cir. 2020) (describing the confusion litigants faced in applying the local single event exception); *RCHFU, LLC v. Marriott Vacations Worldwide Corp.*, No. 16-CV-01301-PAB-GPG, 2018 WL 1045164, at \*2 (D. Colo. Feb. 26, 2018) (demonstrating conflicting arguments by litigants in interpreting the “event or occurrence” language of the local single event exception).

116. See *RCHFU, L.L.C.*, 2018 WL 1045164, at \*2 (exploring conflicting arguments among litigants in a circuit that has not adopted an interpretation of the “event or occurrence” language in the



Secondly, this circuit split potentially upsets the balance of power between federal and state courts.<sup>117</sup> CAFA sought to create broader federal jurisdiction for class actions that were traditionally brought in federal courts under state law theories while ensuring fairness and prompt recoveries for all parties.<sup>118</sup> However, the circuit split has denied defendants access to federal court by forcing claims back to state court if the exception applies.<sup>119</sup> A clear and defined test for determining an “event or occurrence” would benefit courts and litigants by diminishing inconsistencies in applying the law and reducing the amount of time parties and courts spend trying to decipher which interpretation to apply.<sup>120</sup>

Third, this circuit split encourages forum shopping.<sup>121</sup> Vague legislation, like that of the local single event exception, encourages parties to remand a lawsuit from federal court to state court to potentially achieve more favorable treatment.<sup>122</sup> Forum shopping violates the legislative intent of CAFA because Congress adopted the exception to keep certain cases in federal courts.<sup>123</sup> Resolving the circuit split will prevent forum shopping because parties will be less likely to artfully plead their way into a favorable court.<sup>124</sup>

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local single event exception); *see also* Moyer, *supra* note 62, at 831–36 (discussing how confusion by litigants is among the common problems caused by circuit splits).

117. *See* Cohen & Cohen, *supra* note 62, at 997 (discussing the problems circuit splits pose on federal and state courts); Gitt, *supra* note 18, at 456 (“[T]he mass action provision . . . also implicate[s] fundamental values in our judicial system: the boundaries of power between the state and federal courts . . .”).

118. S. Rep. No. 109–14, at 29 (2005); *see also* Burbank, *supra* note 37, at 1443 (“The statute’s stated purposes are to . . . assure fair and prompt recoveries for class members with legitimate claims.”).

119. *See* Cohen & Cohen, *supra* note 62, at 997 (discussing how circuit splits deny litigants access to federal court); *see also* RCHFU, *L.L.C.*, 2018 WL 1045164, at \*3 (demonstrating a loss of federal jurisdiction by the application of the local single event exception).

120. Gerald Bard Tjoflat, *The Federal Judiciary: A Scarce Resource*, 27 CONN. L. REV. 871, 874 (1995) (“But when the law is unstable, the parties cannot know what to expect . . . the parties can neither accurately nor confidently predict the outcome of a judicial resolution of the dispute . . .”).

121. *See* Cohen & Cohen, *supra* note 62, at 997 (discussing how circuits splits can lead to forum shopping); Wayne A. Logan, *Constitutional Cacophony: Federal Circuit Splits and the Fourth Amendment*, 65 VAND. L. REV. 1137, 1183 (2012) (discussing how “enablement of ‘forum shopping among circuits’ was one of the four concerns singled out by the Federal Courts Study Committee in 1990 when assessing if a circuit split was ‘intolerable’”).

122. *See* Cohen & Cohen, *supra* note 62, at 990 (“The issue of circuit splits has been so widely regarded as a threat to the fair and consistent distribution of justice that it has been the focus of numerous reform efforts.”).

123. 151 CONG. REC. S1076–01 (daily ed. Feb. 8, 2005) (statement of Senator Dodd).

124. *See* Cohen & Cohen, *supra* note 62, at 997–98 (“One consequence of the fragmentation of federal law from circuit splits is forum shopping, which has been criticized as unfair.”).

A clear standard to evaluate what constitutes an “event or occurrence” would benefit the courts of different jurisdictions by providing judges with one coherent standard to apply when adjudicating removal jurisdiction for mass actions.<sup>125</sup> A clear standard would also diminish the inconsistent results across the circuits, thereby reducing uncertainty for judges and parties.<sup>126</sup> Further, a clear standard would also help reduce the amount of time courts spend in evaluating which standard to adopt and will enable a court to arrive at a decision swiftly.<sup>127</sup>

In addition, circuit splits often prevent parties from predicting how a judge will rule on a specific case.<sup>128</sup> Unpredictable results encourage parties to proceed in lengthy lawsuits and reduce the chances of settlement.<sup>129</sup> However, a clear and uniform standard will allow parties to weigh the likelihood and potential outcome of removing their case to federal court.<sup>130</sup> Parties may be more willing to settle if they know that their claim will not be heard in the court that is more favorable. Increased settlements will naturally save litigants and courts time and money.

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125. See Mark Latham et al., *The Intersection of Tort and Environmental Law: Where the Twains Should Meet and Depart*, 80 *FORDHAM L. REV.* 737, 740–45 (2011) (discussing how different standards in tort litigation cause circuit splits because judges look at similar facts under different lenses of interpretation); see also Tjoflat, *supra* note 120, at 873 (“The clarity and stability of the rule of law . . . depends on the number of judges pronouncing the rule.”).

126. See Latham et al., *supra* note 125, at 740–45 (discussing how uniform interpretations often resolve problems created in tort litigation circuit splits); Michael Duvall, *Resolving Intra-Circuit Splits in the Federal Courts of Appeal*, 3 *FED. CTS. L. REV.* 17, 18–19, 21–23 (2009) (advocating for the resolution of circuit splits); Evan H. Caminker, *Precedent and Prediction: The Forward-Looking Aspects of Inferior Court Decisionmaking*, 73 *TEX. L. REV.* 1, 38 (1994) (“Both the Constitution’s framers and the Supreme Court have stressed that the articulation of nationally uniform interpretations of federal law is an important objective of the federal adjudicatory process.”).

127. See Wyatt G. Sassman, *How Circuits Can Fix Their Splits*, 103 *MARQ. L. REV.* 1401, 1438 (2020) (“[M]andating uniformity within a circuits’ decisions encourages stability, predictability, and fairness to litigants.”); see also Kenneth S. Abraham, *Cleaning up the Environmental Liability Insurance Mess*, 27 *VAL. U. L. REV.* 601, 602–03 (1993) (arguing uniform standards often render faster court decisions).

128. See Evan Bernick, *The Circuit Splits Are Out There—and the Court Should Resolve Them*, 16 *ENGAGE* 36, 37 (2015) (discussing how circuit splits create uncertainty among litigants).

129. Tjoflat, *supra* note 120, at 873 (“But when the law is unstable, the parties cannot know what to expect . . . [T]he parties can neither accurately nor confidently predict the outcome of a judicial resolution of the dispute . . .”).

130. See Logan, *supra* note 121, at 1142 (advocating for the resolution of circuit splits to reduce confusion among litigants); see also *Coleman v. Estes Express Lines, Inc.*, 631 F.3d 1010, 1015 (9th Cir. 2011) (interpreting the vague language of the local single event exception and showing conflicting interpretations from the litigants).

## IV. ADOPTING A SINGLE INTERPRETATION

A. *Statutory Interpretation*

In statutory construction cases, courts must first review the text of the statute.<sup>131</sup> If the text of the statute is plain and unambiguous, there is no need for further inquiry.<sup>132</sup> However, if the text is not plain and if the statute does not provide guidance to interpret the statute, courts must look at the ordinary meaning of the text.<sup>133</sup> To determine the ordinary meaning, courts “often look to dictionary definitions for guidance.”<sup>134</sup> Because the statute does not define “an event or occurrence,” we must look to dictionary definitions to decipher the ordinary meaning.<sup>135</sup>

## 1. Ordinary Meaning of Words

Several general and legal dictionaries support the broader interpretation of “event or occurrence” adopted by the Third, Fifth, and Eleventh Circuits.<sup>136</sup> For instance, the *Merriam-Webster's Dictionary* defines an “occurrence” as an “action or fact of happening.”<sup>137</sup> Similarly, *Black's Law Dictionary* defines “occurrence” as “something that occurs” or “something that happens or takes place,” including a “continuing condition

131. *Sebelius v. Cloer*, 569 U.S. 369, 376 (2013).

132. *Roth v. Norfalco, L.L.C.*, 651 F.3d 367, 379 (3d Cir. 2011); *see also Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997) (“Our inquiry must cease if the statutory language is unambiguous and ‘the statutory scheme is coherent and consistent.’”) (quoting *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 240 (1989)).

133. *Barton v. U.S. Att’y Gen.*, 904 F.3d 1294, 1298 (11th Cir. 2018); *see also United States v. Diallo*, 575 F.3d 252, 256–57 (3d Cir. 2009) (looking at the ordinary meaning of specific words to determine the scope of a statute); *BP Am. Prod. Co. v. Burton*, 549 U.S. 84, 91 (2006) (“Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning.”).

134. *In re Walter Energy, Inc.*, 911 F.3d 1121, 1143 (11th Cir. 2018); *see also CBS Inc. v. PrimeTime 24 Joint Venture*, 245 F.3d 1217, 1223 (11th Cir. 2001) (using the dictionary definition of the word “termination” to uncover its ordinary meaning).

135. *See generally* 28 U.S.C. § 1332(d)(11)(B)(ii)(I) (demonstrating vague language within the local single event exception).

136. *Event*, AHDICITIONARY, <https://ahdictionary.com/word/search.html?q=event> [<https://perma.cc/Y9T3-C5E4>]; *Event*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/event> [<https://perma.cc/8SCY-8H3F>]; *Occurrence*, AHDICITIONARY, <https://ahdictionary.com/word/search.html?q=occurrence> [<https://perma.cc/2TKV-GNT6>]; *Occurrence*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/occurrence> [<https://perma.cc/V64D-REJ3>]; *Occurrence*, BLACK'S LAW DICTIONARY (11th ed. 2019).

137. *Occurrence*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/occurrence> [<https://perma.cc/V64D-REJ3>].

that results in personal injury or property damage.”<sup>138</sup> As for an “event,” the *Merriam–Webster’s Dictionary* and *The American Heritage Dictionary of the English Language* commonly refer to it as something that “happens” or “takes place.”<sup>139</sup> Contrary to the Ninth Circuit’s interpretation, none of the dictionaries examined contain language limiting the “event” or “occurrence” to something happening at a single or discrete moment in time.<sup>140</sup>

## 2. Legislative History

Courts can also look to the legislative history when interpreting a statute.<sup>141</sup> The use of legislative history in statutory interpretation is to “ascertain the intent of legislative authority.”<sup>142</sup> Courts can look at the legislative history of a statute only when the text of the statute is “ambiguous.”<sup>143</sup> The language of the statute may be ambiguous if it is

138. *Occurrence*, BLACK’S LAW DICTIONARY (11th ed. 2019).

139. *Event*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/event> [<https://perma.cc/8SCY-8H3F>]; *Event*, AHDICTIONARY, <https://ahdictionary.com/word/search.html?q=event> [<https://perma.cc/Y9T3-C5E4>].

140. *See* *Allen v. Boeing Co.*, 784 F.3d 625, 633 (9th Cir. 2015) (“[W]e are constrained to read [the exception] as referring to a single happening because this definition . . . reflects the most common understanding of the terms . . .”). *But see* *Event*, AHDICTIONARY, <https://ahdictionary.com/word/search.html?q=event> [<https://perma.cc/Y9T3-C5E4>] (defining “event” as “something that takes place, especially a significant occurrence”); *Event*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/event> [<https://perma.cc/8SCY-8H3F>] (defining “event” as “something that happens,” “occurrence,” and “a noteworthy happening”); *Occurrence*, AHDICTIONARY, <https://ahdictionary.com/word/search.html?q=occurrence> [<https://perma.cc/2TKV-GNT6>] (defining “occurrence” as “[t]he action, fact, or instance of occurring” and as “something that takes place; an event or incident”); *Occurrence*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/occurrence> [<https://perma.cc/V64D-REJ3>] (defining “occurrence” as “something that occurs” or “the action or instance of occurring”); *Occurrence*, BLACK’S LAW DICTIONARY (11th ed. 2019) (defining “occurrence” as “[s]omething that happens or takes place”).

141. *See In re Hammers*, 988 F.2d 32, 34 (5th Cir.1993) (discussing how courts may look to the legislative history so long as the statutory terms are ambiguous); *see also* Reed Dickerson, *Statutory Interpretation: Dipping into Legislative History*, 11 HOFSTRA L. REV. 1125, 1131 (1983) (“It is currently fashionable among jurists to approve or condone the selective use of legislative history in determining the meaning of statutes.”); Orrin Hatch, *Legislative History: Tool of Construction or Destruction*, 11 HARV. J. L. & PUB. POL’Y 43, 47 (1988) (“[L]egislative history can also serve to overcome some Congressional shortcomings.”).

142. *See Hammers*, 988 F.2d 32, 34 (5th Cir.1993) (“The sole purpose of statutory construction including, when appropriate, a review of all available legislative history, is to ascertain the intent of the legislative authority.”); *see also* Hatch, *supra* note 141, at 43 (“[L]egislative history, properly applied, can have great value in the interpretive process.”).

143. *See Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005) (“Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature’s understanding of otherwise ambiguous terms.”).

“reasonably susceptible to different interpretations.”<sup>144</sup> If a statute appears ambiguous, our search may extend the text of the statute because statutory interpretation focuses on “the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.”<sup>145</sup> This statute appears ambiguous, as evidenced by conflicting interpretations of the “event” or “occurrence” language by the Third, Fifth, Ninth, and Eleventh Circuits.<sup>146</sup> Accordingly, we must consider the local single event exception’s legislative history to determine Congress’s intent in passing the Act.<sup>147</sup>

The Third and Eleventh Circuits refused to consider the legislative history to guide their interpretation because they interpreted the text of the local single event exception to be unambiguous.<sup>148</sup> However, the Fifth and Ninth Circuits examined the legislative history because they held that some ambiguity exists.<sup>149</sup> The Fifth and Ninth Circuits examined the Senate

144. *Edwards v. A.H. Cornel l& Son, Inc.*, 610 F.3d 217, 222 (3d Cir. 2010).

145. *See Robinson*, 519 U.S. at 341 (1997) (“The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.”).

146. *See Moyer*, *supra* note 62, at 839 (“[S]ome federal courts have concluded that a circuit split may establish ambiguity in the text of a federal statute.”); *Morgan v. Swanson*, 659 F.3d 359, 372 (5th Cir. 2011) (“Where no controlling authority specifically prohibits a defendant’s conduct, and when the federal circuit courts are split on the issue, the law cannot be said to be clearly established.”); *Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 682 (9th Cir. 2006) (“Meshing the existing jurisdiction and removal statutory sections with the CAFA ‘mass action’ amendments is far from straightforward.”); *see also Nevada v. Bank of America*, 672 F.3d 661, 668 (9th Cir. 2012) (arguing the exception is constrained to an event that occurs at a discrete moment in time); *Allen v. Boeing Co.*, 784 F.3d 625, 633 (9th Cir. 2015) (adopting the interpretation of *Nevada*); *Abraham v. St. Croix Renaissance Grp., L.L.L.P.*, 719 F.3d 270, 280 (3d Cir. 2013) (arguing the exception need not be constrained to a discrete moment in time); *Rainbow Gun Club, Inc. v. Denbury Onshore, L.L.C.*, 760 F.3d 405, 409 (5th Cir. 2014) (agreeing with the Third Circuit’s in that an “event” or occurrence” need not be constrained to a discrete moment in time but disagreeing with the interpretation that the Third Circuit adopted); *Spencer v. Specialty Foundry Prods. Inc.*, 953 F.3d 735, 742 (11th Cir. 2020) (adopting the interpretation of the Fifth Circuit in *Rainbow Gun Club, Inc. v. Denbury Onshore*).

147. *See Mullenix*, *supra* note 54, at 611 (discussing how the legislative history may help reveal the congressional intent behind the mass action provision).

148. *See Spencer*, 953 F.3d at 741 (“While the District Court is not the only court to rely on CAFA’s Senate Report when interpreting the local event exception, we do not believe this is necessary because the text of the local event exception is clear.”); *Abraham*, 719 F.3d at 278–79 (“[T]here is no reason to consider the legislative history of the CAFA to interpret the phrase ‘event or occurrence’ in the mass-action exclusion.”).

149. *See Rainbow Gun Club*, 760 F.3d at 410 (“Here, at least some ambiguity exists in the scope of the terms ‘event’ and ‘occurrence,’ as evidenced by the district court decisions cited by the parties. Accordingly, we consider the relevant legislative history to shed light on the intent of Congress in passing the local single event exclusion.”); *Allen*, 784 F.3d at 630 (“We find that such a broad definition renders portions of CAFA redundant and is not supported by legislative history.”).

report and the congressional record to discern Congress's intent in adopting the exception.<sup>150</sup> The congressional report reveals that one of the proposed forms of CAFA restricted the local single event exception to cases in which the plaintiffs' claims arose from a "single sudden accident."<sup>151</sup> However, Congress rejected this proposed form of exception.<sup>152</sup> Instead, Congress enacted a version of CAFA that expanded the "single sudden accident exception" to include cases which arise from an "event or occurrence."<sup>153</sup> This congressional report demonstrates that Congress refused to constrain the exception to an "event" or "occurrence" that only happened at a single moment in time. This legislative history supports the proposition that Congress intended courts to follow the ordinary meaning of the terms "event" or "occurrence," and that such terms are not constrained to a singular happening.

### B. *Criticism of Third Circuit Interpretation*

The Third Circuit in *Abraham* reasonably held that the terms "event" and "occurrence" should not be constrained to a single happening.<sup>154</sup> While this claim is supported by the ordinary meaning of the terms<sup>155</sup> and

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150. See *Rainbow Gun Club*, 760 F.3d at 410 ("In one of its prior proposed forms, the local single event exclusion would have applied only to cases in which the plaintiffs' claims arose from a 'single sudden accident.'"); *Allen*, 784 F.3d at 629 ("Moreover, the legislative history of CAFA supports this interpretation, making clear that the exception was intended to apply 'only to a truly local single event with no substantial interstate effects.'").

151. 151 CONG. REC. S1076-01 (daily ed. Feb. 8, 2005) (statement of Senator Dodd); see Dickerson, *supra* note 141, at 1131 ("Committee reports are the second most reliable kind of legislative history. Their main value is in showing (if they do) the ulterior purposes that the respective bills are intended to advance.").

152. 151 CONG. REC. S1076-01 (daily ed. Feb. 8, 2005) (statement of Senator Dodd).

153. See *id.* ("The compromise expands the 'single sudden accident' exception so that federal jurisdiction shall not exist over mass actions in which all claims arise from any 'event or occurrence' that happened in the state where the action was filed and that allegedly resulted in injuries in that state or in a contiguous state.").

154. See *Abraham v. St. Croix Renaissance Grp., L.L.L.P.*, 719 F.3d 270, 277 (3d Cir. 2013) ("In common parlance, neither the term 'event' nor 'occurrence' is used solely to refer to a specific incident that can be definitively limited to an ascertainable period of minutes, hours, or days.").

155. See *Event*, AHDICIONARY, <https://ahdictionary.com/word/search.html?q=event> [<https://perma.cc/Y9T3-C5E4>] (refusing to constrain the definition of "event" to a singular happening); *Event*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/event> [<https://perma.cc/8SCY-8H3F>] (defining "event" as something that need not happen at a singular moment in time); *Occurrence*, AHDICIONARY, <https://ahdictionary.com/word/search.html?q=occurrence> [<https://perma.cc/2TKV-GNT6>] (defining "occurrence" as "the . . . instance of occurring"); *Occurrence*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/occurrence> [<https://perma.cc/V64D-REJ3>] (defining "occurrence" as a circumstance that is broad

legislative history of the Act,<sup>156</sup> the Third Circuit adopted an approach that is too inclusive.<sup>157</sup> Specifically, the Third Circuit held for purposes of the local single event exclusion, an event or occurrence constitutes “circumstances that share some commonality and persist over a period of time.”<sup>158</sup> Under this approach, an “event or occurrence” can constitute multiple events, since many events are capable of sharing “some commonality and persist over a period of time.”<sup>159</sup> By not specifying what constitutes “some commonality,” and by not limiting the time frame between the start and end of a circumstance, the *Abraham* court’s interpretation broadens the scope of the exception.<sup>160</sup> The Fifth Circuit in *Spencer* depicts the level of inclusiveness under the Third Circuit interpretation.<sup>161</sup> The *Spencer* court explains that two baseball games involving the same team, but taking place years apart, could be interpreted as an “event or occurrence” under the Third Circuit interpretation, since they “involve the same team playing the same sport[,]” thereby sharing some commonality and persisting over a period of time.<sup>162</sup>

However, the legislative history of CAFA clearly states that Congress intended the local single event exception to apply to a limited number of cases.<sup>163</sup> The legislative history also reveals Congress intended the words

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enough to include “the instance of occurring”); *Occurrence*, BLACK’S LAW DICTIONARY (11th ed. 2019) (defining “occurrence” also as a “continuing condition that results in personal injury or property damage”).

156. See 151 CONG. REC. S1076–01 (daily ed. Feb. 8, 2005) (statement of Senator Dodd) (discussing how Congress refused to adopt an interpretation limited to a “single sudden accident”); see also *Abraham*, 719 F.3d at 277 (“Giving the words ‘event’ or ‘occurrence’ their ordinary meaning is not at odds with the purpose of the statutory scheme of CAFA.”).

157. See *Rainbow Gun Club*, 760 F.3d at 410 (refusing to adopt the interpretation of the Third Circuit and proposing their own narrower interpretation); *Spencer*, 953 F.3d at 741 (criticizing the interpretation of the Third Circuit).

158. *Abraham*, 719 F.3d at 277.

159. See *id.* (asserting an event may be “of a continuing nature”); see also *Spencer*, 953 F.3d at 778 (urging for “guardrails” to constrain the Third Circuit’s analysis).

160. *Spencer*, 953 F.3d at 742 (“At the same time, the Third Circuit’s analysis would benefit from guardrails for applying the single local event exception.”).

161. *Id.* at 741.

162. *Id.*

163. 151 CONG. REC. S1076–01 (daily ed. Feb. 8, 2005) (statement of Senator Dodd); see also Myers, *supra* note 114, at 196 (“[A] broad approach goes directly against the legislative intent of the CAFA because the CAFA sets out multiple exceptions and a broad interpretation of the same event or occurrence diminishes the value of those exceptions.”).

“event or occurrence” to serve as words of limitation.<sup>164</sup> As such, a broad approach contradicts the legislative intent of the exception because a broad interpretation of an “event or occurrence” broadens the application of the exception.<sup>165</sup> Accordingly, the Third Circuit’s approach is too broad to properly advance the Congressional intent in adopting the local single event exception.<sup>166</sup>

### C. *Criticism of Ninth Circuit Interpretation*

The Ninth Circuit approach holds that an “event or occurrence” only exists when “all claims arise from a *single* event or occurrence.”<sup>167</sup> Although this approach ensures all mass action claims arising out of truly singular happenings are remanded to state courts, it is too narrow for purposes of CAFA.<sup>168</sup> The congressional report reveals that Congress rejected a proposed form of CAFA that restricted the local single event exception to cases in which the plaintiffs’ claims arose from a “single sudden accident.”<sup>169</sup> Instead, Congress enacted a version of CAFA that expanded the exception.<sup>170</sup> This congressional report demonstrates that Congress refused to constrain the exception to an “event” or “occurrence” that happened at a single moment in time.<sup>171</sup> Nevertheless, the Ninth Circuit argues the legislative intent of the exception is a narrowly construed standard because states have an interest in adjudicating issues where the

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164. 151 CONG. REC. S1076–01 (daily ed. Feb. 8, 2005) (statement of Senator Dodd); *see also Abraham*, 719 F.3d at 277 (“Congress clearly contemplated that some mass actions are better suited to adjudication by the state courts in which they originated.”).

165. 151 CONG. REC. S1076–01 (daily ed. Feb. 8, 2005) (statement of Senator Dodd); *see Allen v. Boeing Co.*, 784 F.3d 625, 630 (9th Cir. 2015) (“We find that such a broad definition renders portions of CAFA redundant and is not supported by legislative history.”).

166. *See Myers*, *supra* note 114, at 196 (proposing a new interpretation of the local single event exception which narrows the interpretation of the Third Circuit); *Spencer v. Specialty Foundry Prods. Inc.*, 953 F.3d 735, 742 (11th Cir. 2020) (discussing how the Third Circuit’s interpretation could use some “guardrails”).

167. *Nevada v. Bank of America*, 672 F.3d 661, 668 (9th Cir. 2012); *see also Allen*, 784 F.3d at 633 (agreeing with the interpretation in *Nevada*).

168. *See Myers*, *supra* note 114, at 176 (discussing how the Ninth Circuit’s interpretation is too narrow).

169. 151 CONG. REC. S1076–01 (daily ed. Feb. 8, 2005) (statement of Senator Dodd).

170. *Id.*

171. *Id.*; *see also Myers*, *supra* note 114, at 195 (“When examining the legislative intent of the CAFA, the drafters did not want an approach for removal jurisdiction of mass actions to be too broad or too narrow.”).



source and harm arise in the same place.<sup>172</sup> While this argument holds merit, the Ninth Circuit's narrow view contradicts the legislative intent because their standard would only apply to cases where the "event or occurrence" happened at a single and discrete moment in time.<sup>173</sup> This approach would weaken a state court's power to hear truly localized claims and harms because the exception would not apply to truly localized claims that happened beyond a discrete moment in time. Under the Ninth Circuit interpretation, a multi-day happening, such as a flooding, hurricane, or wildfire will not fall under the exception, even if it is a truly localized happening.

Further, the Ninth Circuit interpretation contradicts several general and legal definitions of the words "event" or "occurrence."<sup>174</sup> None of the popular general and legal definitions examined by the Ninth, Fifth, Third, and Eleventh Circuits, contain language limiting the "event" or "occurrence" to something happening at a single moment in time.<sup>175</sup> In contrast, all the definitions examined by the courts support a broader

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172. See *Nevada*, 672 F.3d at 668 (stating the exception is narrowly construed to certain occurrences); see also *Allen*, 784 F.3d at 633 (arguing the legislative intent of the exception is a narrow one).

173. See *Nevada*, 672 F.3d at 668 (confining the event or occurrence to a discrete moment in time); *Allen*, 784 F.3d at 633 (adopting the narrow interpretation of *Nevada*).

174. See *Event*, AHDICIONARY, <https://ahdictionary.com/word/search.html?q=event> [<https://perma.cc/Y9T3-C5E4>] (defining "event" as "something that takes place, especially a significant occurrence"); *Event*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/event> [<https://perma.cc/8SCY-8H3F>] (defining "event" as "something that happens," "occurrence," and "a noteworthy happening"); *Occurrence*, AHDICIONARY, <https://ahdictionary.com/word/search.html?q=occurrence> [<https://perma.cc/2TKV-GNT6>] (defining "occurrence" as "the action, fact, or instance of occurring" and as "something that takes place; an event or incident"); *Occurrence*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/occurrence> [<https://perma.cc/V64D-REJ3>] (defining "occurrence" as "something that occurs" or "the action or fact of happening or occurring"); *Occurrence*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "occurrence" as "something that occurs," "the action or instance of occurring" or "[s]omething that happens or takes place," including a "continuing condition that results in personal injury or property damage.").

175. *Abraham v. St. Croix Renaissance Grp., L.L.L.P.*, 719 F.3d 270, 277 (3d Cir. 2013); *Rainbow Gun Club, Inc. v. Denbury Onshore, L.L.C.*, 760 F.3d 405, 412–13 (5th Cir. 2014); *Spencer v. Specialty Foundry Prods. Inc.*, 953 F.3d 735, 743 (11th Cir. 2020).

reading of the words.<sup>176</sup> As such the Ninth Circuit interpretation is too narrow and should be abandoned.<sup>177</sup>

#### D. *Adopting the Fifth and Eleventh Circuit Interpretations*

The Fifth Circuit's view, established in *Rainbow Gun Club* and later adopted by the Eleventh Circuit in *Spencer*, is the most acceptable interpretation of an "event or occurrence." The Fifth Circuit agreed with the Third Circuit in *Abraham* that an "event or occurrence" is not limited to a single moment in time.<sup>178</sup> However, the Fifth Circuit held that the Third Circuit's interpretation is too broad because it is overly inclusive and gives courts considerable discretion.<sup>179</sup> The Fifth Circuit used the *Abraham* interpretation and added limitations to establish an interpretation that was easy for courts to apply.<sup>180</sup> The Fifth Circuit held that an "event or occurrence" could include events occurring at a single moment in time and events "contextually connected, which when completed, create[] one event consistent with the ordinary understanding and the legislative history of the exclusion."<sup>181</sup> This interpretation adds words of limitation and will guide courts in applying the exception. Unlike the vague "some commonality" language used by the Third Circuit, this interpretation reveals how much "commonality" must exist to qualify as an "event or occurrence."<sup>182</sup> Further, this interpretation limits the broad judicial discretion given by the Third Circuit by restricting the exception to events that are "contextually connected" and "create a related event."<sup>183</sup> Thus, by narrowing the Third

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176. See *Abraham*, 719 F.3d at 277 ("In common parlance, neither the term 'event' nor 'occurrence' is used solely to refer to a specific incident that can be definitively limited to an ascertainable period of minutes, hours, or days."); *Rainbow Gun Club*, 760 F.3d at 409 ("Nothing in either definition imposes a simultaneous time limitation, and BLACK'S LAW DICTIONARY explicitly defines 'occurrence' as including a continuing condition."); *Spencer*, 953 F.3d at 740–41 ("Based on these definitions, we think that the phrase 'event or occurrence' is broad enough to include a solitary happening that occurs in a single moment in time and (in some cases at least) a continuing set of related circumstances.").

177. See Werner, *supra* note 37, at 483 ("An interpretation of a statute is inappropriate if it overlooks the purpose of the act.").

178. *Rainbow Gun Club*, 760 F.3d at 412–13.

179. *Id.*

180. *Id.*

181. *Id.* at 413; see also Myers, *supra* note 114, at 198–99 (discussing how the Fifth Circuit's interpretation includes "events contextually connected and when completed, create a related event").

182. *Rainbow Gun Club*, 760 F.3d at 413.

183. *Id.* ("[A]n ongoing pattern of conduct . . . contextually connected, which when completed created one event consistent with the ordinary understanding and the legislative history of the exclusion.").

Circuit approach, the Fifth Circuit provides guidelines to limit a court's discretion in applying the exception.<sup>184</sup> The interpretation also serves to prevent the inclusion of happenings that are too separate in time or only share "some commonality," such as a common source.

Further, the Fifth Circuit's interpretation best conforms to the legislative intent of CAFA because the drafters intended the exception to be limited to cases that states would have an interest in adjudicating.<sup>185</sup> This interpretation will only remand cases where the event happened at a discrete moment in time, or events that are so connected as to create one big event. This guarantees that the exception will apply to events and harms that are truly local, and thus, in the state's interest to adjudicate.

It should also be acknowledged that the Ninth Circuit favors the Fifth Circuit interpretation over the Third Circuit Interpretation.<sup>186</sup> The *Allen* court explicitly rejected the interpretation of the Third Circuit,<sup>187</sup> but held the interpretation in *Rainbow Gun Club* did not necessarily contradict the interpretation of the Ninth Circuit.<sup>188</sup> The *Allen* court explained that, although the alleged misconduct in *Rainbow Gun Club* occurred over different periods in time, the misconduct led to a single happening—the failure of a well.<sup>189</sup> Since the failure of the well in *Rainbow Gun Club* happened at a discrete moment in time, the interpretation and facts of *Rainbow Gun Club* were not at odds with the Ninth Circuit interpretation.<sup>190</sup>

Although the *Rainbow Gun Club* opinion has been recognized as the most reasonable circuit interpretation, it has been scrutinized as unclear or

184. *Lafalier v. Cinnabar Serv. Co., Inc.*, No. 10–CV–0005–CVE–TLW, 2010 WL 1486900, at \*4 (N.D. Okla. Apr. 13, 2010).

185. *See generally* Myers, *supra* note 114, at 176–78 (examining the history and legislative intent of CAFA).

186. *See Allen v. Boeing Co.*, 784 F.3d 625, 630, 633 (9th Cir. 2015) (“With due respect to the Third Circuit, we do not agree with its definition of ‘event or occurrence’ as that term is used in CAFA.”); *White v. Bastrop Energy Partners LP*, No. CV H-21-870, 2021 WL 4295320, at \*5 (S.D. Tex. Sept. 21, 2021) (“Although the Ninth Circuit rejected the Third Circuit’s approach in *Abraham* as too broad, it was more open to the Fifth Circuit’s approach in *Rainbow Gun Club*.”)

187. *See Allen*, 784 F.3d at 630 (“However, even were we free to interpret the phrase as we would, we would not adopt the Third Circuit’s approach.”).

188. *See id.* at 633 (“The Fifth Circuit’s approach is neither helpful to Plaintiffs nor necessarily contrary to *Nevada* . . .”).

189. *See id.* (“The case before the Fifth Circuit concerned a single ‘event or occurrence,’ the failure of a well, although the precise timing of the failure was not clear.”).

190. *See id.* (“[T]he Fifth Circuit noted that the spill ‘resulted from a number of individual negligent acts related to each other, all of which came together to culminate in the single event.’”).

incapable of easy application.<sup>191</sup> This criticism is based on the fact that the *Rainbow Gun Club* court established its interpretation without explaining how courts should apply it.<sup>192</sup> However, this criticism came before the Eleventh Circuit's interpretation in *Spencer*.<sup>193</sup> The *Spencer* opinion is essential in analyzing what qualifies as "contextually connected events" under the Fifth Circuit interpretation.<sup>194</sup> The *Spencer* court explains that "contextually connected events" are a "series of connected, harm-causing incidents that culminate in one event or occurrence giving rise to plaintiffs' claims."<sup>195</sup> The *Spencer* court explains that different parties may commit the alleged misconduct or underlying acts, the parties may act independently and separately in committing the alleged misconduct or underlying acts, and the underlying acts may be committed during different periods of time, as long as that conduct "culminat[es] [in one] harm causing event."<sup>196</sup> The *Spencer* court uses the facts from *Adams v. International Paper Company* to demonstrate what constitutes "contextually connected events."<sup>197</sup> The *Spencer* court explains that the defendants in *Adams* committed two different underlying acts during different time periods: one defendant released the pollutants and the other defendant "exacerbated the release of those same pollutants."<sup>198</sup> These two acts came together to form "a continuous release of particular pollutants."<sup>199</sup> The *Spencer* and *Adams* courts held that under the Fifth Circuit interpretation, these acts were sufficiently connected to cause the pollution, which qualified as one "culminating harm causing event."<sup>200</sup> The *Spencer* opinion uses the facts from its own case to show what will not constitute "contextually related events" causing one "culminating harm-

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191. See Myers, *supra* note 114, at 200 ("Although the Third, Ninth, and Fifth Circuits and the drafters of the CAFFA took a step in the right direction by trying to prevent the corruption that is characteristically present in mass actions, a clear standard must be created for the single local event exception and the same event or occurrence requirement.").

192. *C.f. id.* (acknowledging the Fifth Circuit has the best interpretation, but argues the interpretation is insufficient to meet the needs of mass environmental torts).

193. See *id.* at 201–02, 206 (creating a SORT Test as a resolution to the circuit split before the *Spencer* opinion).

194. See *White v. Bastrop Energy Partners LP*, No. CV H-21-870, 2021 WL 4295320, at \*5 (S.D. Tex. Sept. 21, 2021) ("The Eleventh Circuit's opinion in *Spencer* . . . is helpful in analyzing 'contextually connected' events.").

195. *Spencer v. Specialty Foundry Prods. Inc.*, 953 F.3d 735, 740 (11th Cir. 2020).

196. *Id.* at 743.

197. *Id.*

198. *Id.*

199. *Id.*

200. See *id.* (comparing the case facts to other cases with a culminating harm-causing event); *Adams v. Int'l Paper Co.*, No. CV 17-0105-WS-B, 2017 WL 1828908, at \*3 (S.D. Ala. May 5, 2017).

causing event.”<sup>201</sup> In *Spencer*, there was no single harm causing event as in *Adams* because the defendant released harmful chemicals used by the foundry workers in different ways and caused the workers different harms over a twenty-year period.<sup>202</sup> The *Spencer* court held that different harms over a twenty-year period cannot be considered a “culminating harm causing event.”<sup>203</sup>

The *Spencer* opinion is essential to fully understanding the Fifth Circuit interpretation and has aided courts in applying the interpretation.<sup>204</sup> Ultimately, Courts should adopt this interpretation as a uniform standard because it best conforms to the legislative intent of CAFA, is not overly inclusive, and provides guidelines that will render consistent results across circuits.

## V. CONCLUSION

Recently, the Third, Fifth, Ninth, and Eleventh Circuits have interpreted the vague language in CAFA's local single event exception.<sup>205</sup> However, these circuits failed to agree on one interpretation, thereby creating a three-way circuit split on the issue.<sup>206</sup> Courts disfavor circuit splits because they cause wide-ranging issues such as inconsistent outcomes, inequitable results, and forum shopping.<sup>207</sup> To avoid these issues, courts should adopt a clear

201. *Spencer*, 953 F.3d at 743.

202. *Id.* at 737–38.

203. *Id.* at 743.

204. *See* *White v. Bastrop Energy Partners LP*, No. CV H-21-870, 2021 WL 4295320, at \*5–7 (S.D. Tex. Sept. 21, 2021) (using the *Spencer* opinion to apply the Fifth Circuit interpretation to its own facts).

205. *See* *Abraham v. St. Croix Renaissance Grp., L.L.L.P.*, 719 F.3d 270, 279 (3d Cir. 2013) (interpreting the vague “event or occurrence” language of the local single event exception); *Nevada v. Bank of America*, 672 F.3d 661, 668 (9th Cir. 2012) (interpreting the “event or occurrence language”); *Allen v. Boeing Co.*, 784 F.3d 625, 637 (9th Cir. 2015) (approving the Ninth Circuit’s interpretation); *Rainbow Gun Club, Inc. v. Denbury Onshore, L.L.C.*, 760 F.3d 405, 413–14 (5th Cir. 2014) (rejecting the interpretation of the “event or occurrence” language of the Third and Ninth Circuits); *Spencer*, 953 F.3d at 740–41 (accepting the interpretation adopted in *Rainbow Gun Club*).

206. *See* *Abraham*, 719 F.3d at 277–80 (adopting an interpretation that contradicts with the Ninth, Fifth, and Eleventh Circuits); *Nevada*, 672 F.3d at 668 (adopting an interpretation that contradicts with the Third, Fifth, and Eleventh Circuits); *Allen*, 784 F.3d at 637 (adopting an interpretation that contradicts with the Third, Fifth, and Eleventh Circuits); *Rainbow Gun Club*, 760 F.3d at 413–14 (adopting an interpretation that contradicts with the Third and Ninth Circuits); *Spencer*, 953 F.3d at 740–41 (adopting an interpretation that contradicts with the Third and Ninth Circuits).

207. *See* *Myers*, *supra* note 114, at 206 (discussing the problems created by local single event exception circuit split); *Moyer*, *supra* note 62, at 831 (discussing common problems created by circuit splits).

and uniform standard to evaluate what constitutes an “event or occurrence” under CAFA.<sup>208</sup> The Ninth Circuit’s interpretation in *Allen* is too narrow to conform to the exception’s legislative intent.<sup>209</sup> Further, the Ninth Circuit interpretation contradicts several general and legal definitions of the words “event or occurrence.”<sup>210</sup> Although the Third Circuit’s interpretation conforms to the ordinary meaning of the terms “event or occurrence,” the interpretation is too broad and gives judges too much discretion in applying the exception.<sup>211</sup> The Fifth and Eleventh Circuit’s adopted an interpretation that appropriately narrows the interpretation of the Third Circuit.<sup>212</sup> This interpretation holds that an “event or occurrence” could include a happening at a single moment in time and events “contextually connected . . . to culminate in one, distinct harm-causing event or occurrence.”<sup>213</sup> Courts should adopt this interpretation as a uniform standard because it best conforms to the legislative intent of CAFA and provides guidelines that will render consistent results across the circuit courts.

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208. Joseph F. Weis, Jr., *The Case for Appellate Court Revision*, 93 MICH. L. REV. 1266, 1269 (1995) (acknowledging the courts lack “federal law uniformity”).

209. Myers, *supra* note 114, at 197 (arguing the Ninth Circuit’s interpretation is too narrow, and courts should not adopt it).

210. See *Spencer*, 953 F.3d at 740–41 (examining several popular legal and popular dictionaries to prove the *Allen* interpretation does not follow the ordinary meaning of the terms “event or occurrence”).

211. See *Rainbow Gun Club, Inc. v. Denbury Onshore, L.L.C.*, 760 F.3d 405, 413 (5th Cir. 2014) (refusing to adopt the Third Circuit interpretation); *Spencer*, 953 F.3d at 742 (arguing the Third Circuit interpretation is too inclusive).

212. See generally *Rainbow Gun Club*, 760 F.3d at 405 (adopting an interpretation narrowing the Third Circuit’s interpretation); *Spencer*, 953 F.3d at 735 (adopting the interpretation of the Fifth Circuit).

213. *Spencer*, 953 F.3d at 742.