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## Estate of Pew v. Cardarelli

Natallia Krauchuk  
*New York Law School Class of 2009*

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NATALIA KRAUCHUK

## Estate of Pew v. Cardarelli

ABOUT THE AUTHOR: Natalia Krauchuk received her J.D. from New York Law School in June of 2009.

Class action lawsuits are among the most important forms of adjudication in the United States.<sup>1</sup> A powerful procedural device, they serve a critical function by increasing the efficiency of the legal process, enabling private parties to supplement public law enforcement, and lowering the costs of litigation.<sup>2</sup> Yet, class action lawsuits are often misused.<sup>3</sup> Some have argued that class action plaintiffs' attorneys exert an unnecessary cost on government and corporations by routinely initiating frivolous lawsuits against innocent defendants.<sup>4</sup> To reform an area of law often viewed as a vehicle for abuse by attorneys, Congress enacted the Class Action Fairness Act of 2005 ("CAFA").<sup>5</sup> With CAFA, Congress made a drastic change to class action practice in state and federal courts by limiting the jurisdiction of state courts to hear certain types of class actions.<sup>6</sup> However, there are exceptions to CAFA that permit state courts to retain jurisdiction over certain types of claims.<sup>7</sup>

In *Estate of Pew v. Cardarelli*, the United States Court of Appeals for the Second Circuit addressed the question of whether CAFA applies to a state-law claim predicated on the sale of a security.<sup>8</sup> The Second Circuit held that the action fell within CAFA's reach and thus federal jurisdiction was proper.<sup>9</sup> In reaching this decision, the Second Circuit considered an issue of first impression in the federal circuit courts: whether a claim that defendants violated state consumer fraud law by failing to disclose a corporation's insolvency in marketing debt certificates fell within the exception to the grant of original and appellate jurisdiction in section 1332(d)(9)(C) of CAFA. This exception applies to class actions that "solely involve claims related to the rights, duties, and obligations relating to or created by or pursuant to any security covered by the Securities Act of 1933."<sup>10</sup> The court held that the state-law consumer fraud claims did not relate to the "rights, duties, and obligations" of any security and,

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1. WILLIAM RUBENSTEIN, UCLA PROGRAM ON CLASS ACTIONS, UNDERSTANDING THE CLASS ACTION FAIRNESS ACT OF 2005 (2005), <http://www.classactionprofessor.com/cafa-analysis.pdf>.
  2. *See id.*
  3. *See* 28 U.S.C. § 1711(a)(2) (2006). The preamble to the Class Action Fairness Act (CAFA) states that some abusive class actions harmed plaintiff class members with legitimate claims and defendants that have acted responsibly, adversely affected interstate commerce, and undermined public respect for the country's judicial system. Class Action Fairness Act of 2005, Pub. L. No. 109-002, 119 Stat. 3, 4.
  4. Jerome Ringler, *Department: Closing Argument: The Unfairness of the Class Action Fairness Act*, 29 LOS ANGELES LAW. 52, at 52 (2006).
  5. Class Action Fairness Act of 2005, Pub. L. No. 109-002, 119 Stat. 3 (codified as amended in scattered sections of 28 U.S.C.).
  6. *See* Ringler, *supra* note 4. By shifting power from the individual states, which are commonly perceived as class action friendly, to the federal judiciary, Congress sought in part to reduce forum shopping by class action plaintiffs.
  7. *See* 28 U.S.C. § 1332 (2006).
  8. 527 F.3d 25, 26 (2d Cir. 2008).
  9. *Id.* at 33.
  10. *Id.* at 26.

therefore, did not fall within section 1332(d)(9)(C).<sup>11</sup> This case comment contends that the Court of Appeals misconstrued the plain language of the statute, and thus erroneously held that the district court improperly remanded the case to state court.

Plaintiffs were investors who purchased money market certificates issued by an agricultural company, Agway, Inc., from 2000 through 2002.<sup>12</sup> After the company filed for bankruptcy, security holders sued Agway's corporate officers Donald P. Cardarelli and Peter J. O'Neill, as well as its auditor PriceWaterhouseCoopers, LLP, in New York Supreme Court in 2003.<sup>13</sup> Plaintiffs alleged that defendants violated section 11(a) of the Securities Act of 1933, in that they fraudulently concealed the company's insolvency at the time defendants marketed the debt securities.<sup>14</sup> After defendants removed the case to the United States District Court for the Northern District of New York, plaintiffs amended their complaint to include a state-law consumer fraud claim, which provides relief for victims of "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service . . . ."<sup>15</sup> The crux of the security holders' claim was that defendants engaged in a Ponzi scheme by fraudulently concealing from the investors the fact that the corporation was insolvent and could only discharge its prior debt by the issuance of new debt securities.<sup>16</sup>

When the federal court initially addressed this issue in the 2003 lawsuit, it dismissed the federal claim with prejudice and the state claim without prejudice.<sup>17</sup> Plaintiffs filed another action in 2005 in New York State Supreme Court.<sup>18</sup> This time, plaintiffs sought relief under only the state consumer fraud statute.<sup>19</sup> Invoking CAFA, defendants removed the case to federal court.<sup>20</sup> Plaintiffs moved to have the case remanded to state court, arguing that their claims fell within the exception to CAFA's removal provision for actions relating to "the rights, duties, and obligations relating to or created by or pursuant to any security," and as such were outside of

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11. *Id.*

12. *Id.* at 27.

13. *Id.*

14. *Id.*

15. N.Y. GEN. BUS. LAW § 349(a) (2004).

16. For more information on Ponzi schemes, see U.S. Securities and Exchange Commission, Ponzi Schemes - Frequently Asked Questions, <http://www.sec.gov/answers/ponzi.htm> (last visited Feb. 16, 2010).

17. *See Pew v. Cardarelli*, No. 5:03-CV-742, 2005 WL 3817472, at \*1 (N.D.N.Y. Mar. 17, 2005).

18. *See Pew*, 527 F.3d at 25.

19. N.Y. GEN. BUS. LAW § 349(a) ("Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.")

20. *Pew*, 527 F.3d at 27; *see also* 28 U.S.C. § 1332(d)(9) (permitting removal of class actions based solely on state law under certain circumstances).

federal court jurisdiction.<sup>21</sup> The district court agreed with the plaintiffs' argument and declined to exercise jurisdiction over the state-law claim.<sup>22</sup>

In reaching its decision that the plaintiffs' claims did not fall under the exception, and thus were within the reach of the federal court's jurisdiction, the Second Circuit analyzed the text of CAFA.<sup>23</sup> Because it determined that the statute was poorly drafted and the language of the legislation was vague, the Second Circuit found it necessary to go beyond the plain text of the act and consult the legislative history.<sup>24</sup> To determine whether the district court had jurisdiction, the court considered carve-outs provided by the statute to restrict federal jurisdiction over class actions having the greatest local impact and cases that concern traditional state regulation of the state's corporate creatures.<sup>25</sup> In particular, it looked at section 1332(d)(9)(C) to see whether the exception could be applied to the plaintiffs' consumer fraud claim.<sup>26</sup> The court noted that the statute's language mirrored the language set forth in 28 U.S.C. §1453(d)(3),<sup>27</sup> such that if the buyers' claim fell within the exception, the federal court would have neither original nor appellate jurisdiction over the case.<sup>28</sup>

The court concluded that the proper reading of the exception was that claims relating to the rights and obligations of securities had to be grounded in the *terms* of the security itself and not just relating to any security.<sup>29</sup> Thus, the buyers' assertion that a debt instrument was fraudulently marketed did not enforce the buyers' rights as security holders and, therefore, did not fall within CAFA's exception to the grant of federal jurisdiction.<sup>30</sup> The court noted that both the statutory context and the legislative history confirmed its reading of the Act.<sup>31</sup>

In her dissenting opinion, Judge Pooler asserted that the court misconstrued the plain language of the statute and thus reached an incorrect result.<sup>32</sup> While the

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21. *Pew*, 527 F.3d at 27.

22. *See Pew*, 2005 WL 3817472, at \*7.

23. *Pew*, 527 F.3d at 30–31.

24. *Id.* at 30.

25. *Id.*; *see also* 28 U.S.C. § 1332(d)(9).

26. *Pew*, 527 F.3d at 31.

27. *Id.* at 28. Both 28 U.S.C. § 1332(d)(9)(C) and 28 U.S.C. § 1453(d)(3) (2006) are exceptions to federal jurisdiction. 28 U.S.C. § 1332(d)(9)(C) is an exception to CAFA's grant of original and appellate jurisdiction. 28 U.S.C. § 1453(d)(3) is an exception to the rule allowing removal of class actions from state to federal court. Both provisions "operate in tandem" because whether or not there is original and appellate jurisdiction depends on whether or not the claim falls within CAFA's exception for claims that relate to rights, duties, and obligations related to or created by or pursuant to a security. *See Pew*, 527 F.3d at 30–31.

28. *Id.* at 31.

29. *Id.* at 33.

30. *Id.* at 31–32.

31. *Id.* at 32.

32. *Id.* at 33.

majority saw the provision as unclear, the dissent saw it as straightforward.<sup>33</sup> Judge Pooler noted that the court should have realized that the statute was unambiguous on its face and concluded the judicial inquiry there, without going into “legislating from the bench.”<sup>34</sup>

CAFA is a jurisdictional statute designed to shift most large class action lawsuits involving parties from different states to federal courts, removing the cases from the jurisdiction of state courts, which historically have been more receptive to such suits.<sup>35</sup> Congress passed the Act in order to address disparate treatment of class actions by state courts as compared to federal courts and to put an end to certain abusive practices by plaintiffs’ counsel.<sup>36</sup> CAFA adds a subsection to the diversity jurisdiction statute, 28 U.S.C. §1332(d), and a corresponding removal provision, 28 U.S.C. §1453, allowing class actions to be filed in, or removed to federal court if “minimal diversity” exists.<sup>37</sup> Thus, CAFA amends the diversity jurisdiction statute by abandoning the requirement of complete diversity and granting original federal jurisdiction over any class actions involving more than five million dollars, and in which there is any diversity between any defendant and any member of the plaintiff class.<sup>38</sup> This does not apply in cases where at least two-thirds of the class members and the primary defendants are in the state where the case was originally filed.<sup>39</sup> Moreover, recognizing that certain types of cases, including those of great local importance, have to be reserved for the state courts, Congress excluded from federal jurisdiction class action claims that are within any of the three exceptions found in section 1332(d)(9).<sup>40</sup>

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33. *Id.* at 37.

34. *Id.* at 36.

35. Ringler, *supra* note 4.

36. *Id.*

37. *See* 28 U.S.C. § 1332(d).

38. *See id.* § 1332(d)(2).

39. *See id.* § 1332(d)(4). Note that under the original jurisdiction statute, all class representatives and all defendants must be *completely* diverse and the amount in controversy must exceed the sum or value of \$75,000. 28 U.S.C. §1332. Thus, CAFA essentially strengthens defendant’s ability to remove state cases to federal court by giving federal courts original jurisdiction over the claims that fit the new criteria.

40. 28 U.S.C. § 1332(d)(9):

[CAFA jurisdiction] shall not apply to any class action that solely involves a claim:

(A) concerning a covered security as defined under 16(f)(3) of the Securities Act of 1933 (15 U.S.C. 78p(f)(3)) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(f)(5)(E));

(B) that relates to the internal affairs or governance of a corporation or other form of business enterprise and that arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

(C) that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section

In the current case, the court correctly decided that neither section 1332(d)(9)(A) nor section 1332(d)(9)(B) was applicable.<sup>41</sup> It properly determined that original and appellate jurisdiction depended on whether plaintiffs' allegations fell within CAFA's section 1332(d)(9)(C) exception for "claims that relate to rights, duties, and obligations related to or created by or pursuant to any security."<sup>42</sup> Further, the court correctly held that the debt instruments issued by defendants fell within the definition of a "security" under the Securities Act of 1933, as required by section 1332(d)(9)(C).<sup>43</sup>

However, the court's analysis of the wording of the exception was flawed. While the majority held that by issuing debt securities defendants acquired an obligation to repay the plaintiff buyers and the buyers had the right to be repaid by defendants, the court incorrectly held that "the present suit does not relate to [those] rights . . . and obligations" because it was simply a state-law consumer fraud action and, as such, did not involve rights, duties, or obligations "grounded in the *terms* of the security itself."<sup>44</sup> Consequently, the court ruled that the plaintiffs' claims did not fall within section 1332(d)(9)(C).<sup>45</sup>

Since there were no cases that pertained to the reach of CAFA, the court considered the plain meaning of the statute and its legislative history.<sup>46</sup> The natural reading of the statute, the court concluded, was "to differentiate obligations from duties by reading obligations to be those created in [debt] instruments."<sup>47</sup> Obligations created by debt instruments correspond to the rights established in security holders through their ownership of the securities.<sup>48</sup> However, the Second Circuit rejected the idea that the expression "rights relating to any security" includes the right to bring any cause of action that involves a security.<sup>49</sup> If the claim is not grounded in the *terms* of a security, it does not enforce the rights of the securities holders as "holders," and thus does not fall within section 1332(d)(9)(C).<sup>50</sup> Otherwise, any jurisdictional limitations intended by CAFA's drafters would be undermined.<sup>51</sup>

Furthermore, the court held that the text of the Senate Judiciary Committee Report confirmed its reading of the statute that Congress intended to limit the scope

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2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder).

*Id.*

41. *Pew*, 527 F.3d at 30.

42. *Id.* at 31.

43. *See* 28 U.S.C. § 1332(d)(9)(C) (incorporating the broad definition of securities found in section 77b(a)(1)).

44. *Pew*, 527 F.3d at 31–32.

45. *Id.* at 32.

46. *Id.* at 30.

47. *Id.* at 31.

48. *Id.*

49. *Id.*

50. *See id.* at 32.

51. *See id.* at 32–33.

of section 1332(d)(9)(C) to suits involving disputes over the *terms* of securities.<sup>52</sup> While the court acknowledged that the Second Circuit “has expressed some skepticism as to the ‘probative value’ of the Senate Report” because it was issued ten days after CAFA was enacted, the court found it appropriate to rely on the Eleventh Circuit’s theory that the Report had probative value because it was submitted to the Senate while it was still considering the bill.<sup>53</sup>

The court’s analysis was incorrect for the following reasons: the statute is unambiguous on its face and thus the court should not have looked at the legislative history as a guide to the meaning of the bill; and the Senate Judiciary Committee Report has little, if any, value since it was issued after the bill was signed into law.

The Supreme Court has held that courts may consult legislative history only when the plain meaning of the statute is ambiguous.<sup>54</sup> Here, CAFA’s provision excludes from federal jurisdiction claims involving “rights and obligations . . . created by or pursuant to any security.”<sup>55</sup> There is nothing ambiguous in the language of the statute that would suggest that the claims have to be grounded in the *terms* of the security.<sup>56</sup> To the contrary, Congress used specific language to signify that it intended to exclude a broad category of securities-related claims from CAFA’s grant of federal jurisdiction.<sup>57</sup>

In particular, section 1332(d)(9)(C) states: “[CAFA jurisdiction] shall not apply to any class action that solely involves a claim that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security.”<sup>58</sup> This exception is more expansive than the court’s interpretation. Specifically, the language of the provision does not distinguish between claims arising from securities and those grounded in the *terms* of the securities.<sup>59</sup> It covers “any class action” that is “relating to or created by or pursuant to” securities.<sup>60</sup> Had Congress intended this clause to apply to claims pertaining solely to the terms of the securities, it would have stated so within the language of section 1332(d)(9)(C). Because the exception provides no such distinction and is clear and unambiguous, the court should not have looked beyond the plain meaning of the statute.

The plain language of CAFA and section 1332(d)(9)(C) covers not only rights, duties, and obligations conferred by the terms of a security itself, but also those

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52. *Id.*; S. REP. NO. 109-14, at 45 (2005), *reprinted in* 2005 U.S.C.C.A.N. 3, 45 (When referring to “corporate governance litigation, the Committee means only litigation based solely on . . . the rights arising out of the *terms of the securities* by business enterprises.”) (emphasis added).

53. *Pew*, 527 F.3d at 32–33.

54. *See id.* at 30 (citing *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 254 (1992)).

55. 28 U.S.C. § 1332(d)(9)(C).

56. *See id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

rights, duties and obligations that arise from the security.<sup>61</sup> As a result, CAFA does not grant federal jurisdiction over the state-law securities-related claims asserted in this case. Since it was Congress's intention to reserve state-law claims relating to securities to state courts, there is no tension between the plain language reading of the statute and the legislative history.<sup>62</sup> Nothing in the legislative history undermines this analysis.

Finally, the court's reliance on the Senate Judiciary Committee Report was improper. Although committee reports in general can be an authoritative source for ascertaining congressional intent,<sup>63</sup> there is no reason to think that the document in question played any role in Congress's reading and understanding of the bill.<sup>64</sup> Issued ten days *after* the president signed the bill into law, the report is not a helpful interpretative tool<sup>65</sup> because its "probative value for divining legislative intent is minimal."<sup>66</sup> Therefore, the court's decision to consult of the legislative history was erroneous and unnecessary under the circumstances.

Although the question of whether a lawsuit brought wholly under state consumer fraud law is exempt from federal courts' jurisdiction under section 1332(d)(9)(C) is an issue of first impression in the Second Circuit, several courts have ruled that the exemption to federal jurisdiction under CAFA is broad and far-reaching.<sup>67</sup> The few courts that have interpreted the section 1332(d)(9)(C) exemption have determined that it applies to claims that arise out of securities.<sup>68</sup> These courts have held that actions involving claims relating solely to the rights, duties, and obligations connected

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61. *See id.*

62. *See* S. REP. NO. 109-14, *supra* note 52.

63. *Zuber v. Allen*, 396 U.S. 168, 192 (1969).

64. *Hangarter v. Paul Revere Life Ins. Co.*, No. C 05-04558 WHA, 2006 WL 213834, at \*2 (N.D. Cal. Jan. 26, 2006).

65. *Id.*

66. *Blockbuster, Inc. v. Galeno*, 472 F.3d. 53, 58 (2d Cir. 2006).

67. *See generally* *Palisades Collections LLC v. Shorts*, No. 07-098, 2008 U.S. Dist. LEXIS 6354 (N.D. W. Va. Jan. 29, 2008) (ruling that since CAFA did not establish independent removal authority for a non-defendant, a counterclaim defense was not entitled to removal under CAFA); *Abrego v. Dow Chem. Co.*, 443 F.3d 676, 690 (9th Cir. 2006) (holding that federal court lacked jurisdiction over plaintiff's claim because the defendant failed to meet its burden to establish jurisdiction over at least one plaintiff); *Lowery v. Ala. Power Co.*, 483 F.3d 1184, 1221 (11th Cir. 2007) (ruling that because defendants failed to show that removal was proper, the remand was appropriate); *Luther v. Countrywide Home Loans Servicing LP*, 533 F.3d 1031, 1032 (9th Cir. 2008) (holding that plaintiff's class action claims were not removable to federal court under CAFA). *But see* *Spivey v. Vertrue, Inc.*, 528 F.3d 982 (7th Cir. 2008) (finding that federal court had jurisdiction over a petition for appeal); *Evans v. Walter Indus.*, 449 F.3d 1159 (11th Cir. 2006) (holding that class action plaintiffs who failed to prove their case belonged in state court under the local controversy exception to CAFA).

68. *See, e.g.*, *Genton v. Vestin Realty Mortg. II, Inc.*, No. 06CV-2517-BEN (WMC), 2007 U.S. Dist. LEXIS 16892 (S.D. Cal. Mar. 9, 2007); *In re Textainer P'ship Sec.*, No. C05-0969MMC, 2005 WL 1791559 (N.D. Cal. July 27, 2005); *Ind. St. Dist. Council of Laborers v. Renal Care Group, Inc.*, No. 3:05-0451, 2005 WL 2000658 (M.D. Tenn. Aug. 18, 2005).

to securities are covered by the provision.<sup>69</sup> None of these courts have limited the exception to actions that seek to enforce the *terms* of instruments that create and define securities.<sup>70</sup>

In *Genton v. Vestin Realty Mortgage II, Inc.*, the district court faced an issue similar to the one in the current case: whether the plaintiff's state-law based claim, arising out of the defendant's failure to pay the plaintiff security holders their pro rata share, was exempted from federal jurisdiction under CAFA.<sup>71</sup> The court held that the claim fell within the exception covered in section 1332(d)(9)(C) because the lawsuit involved the rights of security owners to be paid and the obligations of the defendant company to pay the investors.<sup>72</sup> The court further explained that the defendants' duty to pay was "connected with" the securities, as required by section 1332(d)(9)(C), because plaintiffs acquired their right to be paid through ownership of the securities.<sup>73</sup> In its analysis, the court used the plain meaning of CAFA and the exceptions to its grant of federal jurisdiction to conclude that claims do not have to be grounded in the terms of a security to be covered by the section 1332(d)(9)(C) exemption.<sup>74</sup> Rather, the court held it is sufficient that rights, duties, and obligations are connected with the security.<sup>75</sup>

In another CAFA case, a district court refused to go beyond the plain meaning of the statute and resort to legislative history because the court found the wording of section 1332(d)(9)(C) provision was not ambiguous at all.<sup>76</sup> The case involved a state-law breach of fiduciary duty claim, which plaintiffs moved to have remanded to state court under CAFA's section 1332(d)(9)(C) carve-out.<sup>77</sup> The defendants asserted that because the exemption was ambiguous, it could not be the only authoritative source of interpretation.<sup>78</sup> The court disagreed that the exception was ambiguous;<sup>79</sup> it held that "any class action solely based upon breach of fiduciary duty in connection with a security" fell within the exception to federal jurisdiction under CAFA.<sup>80</sup> Nowhere in its analysis did the court find it necessary to look beyond the plain meaning of the statute.<sup>81</sup> Defendants owed plaintiffs a duty "relating to or created by or pursuant to"

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69. See cases cited *supra* note 68.

70. See *id.*

71. *Genton*, 2007 U.S. Dist. LEXIS 16892.

72. See *id.* at \*9–10.

73. See *id.*

74. See *id.* at \*9 (citing *Pew*, 2006 WL 3524488, at \*5).

75. *Id.*

76. *Renal Care Group, Inc.*, 2005 WL 2000658, at \*1.

77. *Id.*

78. See *id.*

79. *Id.*

80. *Id.*

81. See *id.* at \*1–3.

securities, and thus the action had to be remanded to state court pursuant to section 1332(d)(9)(C).<sup>82</sup>

In the present case, the defendant corporate officers had an obligation to pay the plaintiff buyers for the debt instruments they had purchased.<sup>83</sup> Thus, the lawsuit involved the defendants' failure to fulfill their obligations arising from the sale of certain securities.<sup>84</sup> Just as in *Genton*, the defendants' failure to pay for the securities took away the plaintiffs' right to be paid by defendants for the purchase of those securities.<sup>85</sup> This is in accord with the language of CAFA's exception—section 1332(d)(9)(C)—for claims relating to the rights and obligations pertaining to the sale of a security.<sup>86</sup> The language of the exception does not differentiate between various claims based on state law and covers all such claims as long as the claims relate to the rights and obligations created by or pursuant to the sale of a security. Thus, the court's finding that the plaintiffs' claim that a debt security that was fraudulently marketed by an insolvent enterprise did not enforce the rights of the buyers as security holders was erroneous.

According to the plain language of the statute, all that plaintiffs needed to show to have their case heard in state court was that their claim involved a matter in which securities holders were seeking to enforce the rights created by or pursuant to the securities they bought and held.<sup>87</sup> Plaintiffs in *Pew* demonstrated this to the court, and thus should have had their case remanded to state court. As Judge Pooler correctly noted, "if the plaintiffs were challenging a bank merger, or the discontinuance of a bond series, or a failure to negotiate replacement credit, such actions would presumably be brought under state corporate law," and thus would fall within the exception to federal jurisdiction under CAFA.<sup>88</sup> The present state-law consumer fraud claim was not different from any other state-law claims falling outside the scope of CAFA's grant of federal jurisdiction.

Although *Genton* and *Renal Care Group, Inc.* are not binding on the Second Circuit, they provide a better way of analyzing CAFA's exception in section 1332(d)(9)(C). In addition, these cases illustrate that CAFA's grant of original federal jurisdiction has not been interpreted by courts to be overreaching.<sup>89</sup> While there is no dispute that one of CAFA's purposes is to make the resolution of large class actions with minimal diversity a federal matter, Congress reserved a number of class actions for the states<sup>90</sup> by providing a number of carve-outs under which state courts retain jurisdiction over

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82. *Id.*

83. *Pew*, 527 F.3d at 31.

84. *Id.*

85. *See id.* at 35; *Genton*, 2007 U.S. Dist. LEXIS 16892, at \*9.

86. *See* 28 U.S.C. § 1332(d)(9)(C).

87. *See id.*

88. *Pew*, 527 F.3d at 36 (Pooler, J., Dissenting).

89. *See* cases cited *supra* note 67.

90. RUBENSTEIN, *supra* note 1.

such actions.<sup>91</sup> One such exception, section 1332(d)(9)(C), is applicable to the case in question. The *Pew* court erred in going beyond the plain meaning of the unambiguous statute. The court should have simply applied the exception to the facts of the case, and held that the federal district court lacked original jurisdiction over the plaintiffs' class action claim.

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91. 28 U.S.C. § 1332(d)(9).