

No. 16-4096

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Apr 13, 2017  
DEBORAH S. HUNT, Clerk

DEPARTMENT OF THE TREASURY OF THE	)
STATE OF NEW JERSEY AND ITS DIVISION	)
OF INVESTMENT, On Behalf of Itself and All	)
Others Similarly Situated,	)
	)
Plaintiff-Appellee,	)
	)
v.	)
	)
CLIFFS NATURAL RESOURCES INC., et al.,	)
	)
Defendants-Appellees,	)
	)
v.	)
	)
JEFF M. BROWN,	)
	)
Movant-Appellant.	)
	)

ORDER

Before: COLE, Chief Judge; BOGGS and MOORE, Circuit Judges.

This matter is before the court upon consideration of the motions filed by the Department of the Treasury of the State of New Jersey and its Division of Investment (1) to dismiss the appeal for lack of jurisdiction, for failure to prosecute, and for failure to post an appeal bond and (2) to expedite a decision. Appellant Jeff M. Brown has not filed a response to the motions.

The underlying federal securities class action, brought on behalf of purchasers of publicly traded stock of Defendant Cliffs Natural Resources, Inc., was settled on March 10, 2016. On March 11, 2016, the district court preliminarily approved the settlement, authorized dissemination of notice of the proposed settlement to class members, provided class members with an opportunity to exclude themselves from the settlement or to object to the proposed settlement, and scheduled a final approval hearing for June 30, 2016.

No. 16-4096

- 2 -

Brown was the only class member to file an objection to the settlement. On June 30, 2016, the district court held the final settlement hearing and entered the following orders: (1) an order and final judgment approving the settlement; (2) an order approving a plan of allocation of net settlement funds; and (3) an order awarding attorneys' fees and reimbursement of litigation expenses. Brown did not attend the hearing. On August 1, 2016, Brown filed a notice of appeal that designated the Court of Appeals for the Eighth Circuit as the court to which he was taking the appeal. The Eighth Circuit directed Brown to show cause why his appeal should not be dismissed for lack of jurisdiction, and Brown failed to respond. By order entered on September 15, 2016, the Eighth Circuit dismissed Brown's appeal for lack of jurisdiction. On September 21, 2016, Brown filed an "amended notice of appeal" designating this court as the court to which he was taking the appeal and seeking to appeal the three orders entered by the district court on June 30, 2016. The appeal was docketed as No. 16-4096, the current appeal.

We lack jurisdiction over appeal No. 16-4096. Pursuant to Federal Rule of Appellate Procedure 4(a)(1), a notice of appeal from the orders and final judgment entered on June 30, 2016 was due to be filed no later than August 1, 2016. Because Brown's notice of appeal was filed on September 21, 2016, it is untimely. Compliance with Federal Rule of Appellate Procedure 4(a) is a mandatory prerequisite that this court may neither waive nor extend. *Bowles v. Russell*, 551 U.S. 205, 214 (2007); *Ultimate Appliance CC v. Kirby Co.*, 601 F.3d 414, 415-16 (6th Cir. 2010). The fact that Brown filed a timely notice of appeal to the wrong court, the United States Court of Appeals for the Eighth Circuit, cannot equitably toll the limitations period for filing appeal. *See Oja v. Dep't of The Army*, 405 F.3d 1349, 1358 (Fed. Cir. 2005) (time provisions of Fed. R. App. P. 4(a) are not subject to equitable tolling). Nor can that notice of appeal be treated as effective in this case. Brown did not move the Eighth Circuit to transfer the timely appeal to this court, and the Eighth Circuit dismissed it. Only then, when no appeal remained pending, did Brown file his amended his notice. The "amended" notice of appeal was in fact a new notice, filed outside the thirty-day time period. Moreover, Brown did not seek an extension of time under Rule 4(a)(5).

No. 16-4096

- 3 -

Accordingly, we **GRANT** the motion to dismiss for lack of jurisdiction and **DISMISS** this appeal. All other pending motions are **DENIED** as moot.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written over a horizontal line.

Deborah S. Hunt, Clerk

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

Deborah S. Hunt  
Clerk

100 EAST FIFTH STREET, ROOM 540  
POTTER STEWART U.S. COURTHOUSE  
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000  
[www.ca6.uscourts.gov](http://www.ca6.uscourts.gov)

Filed: April 13, 2017

Jeff M. Brown  
750 South Dixie Highway  
Boca Raton, FL 33432

Mr. James Abram Harrod  
Bernstein, Litowitz, Berger & Grossmann  
1251 Avenue of the Americas  
44th Floor  
New York, NY 10020

Ms. Adrienne Ferraro Mueller  
Jones Day  
901 Lakeside Avenue, E.  
Cleveland, OH 44114-1190

Mr. John M. Newman Jr.  
Jones Day  
901 Lakeside Avenue, E.  
Cleveland, OH 44114-1190

Mr. Geoffrey John Ritts  
Jones Day  
901 Lakeside Avenue, E.  
Cleveland, OH 44114-1190

Mr. Scott D. Simpkins  
Law Offices  
55 Public Square  
Suite 1950  
Cleveland, OH 44113

Re: Case No. 16-4096, *Department Of The Treasury Of v. Cliffs Natural Resources Inc., et al*  
Originating Case No. : 1:14-cv-01031

Dear Mr. Brown and Counsel,

The Court issued the enclosed (Order/Opinion) today in this case.

Sincerely yours,

s/Michelle M. Davis  
Case Manager  
Direct Dial No. 513-564-7025

cc: Ms. Geri M. Smith

Enclosure

No mandate to issue