

March 1, 2005

President Bush Signs Class Action Fairness Act

On February 18, 2005, President Bush signed into law the Class Action Fairness Act of 2005 (CAFA). CAFA is effective immediately, and will apply to all civil actions filed on or after its enactment. The primary effect of CAFA will be to transfer most multi-state class actions from state court to federal court. By conferring federal court jurisdiction on such cases, CAFA is intended to put a stop to the practice of forum shopping, in which a large number of multi-state class actions have been filed in certain “magnet jurisdictions” known for returning disproportionately large verdicts.

CAFA changes the current law by expanding federal diversity jurisdiction to include cases where plaintiffs seek at least \$5 million in damages and where there is diversity between any putative class member and any defendant, adopting special rules for removal of class actions to allow removal at any time during the litigation and to allow immediate appeal of remand orders, and by limiting attorneys’ fees for “coupon” settlements and requiring that governmental authorities be notified of certain proposed class settlements.

Federal Jurisdiction Over Large Class Actions

In an effort to funnel a majority of large multi-state class actions out of the state court system, CAFA greatly expands federal diversity jurisdiction by allowing the “amount in controversy” requirement to be satisfied by aggregating class damages and granting jurisdiction to the federal courts for certain class actions in which the total damages exceed \$5,000,000. If this monetary threshold is satisfied, to remove the action to federal court the defendant need only show that the citizenship of at least one member of the plaintiff class is diverse from at least one defendant. Subject to certain statutory carve-outs, including certain securities matters, the federal courts’ ability to decline jurisdiction and remand these cases back to state court depends exclusively on the number of class members who are citizens of the original forum state. If one-third or fewer of proposed class members are citizens of the original forum state, federal courts must retain jurisdiction and hear the case.

While the “one-third” rule applies solely to the plaintiff class and requires the federal court to retain jurisdiction, a federal court is given discretion to accept or decline jurisdiction where both the primary defendants and between one-third and two-thirds of proposed class members are citizens of the original forum state. In this circumstance, CAFA sets forth six factors to be considered by the federal courts when exercising this discretion, including:

- 1) whether the case involves matters of national or interstate interest,
- 2) the action will be governed by laws other than those of the original forum state,
- 3) there is a distinct nexus between the original forum state and the alleged harm,
- 4) the case is pleaded in a manner intended to avoid federal jurisdiction,
- 5) the number of citizens of the original forum is proportionately substantially larger than the citizenship of other members of the proposed class, and
- 6) the nonresident members are dispersed among many other states, and other class actions involving the same or similar claims have been filed during the three-year period preceding the class action in question.

Finally, federal courts must decline jurisdiction if both two-thirds of a proposed class are citizens of the original forum state and either the primary defendants are also citizens of the original forum state or at least one defendant, from whom significant relief is sought by members of the class and whose alleged conduct forms a significant basis for the claims, is a citizen of the original forum state.

In short, the critical factor in determining whether a case is subject to removal from state court will be the composition of the class. The more “multi-state” the class members and claims, the more likely the case is to fall under the requirement that it be heard in federal court. How each of these factors will be interpreted, however, will undoubtedly be the subject of a substantial amount of future litigation and published caselaw.

Removal Procedures

In addition to expanding the jurisdiction of the federal courts over large multi-state class actions, CAFA also provides defendants with expanded opportunities to remove eligible cases throughout the pendency of the case. Specifically, in a change from prior law CAFA provides that any defendant may remove an eligible class action to federal court without the consent of the other defendants, and without regard to the typical one-year limitations period on such removal. In addition, while prior law provided that a case filed against a defendant in its home state was not subject to removal, an eligible class action may be removed in this circumstance. Finally, CAFA provides for expedited appellate review of district court decisions granting or denying remand, where a notice of appeal is filed within one week of the district court's order.

Settlements and Attorneys' Fees

In addition to expanded federal court jurisdiction and removal procedures, CAFA also creates a "Consumer Class Action Bill of Rights" which addresses a variety of perceived abusive settlement practices. One aspect of this provision of CAFA is increased notice procedures in connection with class action settlements. Specifically, within ten days of filing a proposed class action settlement in court, defendants participating in the settlement must notify certain federal and state officials of the prospective settlement. Appropriate officials include the U.S. Attorney General or State Attorney General, or the state regulator or licensing authority with jurisdiction over the subject matter of any of the allegations of the complaint. The court cannot approve a proposed settlement until 90 days after such notification, and a settlement is not binding on class members if proper notification of the officials is not made. Defendants may thus tend to err on the side of over-notification, albeit with the risk that state regulators may be spurred to take action that they might not otherwise have undertaken had no notice been given.

In addition to these notification procedures, CAFA provides for specific procedures that must be followed in "coupon settlements" involving low or no monetary payments to consumers. Specifically, CAFA provides that any award of plaintiffs' attorneys' fees attributable to the value of coupons must be based on the value to class members of the coupons that are redeemed, as opposed to the value of total coupons available. Although CAFA provides that the value of unclaimed coupons may be distributed to charitable organizations, plaintiffs' attorneys' fees may not be based upon the value of such unclaimed funds. CAFA also prohibits settlements that provide greater benefits to class members located near the forum state, and limits the circumstances in which plaintiffs can accept a settlement which results in a "net loss" for some plaintiffs.

For a copy of the Act, [click here](#).

This memo has been written by several Seyfarth Shaw attorneys who regularly defend complex class action matters throughout the country. If you wish to discuss any of these issues in more detail, please contact a member of Seyfarth Shaw's complex commercial litigation practice group.

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