

One Minute Memo[®]



Supreme Court Eliminates Major Obstacle To CAFA Removal

The United States Supreme Court yesterday dealt a severe blow to putative class-action plaintiffs who want to avoid removal to federal court. Under the Class Action Fairness Act, 28 U.S.C. § 1332(d), district courts have original jurisdiction over civil class actions when the aggregate amount in controversy exceeds \$5 million. Many class counsel have attempted to avoid removal of their cases to federal court by expressly pleading that the amount in controversy is less than \$5 million or that the class will not seek or waives aggregate damages to the extent they exceed \$5 million.

In *Standard Fire Insurance Co. v. Knowles*, No. 11-1450 (Mar. 19, 2013), the Supreme Court unanimously held that such allegations are not dispositive and do not prevent removal. Because the putative class representatives do not represent absent class members before a class is certified, the Court reasoned, they cannot enter into binding stipulations or make admissions that bind absent class members. Accordingly, they cannot use artful pleading to reduce the aggregate damages that constitute the amount in controversy for CAFA purposes.

Although class actions in recent years have been filed more frequently in federal rather than state court, the *Standard Fire* decision certainly benefits class action defendants by eliminating one of the most common grounds for opposing CAFA removal.

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