Supreme Court Limits Plaintiffs’ Strategy to Avoid Class Action Fairness Act Removal

On March 19, 2013, the Supreme Court’s first opinion addressing the Class Action Fairness Act (CAFA), *Standard Fire Insurance Company v. Knowles*, unanimously rejected a state class action plaintiff’s attempt to avoid federal court by using a precertification stipulation to come in under the amount in controversy requirement of the statute. In doing so, the Supreme Court blocks one of plaintiffs’ counsels more popular strategies for structuring class action pleadings to avoid federal jurisdiction. As a result, plaintiffs’ efforts to forum shop class action litigation in favorable state court venues should be curtailed, and it is likely that more class action litigation will be subject to stricter federal rules on class certifications. It is less clear how the Court’s ruling will affect other popular plaintiff strategies to avoid federal jurisdiction. However, at a minimum, the Court’s emphasis on prioritizing substance over form when interpreting CAFA may be helpful for defendants seeking removal in other contexts.

Knowles filed a class action suit in Arkansas state court claiming that Standard Fire Insurance Company (Standard Fire) underpaid homeowners’ property loss claims by refusing to pay general contractor fees in the aftermath of a 2010 hailstorm. Knowles’ suit sought to certify “hundreds, and possibly thousands” of similarly situated Arkansas insurance policyholders. Standard Fire removed the case to federal court under CAFA’s class action provision conferring federal jurisdiction over interstate class actions in which, among other things, the combined claims of the putative class members exceed US$5 million. See 28 U.S.C. § 1332(d)(2).

Knowles moved to remand the case back to state court because he had stipulated in the complaint that neither he nor the class he sought to represent would seek more than US$5 million in damages. Despite finding the amount of damages in question, plus attorneys fees, would have been just over US$5 million absent the stipulation, the district court remanded the case. Standard Fire petitioned for leave to appeal to the Eighth Circuit, which was denied. The question before the Supreme Court, on which there was a split in the circuit courts, was whether such stipulations exempt a case from CAFA’s reach.
In a brief opinion by Justice Breyer, the Supreme Court unanimously said “no” and vacated the district court’s remand order. Put simply, the Court held that “the stipulation must be binding” and “a plaintiff who files a proposed class action cannot legally bind members of the proposed class before they are certified.”

The Court continued:

To hold otherwise would, for CAFA jurisdictional purposes, treat a nonbinding stipulation as if it were binding, exalt form over substance, and run directly counter to CAFA’s primary objective: ensuring “Federal court consideration of interstate cases of national importance”...It would also have the effect of allowing the subdivision of a $100 million action into 21 just-below-$5-million state-court actions simply by including nonbinding stipulations; such an outcome would squarely conflict with the statute’s objective.

The Court’s holding should have immediate implications. The decision thwarts one popular method by the plaintiffs’ bar to keep class action litigation in state court. As such, plaintiffs’ attempts to forum shop class action suits in perceived plaintiff-friendly venues (particularly in the Eighth Circuit) should be limited. In addition, class certification will now occur more frequently in federal courts under the generally stricter requirements of Federal Rule of Civil Procedure 23.

Knowles also has the potential to impact some of plaintiffs’ other attempts to circumvent CAFA’s class action amount in controversy requirements of CAFA. Indeed, plaintiffs’ gamesmanship in attempting to circumvent CAFA’s class action amount in controversy requirements has also been rejected in other situations. For example, in Freeman v. Blue Ridge Paper Prods. Inc., plaintiffs “divided their suit into five separate suits ... limiting the total damages for each suit to less than CAFA’s $5 million threshold.” The Sixth Circuit affirmed removal, holding that “the $4.9 million sought in each of the five suits must be aggregated.” In sum:

The complaints are identical in all respects except for the artificially broken up time periods. Plaintiffs put forth no colorable reason for breaking up the lawsuits in this fashion, other than to avoid federal jurisdiction ... If such pure structuring permits class action plaintiffs to avoid CAFA, the Congress’ obvious purpose in passing the statute—to allow defendants to defend large interstate class actions in federal court—can be avoided almost at will, as long as state law permits suits to be broken up on some basis.

The Court concluded that the “splintering of lawsuits for no colorable reason” could not be used to defeat CAFA class action jurisdiction.

However, plaintiffs still employ other strategies to avoid federal jurisdiction under CAFA. For example, CAFA’s “mass action” provision confers federal removal jurisdiction over civil actions “in which monetary relief 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.” To avoid CAFA, plaintiffs now cut-and-paste hundreds or thousands of individual plaintiffs’ claims into multiple identical complaints, each with fewer than 100 plaintiffs. Thus far, federal courts have permitted this strategy absent additional factors. See e.g., Anderson v. Bayer Corp., 610 F.3d 390 (7th Cir. 2010);

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2 Id. at 6 (internal citation omitted).
4 Id.
5 See e.g., Frederick v. Hartford Underwriters Ins. Co., 683 F.3d 1242, 1247 (10th Cir. 2012) (a proposed class-action representative’s “attempt to limit damages in the complaint is not dispositive when determining the amount in controversy.”).
6 551 F.3d 405, 406 (6th Cir. 2008).
7 Id. at 407.
8 Id.
9 Id. at 409.
Tanoh v. Dow Chem. Co., 561 F.3d 945 (9th Cir. 2009). While Knowles was decided under CAFA’s provisions for class actions, not mass actions, the Court’s emphasis on substance over form to fulfill congressional intent could be helpful for defendants facing similar remand strategies in the future.

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