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## **Class Action Fairness Act: Amount in Controversy after *Knowles***

In 2005 the Class Action Fairness Act (CAFA) was enacted, thereby creating an avenue for class actions arising in state courts to be drawn into federal courts. However, CAFA does not authorize federal jurisdiction over each and every class action case. The determination of which cases are subject to federal jurisdiction is governed by 28 U.S.C. § 1332(d). One of the requirements of 1332(d) is that the potential recovery from the case – *id est*, the amount in controversy – exceeds \$5 million. This past week, the Supreme Court handed down a brief but insightful opinion in *Standard Fire Insurance Co. v. Knowles* that helped shed light on the amount in controversy requirement under CAFA.

Before we launch into the discussion of *Knowles*, it would behoove us to first discuss some of the relevant aspects of the amount in controversy requirement. When a party seeks to bring a matter before a federal court, it is the party seeking federal jurisdiction that must show that the amount in controversy is sufficiently high so as to exceed the \$5 million figure. Traditionally, exercise of federal jurisdiction over class action cases has been more desirous for defendants than for plaintiffs seeking to certify a class. As such, the party who typically must bear the burden of showing that there is actually \$5 million at stake is the defendant.

The burden of establishing the amount in controversy when removing a case from state to federal court is not as simple as blindly asserting that it is met. As

explained by the First Circuit Court of Appeals in *Amoche v. Guarantee Trust Life Ins. Co.*, there are two possible standards utilized by the various federal circuits. At the time of the *Amoche* decision – February 2009 – the First Circuit joined with the Second and Seventh Circuits in applying the “reasonable probability standard” requiring a removing defendant to “show that it appears to a ‘reasonable probability’ that the aggregate claims of the plaintiff class are in excess of \$5 million.” The alternative standard, utilized at the time by the Third and Ninth Circuits, is to require the defendant to prove “to a legal certainty” the amount in controversy. Regardless of which standard is applicable, it is a higher threshold than the requirement to initially file a case in federal court – that the amount alleged have been made in good faith.

Before the Supreme Court of the United States in *Knowles* was the issue of whether a named plaintiff in a putative class action that was filed in an Arkansas state court could prevent removal of the case to federal court by stipulating to not seek damages in excess of \$5 million. The plaintiff’s argument won the day with the federal district court and he was granted remand of his case to the state court. The defendant appealed this decision to the Eighth Circuit but the court declined to hear the appeal. The matter was then granted review by the Supreme Court. In a succinct opinion – seven pages in all – the unanimous Court held that the use of a stipulation such as this prior to class certification could not defeat removal. The Court found that while Mr. Knowles was able to freely stipulate to the amount that he would individually seek to recover against the defendant, without a class having been certified, he could not speak for the other class members.

The Court found merit in Mr. Knowles argument “that a federal district court might find it simpler to value the amount in controversy on the basis of a stipulation than to aggregate the value of the individual claims of all who meet the class description.” Nevertheless, that alone does not provide a basis to permit such a stipulation to bind other would-be plaintiffs for whom Mr. Knowles could not yet speak.

Further, the Court found contention that an individual was the master of his complaint and in individual actions could stipulate to a lesser amount so as to avoid federal court. The Court distinguished the individual context from the class action context because the stipulation on behalf of an individual would have the effect of binding all plaintiffs, an aspect that could not occur in the putative class context.

The opinion left open one potential utility for such a stipulation in the class action context. Mr. Knowles sought to argue that the stipulation had the effect of limiting the amount to be sought in attorney fees from going above the threshold of \$5 million. The Court found that this was not part of Mr. Knowles’ specific

stipulation. Thus, the Court did not address this argument. However, it would appear that such a stipulation may very well have merit when used appropriately and explicitly.

What to take away from *Knowles*? First, though the burden may be upon the removing defendant to prove with at least reasonable probability that the amount in controversy exceeds \$5 million, the plaintiff cannot bind the entire class' damages by stipulation. Second, that plaintiffs may be able to avoid federal jurisdiction by stipulation to limit class counsel's potential fee recovery.

Join us again next time for further discussion of developments in the law.

### Sources

- Class Action Fairness Act of 2005.
- 28 U.S.C. § 1332(d).
- *Standard Fire Ins. Co. v. Knowles*, 568 U. S. \_\_\_\_ (2013).
- *Amoche v. Guarantee Trust Life Ins. Co.*, 556 F.3d 41, 48-49 (1st Cir. 2009).
- For further discussion of the development of CAFA consider: Mallori Allen, Casenote, *Classing up the Re-Litigation Exception?: Federalism, Injunctions, and Class Actions in Smith v. Bayer Corp.*, 131 S. Ct. 2368 (2011), 37 S. Ill. U. L.J. 219 (2012), available at <http://www.law.siu.edu/Journal/37Fall/8%20-%20Allen.pdf>

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