Cappuccitti Decision Could Curtail CAFA Suits in the Eleventh Circuit

In a decision that may significantly reduce the impact of the Class Action Fairness Act of 2005 (CAFA) in courts within its jurisdiction, the U.S. Court of Appeals for the Eleventh Circuit has held that **the claim of at least one member of a proposed class in a case originally filed in federal court under CAFA must exceed $75,000** in order to satisfy the diversity jurisdiction threshold of 28 U.S.C. § 1332(a). *Cappuccitti v. DirecTV, Inc.*, No. 09-14107, ___ F.3d ___, 2010 U.S. App. LEXIS 14724, 2010 WL 2803093 (11th Cir. July 19, 2010).

Read the opinion at: http://www.ca11.uscourts.gov/opinions/ops/200914107.pdf.

Cappuccitti involved a putative class action brought by two Georgia consumers of subscription television services, challenging early-termination charges in their subscriber agreements with the defendant, a California corporation. The fees at issue for each of the individual plaintiffs were alleged to be only in the hundreds of dollars (the alleged maximum cancellation penalty was $480), though the damages sought on behalf of the class were allegedly in excess of $5 million. The plaintiffs invoked the jurisdiction of the U.S. District Court for the Northern District of Georgia under 28 U.S.C. § 1332(d)(2), which incorporates CAFA's provisions for original jurisdiction in federal court over class actions where there is minimal diversity (a difference in citizenship between *any* member of a class and *any* defendant) and an aggregate amount in controversy for the putative class in excess of $5 million (exclusive of interest and costs).

However, on an interlocutory appeal of the district court's denial of the defendant's motion to compel arbitration in *Cappuccitti*, the Eleventh Circuit considered the threshold question (apparently on its own initiative) of whether the district court possessed subject matter jurisdiction under CAFA -- and concluded that it did not. According to the appellate court, the plaintiffs had the burden of demonstrating the federal court's original jurisdiction, and they had failed to do so because no member of the class alleged an *individual* amount in controversy in excess of $75,000. The panel in *Cappuccitti* found that there was no evidence of congressional intent to obviate the pre-CAFA $75,000 jurisdictional threshold as to at least one plaintiff in the class. Rather, the court held, Congress's primary concern was that some federal courts of appeals were requiring *each* plaintiff in a class action to demonstrate that it met the diversity threshold.

The *Cappuccitti* decision was rendered in the context of a case originally brought by the plaintiff in federal court, as opposed to one removed by a defendant under CAFA. However, the court based its decision in part on its understanding that the same requirement that a plaintiff satisfy the $75,000 jurisdictional threshold applies to actions removed under CAFA, and that cases originally filed in federal court should be treated no differently.

If *Cappuccitti* stands as controlling precedent in the Eleventh Circuit, it could result in the dismissal of many, if not most, of the class actions filed under CAFA in district courts within the Eleventh Circuit. Such cases would then have to be re-filed in the state courts of Alabama, Florida, and Georgia (within the geographic boundaries of the Eleventh Circuit). Moreover, if the *Cappuccitti* decision is allowed to stand as is, those state courts would likely become especially attractive to the plaintiffs' class action bar if cases, once filed there and lacking a plaintiff asserting over $75,000 in damages (as would be the case in virtually all consumer class actions, for example), could no longer be removed to federal court under CAFA. All of this, of course, remains to be determined, and *Cappuccitti* may well be a candidate first for *en banc* review, a petition for *certiorari,* or even legislative clarification of the CAFA statute.

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