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Special Feature

Meritorious class actions survive the Class Action Fairness Act

By *E Powell Miller, David H Fink and Lauren Duerr*

Heralded by President Bush as "a model of effective, bipartisan legislation" that will "ease the needless burden of litigation on every American worker, business, and family," the Class Action Fairness Act (CAFA) was signed into law on Feb. 18, 2005.

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Opponents slammed CAFA as being an "assault on our Nation's civil justice system"

A Feb. 12, 2005, New York Times article argued that, "[i]nstead of narrowly focusing on real abuses of the system, the measure reconfigures the civil justice system to achieve a significant rollback of corporate accountability and people's rights."

One year later, what has this legislation really meant for legitimate claimants?

History

CAFA passed by a vote of 72-26 in the Senate, and 279-149 in the House of Representatives.

The bill sought to reduce perceived class action abuses by softening diversity jurisdiction requirements so that more class actions are litigated in federal court.

For example, CAFA requires only minimal diversity among class members and defendants, and also permits aggregation of monetary claims. These provisions lower the bar for removing cases to federal court by making it easier to meet diversity and amount in controversy requirements.

Finally, CAFA sought to limit perceived excesses in attorneys' fees by limiting recovery of fees in coupon-based settlements. Fees in coupon-based settlements are now limited to a percentage of the value of those coupons actually redeemed by class members, or must be based on the amount of time class counsel worked on the case.

Previously, some state court jurisdictions had developed reputations as being unfairly generous to class action plaintiffs by granting large class awards and attorneys' fees. Cases filed in these courts were seen by some as "abuses" of class action litigation. Madison County, Ill., is one of the most frequently cited examples of a county where numerous class action "abuses" have occurred.

In one Madison County case, the court awarded a \$12 billion dollar verdict against Philip Morris (recently overturned by the Illinois Supreme Court) in a lawsuit claiming it was deceptive to market cigarettes as "light." (See, "Judicial Hellholes 2005," American Tort Reform Foundation, p. 22 (2005).)

One year later, CAFA appears to have had a meaningful impact on the number of cases filed in Madison County. Only 45 class actions were filed in Madison County in 2005, compared to 82 in 2004. (See, <http://www.madisonrecord.com/printer/article.asp?c=171374>.)

Meanwhile, of the 45 class actions filed in 2005, 34 were filed before the President signed CAFA in February. (See, "Class Action Law Prompts Madison County Filing Frenzy," Brueggemann, Brian; Belleville News Democrat, Feb. 19, 2005.)

Not a death knell

While CAFA may have had a marked effect on the rush to file in certain state courts, it has not been a death knell for legitimate class actions. Certain class actions — such as those arising from securities fraud — have been litigated in federal court for years, and CAFA has had no impact on them.

In other areas, the impact of CAFA remains to be seen, as no known cases filed under CAFA have reached a stage of litigation where provisions regarding coupon settlements and attorneys' fees become pertinent.

In its jurisdictional provisions, CAFA has had the effect of causing more class actions to be filed in or removed to federal court. However, meritorious class action claims filed or removed under CAFA can continue to thrive in federal court.

Important litigation role

Class actions serve a unique and important role in litigation. They provide remedies to citizens injured by a single defendant or group of defendants, where the individual claims would not be sufficient to compel plaintiffs to seek legal relief. Moreover, class actions may serve to deter defendants from inflicting small injuries on great numbers of citizens by allowing class members to aggregate claims that alone would not justify the cost of litigation.

For example, in a recently settled case, the defendant charged consumers a bogus "transaction fee" of 8.2 cents per phone call made from cellular phones to land-lines. At first blush, the charge appears nominal. But when taken in the aggregate, the damages totaled many of millions of dollars. While the damages sustained by any one consumer in that instance could never justify the cost of litigation, by pursuing the claims as a class action, class counsel achieved a settlement eliminating the transaction fee and earning a multimillion-dollar recovery for the class. Even claims valued at several thousands of dollars each can only be litigated economically in the form of a class action.

Impact and implications still unclear

At the signing of CAFA, President Bush himself recognized that "[c]lass actions can serve a valuable purpose in our legal system. They allow numerous victims of the same wrongdoing to merge their claims into a single lawsuit."

He also contended that CAFA "maintains every victim's right to seek justice, and ensures that wrongdoers are held to account."

CAFA's funneling of class actions into federal courts may, however, change the time frame and scope of justice for class members and individual litigants alike. The true impact of CAFA may not become evident for some time, until federal courts decide how to balance increased case loads.

It is clear that CAFA has caused more cases to be filed in and removed to federal court; what is unclear is whether some federal courts have the long-term capacity to cope with the increased burden of these often-complex cases without allowing unreasonable delays in both class action and non-class action lawsuits.

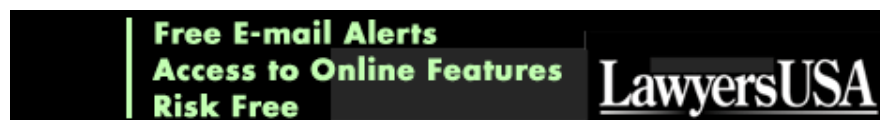
Although CAFA has wrought some changes to class action litigation, its implications do not necessarily weigh heavily against class members, if they are represented by competent counsel. CAFA has changed the jurisdictional landscape of class action litigation, and it is now essential to understand CAFA's provisions in order to file class actions correctly and litigate them effectively.

Class actions remain a unique and essential vehicle by which large numbers of class members may efficiently seek redress for their injuries. With proper interpretation and application, CAFA need not become a quagmire for class actions.

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