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IS THERE FEDERAL SUBJECT MATTER JURISDICTION UNDER THE CLASS ACTION FAIRNESS ACT?

May 30, 2019

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The Class Action Fairness Act, or CAFA, 28 U.S.C. § 1332(d), establishes federal subject matter jurisdiction for the vast majority of nationwide and multi-state product liability class actions. Subject to the limited exceptions addressed below, CAFA's jurisdictional requirements are: (1) minimal diversity; (2) 100 or more putative class members; and (3) more than $5 million dollars in controversy. The one-year limit on removal does not apply, and any defendant may remove, with or without the consent of its co-defendants. District court decisions granting or denying motions to remand class actions may be appealed by permission.

Minimal Diversity of Citizenship: The minimal diversity requirement is met when *any* member of the putative class is a citizen of a different state than *any* defendant. Notably, while an individual may be a resident of multiple states, she is a citizen only of one state – the "place where that individual has a true, fixed home and principal establishment" and the place where she intends to return. *See* 13E Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure, § 3612 (3d ed. 2009); *see also Mississippi Band of Choctaw Indians v. Holyfield,* 490 U.S. 30, 48 (1989). Corporations, on the other hand, are citizens of both the state where they were incorporated and the state where they have their principal place of business.

More than $5 Million in Controversy: Under CAFA, the claims of all putative class members are aggregated when calculating the amount in controversy. Potential compensatory, statutory, and punitive damages are included in the calculation; interest and costs are not. If a state court complaint "demands monetary relief of a stated sum, that sum, if asserted in good faith, is 'deemed to be the amount in controversy.'" *Dart Cherokee Basin Operating Co., LLC v. Owens,* 135 S. Ct. 547, 551 (2014)(citing 28 U.S.C. § 1446(c)(2)). However, a plaintiff may not avoid CAFA jurisdiction by stipulating that the class will not seek more than $5 million because that type of stipulation does not bind absent class members. *Standard Fire Ins. Co. v. Knowles,* 133 S. Ct. 1345, 1348 (2013). If the complaint does not state the amount in controversy, the notice of removal may do so. *Dart*, 135 S. Ct. at 551 (citing 28 U.S.C. § 1446(c)(2)(A)).

Exceptions: CAFA provides narrow exceptions to its grant of jurisdiction for what are essentially local controversies. Two of these exceptions – the local controversy exception and the home state exception – require the court to decline jurisdiction. *See* 28 U.S.C. § 1332(d)(4). They apply when two-thirds or more (the language of the exceptions is slightly different) of the putative class members are citizens of the state where the action was originally filed and other exception-specific requirements are met – for example, where the primary defendants are also citizens of the state where the action was originally filed. Unless the class action is only state-wide and is filed in a state where the manufacturer or target retailer is a citizen, however, there are relatively few circumstances in the product liability context where these mandatory exceptions will apply.

A third exception, the interests of justice exception, 28 U.S.C. § 1332 (d)(3), gives the district court discretion to exercise (or not) its jurisdiction where more than one-third but less than two-thirds of the putative class members and the primary defendants are citizens of the state where the action was originally filed. The court is to exercise its discretion based on a consideration of six listed factors, including, for example, whether the claims involve matters of national or interstate (rather than local) interest and whether the law of the state where the action was

filed will govern the claims.

Product liability class actions are ideal candidates for CAFA jurisdiction. Most often, in class actions premised on a claimed product defect, there are far more than 100 putative class members, there is minimal diversity, and the amount in controversy exceeds $5 million dollars.