

Class Action Reform – Will You Be Affected?

By MARK A. TANNER

On Feb. 18, President Bush signed the “Class Action Fairness Act of 2005” (CAFA) into law. This measure allows defendants to remove most class action lawsuits, filed after Feb. 18, 2005, from state to federal court, a venue where many class action defendants believe they will receive protection from what many believe are unpredictable state courts and runaway jury verdicts.

Class action lawsuits have a long history in the United States. As early as the 1850s, the United States Supreme Court intimated that American courts should allow a representative to sue or be sued on behalf of similarly situated individuals. Policy justification for allowing class actions is premised on the belief that joining similarly situated individuals promotes efficient use of the courts by having one large lawsuit rather than numerous small cases, by ensuring that compensation is distributed among all similarly injured parties, and by encouraging private individuals to challenge socially unacceptable conduct, which, but for class actions, might otherwise go unpunished.

For the past decade, business, insurance, and manufacturing interests, have grown increasing fearful of large jury verdicts and the uncertainty of litigation in state courts. As a result, these interests pressed the Bush administration and Congress for tort

reform, including reformation of the class action process. After finding that over the past decade there have “been abuses of the class action device” which undermined public respect for the judicial system, Congress passed, and the President signed it into law.

CAFA, which is largely jurisdictional, modifies two important aspects of class action litigation. First, subject to limited exceptions enumerated in the statute, CAFA provides for federal jurisdiction over class action lawsuits which would have historically been litigated in state courts. This change is accomplished by allowing defendants to remove cases originally filed in state court, to federal court when:

- There are 100 or more class members;
- The combined alleged damages of all members of the plaintiff class exceeds \$5 million; and
- Any plaintiff and any defendant are residents of different states; or any defendant is a foreign national or foreign government.

This liberalization of the jurisdictional requirements is calculated to shift class action lawsuits from state to federal court and ensures that in most cases, class action defendants will have the opportunity to litigate in federal court.

A second important aspect of CAFA deals with oversight of class action settlements. In what many consider to be a concerted attack on plaintiffs’ lawyers, CAFA imposes new restrictions on the fees that can be recovered by attorneys representing plaintiff classes. For example, CAFA regulates so called “coupon settlements,” whereby plaintiffs’ attorneys are awarded monetary fees, but class members receive only coupons for future discounts on the defendant’s products.

Unlike state courts, which have historically allowed judicial discretion in the oversight of settlements, under CAFA, a federal court may approve coupon and most other settlements only after the court determines that the settlement is reasonable, adequate, and fair to class members.

Further, in coupon settlements, attorneys fees may no longer be based on the value of the coupons issued, but instead must be based on the value of the coupons actually redeemed, or the court must use a mathematical formula which takes into account the amount of time plaintiffs counsel spent working on the matter.

The overall impact of CAFA will likely take some time to be shake itself out. On the national

scene, CAFA is likely to immediately impact the number of class action lawsuits filed in so-called “magnet” states, those with the reputation of being plaintiff-friendly venues. Likewise, based upon the widely held belief among defendants that federal courts are less likely to certify class status, and are more predictable than state courts, it also appears likely that many defendants will remove eligible class action lawsuits from state to federal court.

From a local perspective, it seems unlikely that CAFA will immediately impact most local business, since many local and small businesses don’t place goods or services into the national or international stream of commerce and are therefore not prone to being named as defendants in large multi-state class action lawsuits. For local concerns, the promise of CAFA, like tort reform in general, lies in the belief that tort reform will result in a healthier business climate and a lower overall cost of doing business.

This article is intended as a general introduction to Class Action Reform. If you are a party to a pending class action lawsuit you should seek the advice of an attorney.

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