

## Class Action Lawyers React To Supreme Court's CAFA Ruling

*Law360, New York (March 19, 2013, 9:25 PM ET)* -- The U.S. Supreme Court on Tuesday ruled in *Standard Fire Ins. Co. v. Knowles* that plaintiffs bringing class actions cannot avoid federal jurisdiction by vowing to seek less than \$5 million in damages — a threshold set by the Class Action Fairness Act. Here, class action attorneys tell Law360 why the unanimous decision is important.

### **David N. Anthony, Troutman Sanders LLP**

"This is a significant win for defendants as plaintiffs have attempted to avoid federal jurisdiction of class actions by the singular expedient of demanding damages less than \$5 million in their class complaints. The decision vindicates Congress' intent to promote broad, federal CAFA jurisdiction for all significant, multistate class actions. Moreover, the court effectively closed an exception that allowed some class plaintiffs to remain in state court and reap the benefits of an unbalanced, state class-action device. Before, named plaintiffs could forum-shop in an effort to increase litigation costs and potential damages for defendants who may then be forced into large settlements, sometimes in excess of the \$5 million limit supposedly voluntarily agreed to. Now, class plaintiffs with an amount-in-controversy greater than \$5 million will have to litigate in federal court regardless of any damages stipulations."

### **David L. Balsler, King & Spalding**

"The Supreme Court's decision is both legally correct and appropriately straightforward. The court relied on fundamental class action jurisprudence, which the Court already reiterated in the Bayer decision, that unless and until a class is certified, it is a legal fiction. A named plaintiff who seeks to represent purported class members has no legal right to bind those class members until a court has certified the class. As a practical matter, the decision isn't surprising (nor is its unanimity), but it nevertheless is significant for defendants because it brings the Eighth Circuit back into line with every other court that has addressed the issue. It also should facilitate defendants' removal of cases from particularly hostile state-court jurisdictions in the Eighth Circuit, of which there has been a notable increase over the last few years since the Eighth Circuit's decision in *Bell v. Hershey Co.*"

### **Aaron D. Van Oort, FaegreBD**

"*Knowles* is important because it reinforces the court's recent trend, begun in *Wal-Mart v. Dukes*, of holding that class actions must be managed based on what the facts actually are, not what the plaintiffs allege them to be. In *Dukes*, the Court held that a plaintiff must 'prove that there are in fact sufficiently numerous parties, common questions of law or fact, etc.' So now, plaintiffs cannot simply allege a class into existence. In *Knowles*, a unanimous court confirmed that federal jurisdiction exists when there is in fact more than \$5 million at stake. Next up? Another variation on the same theme: holding that plaintiffs cannot create the illusion of predominantly common issues by asserting only weaker, common claims on behalf of the class when stronger but fact-bound claims exist."

**Tony Lathrop, Moore & Van Allen**

"At the heart of Knowles was a fight against the notion that class action plaintiffs have the power as 'masters of the complaint' to manipulate the amount in controversy to avoid federal jurisdiction under the Class Action Fairness Act of 2005. The Supreme Court's ruling that a plaintiff cannot legally bind proposed class members via a stipulation to limit damages before a class is certified is a significant victory for defendants who, in jurisdictions like the Eighth Circuit, would have been helpless against the very abuses by state courts that prompted the passage of CAFA. As the unanimous Supreme Court noted, if left to stand, the district court's ruling in Knowles would have permitted nonbinding stipulations to subdivide a large interstate class action of national importance into many smaller state actions just below CAFA's \$5 million threshold, which 'would squarely conflict with the statute's objective.'"

**Gerald L. Maatman, Jr., Seyfarth Shaw**

"The ruling in Standard Fire puts teeth back into the CAFA insofar as defense of workplace class actions is concerned. Especially in wage and hour class actions, plaintiffs had been turning the tables on employers and forcing them to litigate in more hostile state court jurisdictions by the stratagem of making their claims CAFA-proof by stipulating to \$4,999,999.99 in damages. Standard Fire closes that avenue, and now opens up new defense strategy considerations to litigating workplace class actions, for employers can now remove lawsuits more handily and without being encumbered by talismanic invocation of the \$4,999,999.99 stipulation. This ruling most definitely belongs in the win column for employers facing class action litigation."

**Cate Stetson, Hogan Lovells**

"If Knowles' argument had carried the day in the Supreme Court, putative class representatives would have been able to advantage themselves of a massive CAFA loophole: Simply stipulate, on behalf of an absent class, to a damages amount just lower than the removal-triggering threshold (or subdivide huge class actions into multiple sub-\$5-million damages increments), and the cases would remain in state court – perhaps even shedding those cumbersome stipulations along the way. The Supreme Court's unanimous decision in favor of Standard Fire closes that loophole. It prohibits putative class representatives from avoiding federal court through strategic stipulations or subdivisions. CAFA was enacted to prevent systematic abuses of class-action lawsuits; the court's decision today furthers and strengthens that statutory charge."

**Kip Bollin and Brian Troyer, Thompson Hine**

"This is an important victory for defendants because prior to this decision plaintiffs had, like Knowles, sometimes avoided removal to federal court under CAFA by stipulating that they would seek damages below the \$5 million threshold. The Supreme Court's ruling now prevents them from doing so. Rather than treating a class representative's precertification stipulation of damages as binding, it is now clear that district courts must determine the actual value of the matter in controversy by aggregating the claims of the individual class members."

**Chris Coutroulis, Carlton Fields**

"By taking away an important piece of gamesmanship, plaintiffs have used to thwart CAFA's goal of expanding federal jurisdiction, the decision is quite significant. It goes right to the heart of where high-exposure class actions will be litigated, and that may well be outcome determinative in any particular case. With more cases successfully removed to federal court, the more likely it is that the requirements for class certification in Rule 23 and cases like Walmart v. Dukes will be carefully applied and that a rigorous analysis will be conducted. That, of course, is the very kind of class certification analysis plaintiffs seek to minimize or avoid by filing in friendly state court jurisdictions."

**Andre Cronthall, Sheppard Mullin**

"The court's unanimous decision in *Standard Fire v. Knowles* is not unexpected since to rule otherwise would permit named plaintiffs in proposed class actions to easily circumvent the Class Action Fairness Act by using purported 'stipulations' that could not be binding on unnamed class members pre-certification. Justice Breyer properly noted that accepting the plaintiff's stipulation would elevate form over substance and run counter to the purpose of CAFA."

**Dennis S. Ellis, Paul Hastings**

"The court's opinion in *Standard Fire Insurance Co. v. Knowles* denies plaintiffs and their counsel the opportunity to plead around CAFA and will require district courts to aggregate claims regardless of a stipulation. It will be interesting to see how this plays out in practice, as plaintiffs are often fond of overstating the number of putative plaintiffs. Without the ability to rely on a stipulation of the amount in controversy, plaintiffs and their counsel will have to put their money where their mouth is and risk removal to a potentially unfavorable forum if they inflate their predictions regarding the number of putative class members."

**Andra Barmash Greene, Irell & Manella LLP**

"Today's decision is significant because it prevents class action plaintiffs from controlling whether a putative class action is removable under the Class Action Fairness Act by purporting to limit claimed damages. Plaintiffs have sought to hinder defendants' ability to remove under CAFA by claiming in their complaints that the amount in controversy was less than CAFA's threshold of \$5 million. The Supreme Court easily dispensed with this tactic to avoid federal jurisdiction by saying that a class plaintiff could no longer stipulate to the amount in controversy. I consider this to be an important victory for defendants, as it will eliminate a hurdle that plaintiffs have used to prevent removal under CAFA. Defendants typically want the ability to remove class actions to federal court whenever possible. The significance of this ruling means that more class actions are likely to end up in federal court where CAFA says they belong."

**Michael R. McDonald, Gibbons PC**

"The significance of the Supreme Court's decision lies in the court's unanimous refusal to allow a plaintiff to unilaterally circumvent CAFA jurisdiction. The Court re-emphasized that district courts must aggregate the claims of potential class members at the time the complaint was filed in state court, and specifically rejected the notion that a plaintiff could stipulate to an amount less than the amount in controversy because such a stipulation could not be binding on absent class members. The decision is really a victory for following Congressional intent. For state class actions going forward, the decision means that the allegations of the complaint control, not the acts of a named plaintiff to circumvent CAFA."

**Christopher Pace, Weil Gotshal**

"The *Knowles* decision is significant not only because the court eliminated a common tactic plaintiffs lawyers were using to keep class actions in state courts, contrary to the goals of CAFA, but also because of the special attention the court paid to the interests of absent class members. The court's logic that a lead plaintiff cannot bind a class prior to certification may have ripple effects in other areas, such as whether agreements among the parties prior to class certification to narrow issues or discovery will continue to be binding after a class is certified. The *Knowles* decision closes a significant loophole plaintiffs lawyers were using to keep out of federal court class actions that Congress clearly intended be litigated in federal court when it passed CAFA. The *Knowles* decision shut the door on an end run plaintiff attorneys were making around CAFA, and in the process confirmed the importance of respecting the interests of absent class members in class action litigation."

**Archis Parasharami, Mayer Brown LLP**

"Today's decision in Standard Fire reflects the Supreme Court's unanimous recognition of the 'primary objective' of the Class Action Fairness Act: to ensure that federal courts are the ones to hear significant class actions. The decision should put an end to one of the lingering abuses in the class action arena, in which plaintiffs would bring class actions with sizeable potential damages but then 'stipulate' that the claims at issue are worth less than \$5 million — coincidentally, the threshold for when federal courts have jurisdiction over class actions. The goal in doing so is to avoid federal court and instead bring class actions in certain 'magnet' state courts that have been traditionally viewed as more hospitable to class actions and hostile to out-of-state defendants in particular."

**Amy Pierce, Pillsbury Winthrop Shaw Pittman LLP**

"It has become quite commonplace to see allegations in consumer class action complaints that the damages will not exceed \$5 million, the threshold for federal jurisdiction under CAFA. These sorts of stipulations have been quite effective at deterring removal of class actions to federal court under CAFA. The Supreme Court, in its common sense opinion, recognizes that, although the representative plaintiff certainly can bind himself or herself to stipulated damages, the same does not hold true for the other class members. Until a class has been certified, any such stipulations would be ineffective at binding the other class members. This opinion restores the level the playing field for determining in which forum the class action may be heard."

**Thomas Rohback, Axinn, Veltrop & Harkrider**

"Today's ruling by the Supreme Court in Standard Fire Ins. Co. v. Knowles ends any debate as to the ability of class action plaintiffs to plead around the jurisdictional requirements of the Class Action Fairness Act CAFA. The Congressional intent in enacting CAFA was to liberalize the jurisdictional threshold of class actions. Before CAFA, many class actions were brought in state court where plaintiffs believed they had some tactical advantages. Under CAFA, class actions were generally made the subject of federal court jurisdiction provided there was minimal — as opposed to complete — diversity of citizenship of the parties. So, too, federal court jurisdiction would be found where the amount in controversy exceeded the \$5 million threshold for class-wide damages. The court's decision precludes plaintiffs from preventing removal simply by artificially pleading a damage amount that is below \$5 million or stipulating that they would not seek more than \$5 million in damages. As a result of this ruling, plaintiffs will face greater difficulty in trying to keep putative class actions in state court."

**Chris St. Jeanos, Willkie Farr**

"Today's unanimous decision from the Supreme Court, rejecting plaintiff's effort to circumvent the Class Action Fairness Act by agreeing, in advance, that the class he hoped to, but did not yet, represent, would limit the damages sought, reaffirms the importance of the fundamental goal underlying CAFA — for fairness to all parties involved, class actions should generally be handled in the federal court system, and the attorneys who bring class actions should not be permitted to forum shop by selecting state court forums they believe will be favorable to their cases. Today, the court ensured this important goal would not be undermined by creative lawyering. Further, because of the impact class actions have on policyholders who buy coverage for such claims or insurers who sell it — today's decision is particularly important for those in the insurance industry."

--Editing by Sarah Golin.