

Class Action Alert

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FEBRUARY 2005

What the Class Action Fairness Act Means to You

The Class Action Fairness Act of 2005, signed into law by President Bush on February 18, marks the beginning of a new era of class action litigation where many large, multi-state class actions will be heard by federal courts.

Whether such cases will receive a harsher audience in the federal courts - the implicit goal of the law - is not a certainty, given the tendency of federal courts to certify classes in many cases and the enormous pressure to settle such cases once certified.

Proponents of class action reform are already taking the position that the Act did not go far enough and that federal law should be reformed so that proposed class members have to "opt-in" to class actions. Current law provides that courts may certify classes seeking money damages as long as class members are given notice and an opportunity to "opt out." If enacted into law, this "opt-in" provision would dramatically change the class action landscape.

It remains to be seen whether future reform will take place, but the Act is a step in the right direction. Whether future reform will take place is an interesting political question, but for now, how the federal courts will interpret the Act and how plaintiffs' counsel will seek to avoid its provisions remain open questions.

Let's take a brief look at what the Act does. The purposes of the Act are to "(1) assure fair and prompt recoveries for class members

The Act applies to any civil action commenced on or after February 18, 2005.

with legitimate claims; (2) restore the intent of the framers of the United States Constitution by providing for Federal court consideration of interstate cases of national importance under diversity jurisdiction; and (3) benefit society by encouraging innovation and lowering consumer prices." The Act does this by expanding the jurisdiction of federal courts to hear most class actions other than securities class actions (which are governed by other provisions of federal law) and class actions that are truly "local" in nature. It provides broad grounds for removing class actions to federal court. It also creates a "Bill of Rights" for class members.

'Minimal Diversity' Federal Jurisdiction

- The Act grants federal courts original jurisdiction over any class action lawsuit in which (a) there is diversity between any plaintiff and any defendant; and (b) the amount in controversy exceeds \$5 million (exclusive of costs and interest). The claims of individual class members may be aggregated in determining whether the action meets the amount-in-controversy requirement. This is a major change from existing law.

- Federal courts must exercise jurisdiction over any class action where less than one-third of the proposed class members are citizens of the same state and the primary defendants.
- Federal courts have discretion to decline jurisdiction over any class action in which between one-third and two thirds of the proposed class members and all primary defendants are citizens of the same state. The Act provides a list of factors for courts to consider in exercising this discretion:
 - whether the claims involve matters of national interest
 - whether the claims will be governed by laws of the state in which the action was originally filed
 - whether the class action has been pleaded in a manner that seeks to avoid federal jurisdiction
 - whether the action was brought in a forum with a distinct nexus with the class members, the alleged harm or the defendants
 - whether the number of citizens of the state in which the action was originally filed is substantially larger than the number of citizens from any other state, and the citizenship of the other members of the proposed class is dispersed among a substantial number of states
 - whether, during the three-year period preceding the filing of the class action, one or more other class actions asserting the same or similar

claims on behalf of the same or other persons have been filed.

- A “local class action” exception applies to federal court jurisdiction where:
 - greater than two-thirds of the proposed class members are citizens of the state in which the action was originally filed, at least one defendant from whom significant relief is sought and whose conduct forms a significant basis for the claim is a citizen of the state in which the action was originally filed, the principal injuries were incurred in the state in which the action was originally filed, and no other similar class action has been filed against the defendants in the preceding three years, **or**
 - two-thirds or more of the proposed class members and the primary defendants are citizens of the state in which the action was originally filed.
- The Act exempts claims involving federal securities as well as claims relating to internal governance of corporations or other business enterprises.
- The Act extends federal court jurisdiction to state court “mass actions” if the claims otherwise meet the requirements of diversity and amount in controversy as used for class actions under the Act. A “mass action” is any civil action other than a class action where claims for monetary damages to 100 or more plaintiffs are tried jointly. Mississippi law provides for such a procedure.

Rules Governing Removal of Class Actions

- The Act amends the federal removal statute to provide for removal of class actions under 28 U.S.C. § 1446, with three important differences from other civil actions:
 - The one-year limitations period for

removal under section 1446(b) does not apply. Class actions can be removed after one year has passed.

- Class actions are removable without regard to whether any defendant is a citizen of the state in which the action is brought.
- Class actions may be removed by any defendant without the consent of all defendants.

Class Action Bill of Rights

- The Act permits coupon settlements, but attorneys’ fees must be based either on the proportionate value of the coupons actually redeemed by class members or the hours actually billed in prosecuting the class action.
- The Act prohibits settlement of any class action where any class member would incur a net loss in paying attorneys’ fees, unless the court finds that the non-monetary benefits to the class member substantially outweigh the monetary loss.
- The Act prohibits settlement of any class action where some plaintiffs receive a larger proportion of the settlement than others simply because they are located in closer geographic proximity to the court.
- The Act requires each participating defendant to serve notice of the proposed settlement upon appropriate state and federal officials within 10 days of filing the settlement with the courts.

If notice is not provided, class members may refuse to comply with and may choose not to be bound by the settlement.

Effective Date

- The Act applies to any civil action commenced on or after February 18, 2005.

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