

## *Client Alert*

### **Class Action Fairness Act of 2005**

On February 18, 2005, President George W. Bush signed into law the Class Action Fairness Act (CAFA). The CAFA will significantly impact class action lawsuits commenced on or after that date.

#### **Highlights**

The most noteworthy effects of the enactment of CAFA include:

- significantly broadening the scope of federal court jurisdiction over class actions;
- eliminating strict procedural obstacles to removing a class action from state to federal court, and providing for accelerated appellate review of orders remanding class actions to state court;
- imposing stricter notice requirements in connection with the settlement of class actions; and
- imposing stricter court scrutiny of proposed class action settlements that involve an award of coupons to class members as well as the payment of plaintiffs' counsel's fees.

#### **Federal District Court Jurisdiction Over Interstate Class Actions**

Under CAFA, federal district courts now have jurisdiction over many class actions, provided: (1) the amount in controversy exceeds \$5 million (exclusive of interest and costs), and, (2) at least one of the plaintiffs is a citizen of a different state or country than at least one of the defendants.

While, prior to CAFA, individual class members' claims could not be aggregated in certain jurisdictions in determining whether the necessary amount in controversy had been met, the new law permits the aggregation of all class members' claims to satisfy the \$5 million requirement.

CAFA also has implemented distinct dates for use in determining the citizenship of plaintiff class members: (1) as of the date of the filing of the (a) complaint or (b) amended complaint; or (2) if there is no federal jurisdiction over the case stated by the initial complaint, as of the date of service by plaintiffs of an amended pleading, motion, or other paper indicating the existence of federal jurisdiction.

While under prior law, the citizenship of partnerships and other unincorporated entities was based on the citizenship of each individual member (often making it difficult to obtain diversity jurisdiction), CAFA provides that, for purposes of class actions, an unincorporated association is considered a citizen of the state where it has its principal place of business, and the state under whose laws it is organized -- the same standard used for determining the citizenship of corporations.

#### **For Home State Defendants**

Assuming the jurisdictional diversity and monetary requirements set out in CAFA are satisfied, the federal court must exercise jurisdiction over the class action if one-third or fewer of all class

members, in the aggregate, and the primary defendants, are citizens of the state in which the action was commenced. Conversely, the federal court must decline to exercise jurisdiction over a class action where two-thirds or more of the class members and the primary defendants are citizens of the forum state. If between one-third and two-thirds of the members of the putative plaintiffs' class, in the aggregate, and the defendants, are citizens of the state in which the action was originally filed, the district court has discretion to exercise jurisdiction over the case. In deciding whether to do so, the court should weigh the following factors:

1. whether the claims asserted involve matters of national or interstate interest;
2. whether the claims will be governed by laws of the state in which the action was originally filed;
3. whether the class action has been pleaded in a manner that seeks to avoid federal jurisdiction;
4. whether the class action was brought in a forum with a distinct nexus to the class members, the alleged harm, or the defendants;
5. whether the number of citizens of the state in which the action was filed is substantially larger than the number of citizens of any other state, and the citizenship of the other members of the proposed class is dispersed among a substantial number of states; and
6. whether one or more other class actions asserting the same or similar claims on behalf of the same or other persons have been filed during the previous three years;

### **Other Exceptions**

CAFA also specifically carves out of the federal courts' jurisdiction class actions involving: 1) governmental defendants; 2) small classes with fewer than 100 members; and 3) securities-related class actions or state-law-based class actions regarding the internal affairs of a business enterprise.

### **Mass Actions**

CAFA also expands federal jurisdiction to cover so-called "mass actions" -- actions in which several named plaintiffs seeking monetary relief for claims involving common questions of fact or law join together in one action for purposes of trial without obtaining class certification.

### **Removal of Class Actions**

CAFA provides for easier and more efficient removal of an interstate class action to a federal district court. Among the changes for removal procedures for class actions are:

- the abolition of the one-year deadline for removal;
- allowing removal regardless of whether a defendant is a citizen of the state where the action was commenced;
- the elimination of the requirement that all defendants consent to removal;
- an accelerated discretionary appellate review process when a class action has been remanded to state court after purportedly being improperly removed; and

### **Notice Requirements for Class Action Settlements**

CAFA establishes several new requirements for notification of any proposed class action settlement to the appropriate federal official and state officials of each state in which a class member resides. These notice provisions specifically govern the content of the notice, and when, and to whom, such

notice must be given. If a class member demonstrates that the defendants failed to comply with the notice requirements, that class member may refuse to be bound by the settlement agreement.

### **Court Approval of Coupon Settlements**

In contingency fee cases, under CAFA, the value of a proposed class action settlement in which class members are awarded “coupons” -- an award intended to be redeemed for something else -- will be based upon the value of the coupons actually redeemed, not the value of the coupons awarded. Moreover, the court must conduct a hearing and issue a written finding that the settlement is fair, reasonable and adequate for class members.

In non-contingency fee case where a class action settlement provides for an award of coupons to class members, the attorneys’ fees to be paid will be based on the reasonable amount of time the attorneys spent working on the action. The same standard will apply where the class action settlement provides for an award of both coupons and equitable relief.

### **Other Changes**

Under CAFA, the court cannot approve any proposed class action settlement in which a class member is required to make payments to class counsel that result in a net loss to the class member without issuing a written finding that the non-monetary benefits substantially outweigh the monetary expenditure. In addition, courts are prohibited from approving a proposed class action settlement that would provide for the payment of greater sums to certain class members based solely on those members’ geographic proximity to the court.

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While CAFA places more class action cases in the federal courts, it does not affect the type of remedies or damages to which successful plaintiffs would be entitled under state law, as applied by the federal courts. Nonetheless, any defendant served in state court with a multi-party plaintiffs class action suit subsequent to February 18, 2005 may well benefit from this new law.

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This client alert is meant to provide you with a brief overview of some of the more significant aspects of CAFA. We will be happy to further discuss with you any of the topics raised in this client alert, provide you with a more detailed analysis, or to continue to keep you informed of any subsequent amendments or case law interpreting this new Act as they come to light.

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### **For Additional Information**

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**Litigation**

Peter N. Hillman	1 (212) 408-1010	phillman@chadbourne.com
Mary T. Yelenick	1 (212) 408-5493	myelenick@chadbourne.com
Thomas E. Butler	1 (212) 408-5283	tbutler@chadbourne.com
Phoebe A. Wilkinson	1 (212) 408-1157	pwilkinson@chadbourne.com
Gretchen N. Werwaiss	1 (212) 408-1112	gwerwaiss@chadbourne.com

**Chadbourne & Parke LLP**

**New York**

30 Rockefeller Plaza  
New York, New York 10112  
Telephone: +1 (212) 408-5100  
Facsimile: +1 (212) 541-5369

**Washington, D.C.**

1200 New Hampshire Avenue, N.W.  
Washington, D.C. 20036  
Telephone: +1 (202) 974-5600  
Facsimile: +1 (202) 974-5602

**Los Angeles**

350 South Grand Avenue, Suite 3300  
Los Angeles, CA 90071  
Telephone: +1 (213) 892-1000  
Facsimile: +1 (213) 622-9865

**Houston**

1100 Louisiana, Suite 3500  
Houston, TX 77002  
Telephone: +1 (713) 571-5900  
Facsimile: +1 (713) 571-5970

**London**

Chadbourne & Parke  
(a multinational partnership)  
Regis House  
45 King William Street  
London EC4R 9AN  
Telephone: +44 (0)20 7337-8000  
Facsimile: +44 (0)20 7337-8001

**Moscow**

52/5 Kosmodamianskaya Naberezhnaya  
Moscow 115054, Russian Federation  
Telephone: +7 (095) 974-2424  
Facsimile: +7 (095) 974-2425

**Warsaw**

(through a Polish partnership)  
ul. Emilii Plater 53  
00-113 Warsaw, Poland  
Telephone: +48 (22) 520-5000  
Facsimile: +48 (22) 520-5001

**Kyiv**

11 Mykhailivska Street, 4th Floor  
Kyiv 01001, Ukraine  
Telephone: +380 (44) 230-2534  
Facsimile: +380 (44) 230-2535

**Beijing**

Beijing Kerry Centre  
Suite 26, Plaza Business Centre  
3rd Floor, North Tower  
1 Guanghai Road, Chaoyang District  
Beijing 100020, China  
Telephone: +86 (10) 8529-8892  
Facsimile: +86 (10) 8529-8866

If you would like additional copies of this client alert, please contact Phillipa Yule, Director of Marketing and Creative Services, at +1 (212) 408-5240 or e-mail: [pyule@chadbourne.com](mailto:pyule@chadbourne.com).