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## Ninth Circuit Makes CAFA Jurisdiction Stick

On April 21, 2010, the Ninth Circuit Court of Appeals confirmed that a putative class action removed to federal court under the Class Action Fairness Act (CAFA) does not lose federal jurisdiction just because the court denies class certification. The case, *United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, AFL-CIO, et al. v. Shell Oil Company, et al.*, No. 10-55269, \_\_\_ F.3d \_\_\_ (9th Cir. Apr. 21, 2010), began as a putative class action in California state court. Plaintiffs alleged that defendants' oil refineries violated California's Unfair Competition Law, Business & Professions Code § 17200, and failed to provide meal periods, rest periods, timely and accurate wage statements and wages due at the time of termination. Defendants removed the case to federal court under CAFA, 28 U.S.C. § 1332(d)(2), which provides removal jurisdiction if any member of the putative class is diverse from any defendant, if the amount in controversy exceeds \$5,000,000.

After removal, plaintiffs sought certification of two classes. The district court denied class certification and then granted plaintiffs' motion to remand, on the basis that the case no longer satisfied CAFA's jurisdictional requirements. The parties then engaged in a series of procedural volleys that resulted in two new putative class actions in federal court and the remanded action stayed in state court. Against that procedural backdrop, the Ninth Circuit addressed the question "whether post-removal denial of class certification divests the federal courts of jurisdiction—or, as plaintiffs argue, whether class certification is a necessary condition to continued jurisdiction." The answer is NO.

Only the Seventh and Eleventh Circuits had squarely considered the issue before, and both reached the same conclusion as the Ninth Circuit: "a putative class action, once properly removed, stays removed." The Ninth Circuit approvingly noted three grounds relied on by the Eleventh Circuit: (1) CAFA's jurisdictional rules apply to "proposed" classes; (2) jurisdictional facts are assessed at the time of removal; and (3) post-removal events, including non-certification, do not deprive federal courts of subject matter jurisdiction. The court noted that if Congress had intended that a properly removed class action be remanded if class certification ultimately fails, "it could have said so."

Finally, the court left the door slightly ajar for limited exceptions, "such as when a case becomes moot in the course of litigation or when there was no jurisdiction to begin with because the jurisdictional allegations were frivolous from the start."

*This article was originally posted on Sheppard Mullin's Class Action Defense Strategy Blog, which can be found at [www.classactiondefensestrategy.com](http://www.classactiondefensestrategy.com).*

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