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## Supreme Court Holds That Damages Stipulation Cannot Bind Class and Defeat Federal Jurisdiction

The Supreme Court unanimously held yesterday in *Standard Fire Ins. Co. v. Knowles*, 2013 WL 1104735, that a damages-limiting stipulation by the named plaintiff in a putative class action is not binding on absent class members before class certification and therefore cannot defeat removal of a class action under the Class Action Fairness Act of 2005 (CAFA). Click [here](#) for the opinion.

*Knowles* is a proposed class action filed in an Arkansas state court claiming that Standard Fire Insurance Company unlawfully failed to include general contractor fees (for overhead and profit) when it settled homeowners' insurance claims. In the complaint, and in an attached affidavit, the named plaintiff stipulated that he "will not at any time during this case . . . seek damages for the class . . . in excess of \$5 million in the aggregate." (Slip op. at 2.) The district court concluded that the stipulation was enforceable and binding on the class and defeated CAFA jurisdiction. The Eighth Circuit declined to hear an interlocutory appeal under the CAFA procedure.

Justice Breyer's opinion for the Court reasoned that, to be effective, stipulations must be binding. But the stipulation filed by the named plaintiff "does not speak for those he purports to represent. That is because a plaintiff who files a proposed class action cannot legally bind members of the proposed class before the class is certified." (Slip op. at 4.) Thus, the effect of the stipulation was not to reduce the value of the putative class members' claims. "[T]o ignore a non-binding stipulation does no more than require the federal judge to do what she must do in cases without a stipulation and what the statute requires, namely "aggregat[e] the 'claims of the individual class members.'" (Slip op. at 6.) The Court contrasted an individual plaintiff's mastery of her own complaint, noting that an individual plaintiff can submit a binding stipulation to limit damages that effectively also limits standard removal jurisdiction. The Court did not consider *Knowles*'s alternative argument that a stipulation is binding to the extent it limits attorneys' fees, because the stipulation here did not provide for that option.

In *Knowles* and in other recent cases, the Court has announced an increasingly firm rule that a putative class representative cannot take binding actions on behalf of an uncertified class. This development raises issues concerning whether, for example, communications between a putative class member and a proposed class representative's attorney can be subject to the attorney-client privilege, as some older cases had suggested.

The Court is expected to issue an opinion soon in another pre-certification controversy, *Genesis HealthCare Corp. v. Symczyk*, which addresses the effect of tendering judgment to the proposed class representative.

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*If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.*

**Authors**

[Thomas M. Byrne](#)

404.853.8026

[tom.byrne@sutherland.com](mailto:tom.byrne@sutherland.com)

[Valerie Strong Sanders](#)

404.853.8168

[valerie.sanders@sutherland.com](mailto:valerie.sanders@sutherland.com)

**Related Attorneys**

[Thomas W. Curvin](#)

404.853.8314

[tom.curvin@sutherland.com](mailto:tom.curvin@sutherland.com)

[Robert D. Owen](#)

212.389.5090

[robert.owen@sutherland.com](mailto:robert.owen@sutherland.com)

[Phillip E. Stano](#)

202.383.0261

[phillip.stano@sutherland.com](mailto:phillip.stano@sutherland.com)

[Steuart H. Thomsen](#)

202.383.0166

[steuart.thomsen@sutherland.com](mailto:steuart.thomsen@sutherland.com)

[Lewis S. Wiener](#)

202.383.0140

[lewis.wiener@sutherland.com](mailto:lewis.wiener@sutherland.com)