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**Practice Groups:**

**Class Action  
Litigation Defense;  
Financial Institutions  
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Litigation**

## Knowing Where You Are Litigating is Half the Battle:

The Supreme Court Hears Oral Argument in *Knowles v. Standard Fire Insurance Co.* to Decide Whether a Named Plaintiff Can Defeat Federal Jurisdiction Under CAFA by Stipulating Not to Seek Damages in Excess of \$5 Million

**By Brian M. Forbes, Ryan M. Tosi, David D. Christensen, Matthew N. Lowe**

Whether a putative class representative can block removal of his case to federal court by stipulating that class damages will not exceed the jurisdictional minimum under the Class Action Fairness Act (“CAFA”) will be addressed by the U.S. Supreme Court in *Knowles v. Standard Fire Insurance Co.*, No. 11-1450 (U.S.). This is the first opportunity for the Court to directly address the scope of CAFA removal and attempts by the plaintiff bar to curtail such removal in order to remain in certain “plaintiff-friendly” state courts.

The U.S. Supreme Court is due to address a matter of first impression regarding the scope of the Class Action Fairness Act (“CAFA”) and a plaintiff’s ability to restrict removal of a putative class action to federal court forcing the defendant to litigate in “plaintiff friendly” state court. The Court recently heard argument in *Knowles v. Standard Fire Ins. Co.*, No. 11-1450 (U.S.), to decide whether a putative class representative can block removal of his case to federal court by stipulating that class damages will not exceed the jurisdictional minimum under CAFA.

Before Congress enacted CAFA in 2005, a putative class action could only be filed in or removed to federal court if the case presented a federal question (typically involving a federal statutory or constitutional claim), or satisfied principles of traditional diversity jurisdiction.<sup>1</sup> Under traditional diversity jurisdiction, federal courts can only exercise jurisdiction over a class action where (1) there is complete diversity among the named plaintiffs and defendants (i.e., no plaintiff is a citizen of the same state as any defendant), and (2) there is at least one named plaintiff whose amount in controversy exceeds \$75,000.<sup>2</sup> Before CAFA, defendants in exclusively state-law based class actions could face exposure of tens of millions of dollars, but could not be heard in federal court because no single named plaintiff had claims in excess of \$75,000.<sup>3</sup> Congress enacted CAFA to address at least two major trends in class action filings: first, that “cases involving large sums of money, citizens of many different States, and issues of national concern, have been restricted to State courts even though they have national consequences,” and second, that some plaintiffs and their attorneys were engaging in abusive, forum-shopping strategies that required foreign defendants to litigate in potentially biased state court jurisdictions.<sup>4</sup>

CAFA significantly expanded the ability of federal courts to preside over class actions by providing diversity jurisdiction over putative class actions (1) consisting of more than 100 class members, (2) whose claims, *in the aggregate*, exceed \$5 million, and (3) in which any of the class members is a citizen of a state different from any defendant, unless at least two-thirds or more of the members of the class in the aggregate and the primary defendants are citizens of the state in which the action was originally filed.<sup>5</sup>

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The United States Supreme Court has long held that a plaintiff in a non-class action suit may stipulate to damages below the jurisdictional threshold on the basis that the plaintiff is the “master of his complaint.”<sup>6</sup> Few federal appellate courts, however, have directly addressed whether a putative class representative – acting on behalf of non-named individuals – can avoid federal jurisdiction under CAFA by stipulating that the aggregated *class* damages will not exceed the \$5 million threshold. The Eighth Circuit Court of Appeals commented in *dicta* (a non-essential, non-binding remark in the decision) that a class representative may avoid removal to federal court by including “a binding stipulation with his [pre-removal complaint] stating that [plaintiff] would not seek damages greater than the jurisdictional minimum.”<sup>7</sup> The Sixth Circuit Court of Appeals also stated in *dicta* that “a binding stipulation or affidavit that waives a jurisdictionally sufficient recovery and is filed with a plaintiff’s complaint is effective to reduce the amount in controversy below the threshold.”<sup>8</sup> On the other hand, the Seventh Circuit Court of Appeals suggested that a plaintiff may not avoid federal jurisdiction under CAFA by disclaiming class damages in his complaint.<sup>9</sup> Moreover, the Seventh Circuit recently noted that named plaintiffs owe a fiduciary duty to the class, which could be violated where “[a] representative . . . throw[s] away what could be a major component of the class’s recovery.”<sup>10</sup>

In *Knowles*, the case on review by the Supreme Court, the named plaintiff filed a class action complaint in Arkansas state court that expressly stated that neither the plaintiff nor any putative class member had individual claims exceeding \$75,000 in damages, and that the aggregate damages for the class were less than \$5 million, inclusive of costs and attorneys’ fees.<sup>11</sup> The named plaintiff also offered a declaration affirming that he would not “seek damages for myself or any other individual class member in excess of \$75,000 (inclusive of costs and attorneys’ fees) or seek damages for the class as alleged in the complaint to which this stipulation is attached in excess of \$5,000,000 in the aggregate (inclusive of costs and attorneys’ fees).”<sup>12</sup> The named plaintiff also limited the scope of the putative class to cover only a two-year period despite a five-year statute of limitations applicable to the putative class claims.<sup>13</sup>

Defendant Standard Fire Insurance Company (“Standard Fire”) removed the case to federal court under CAFA and submitted evidence showing that if the named plaintiff recovered the class damages sought – even only as to a two-year class period – the total damages would exceed \$5 million.<sup>14</sup> The District Court held that this evidence satisfied Standard Fire’s burden of proving by a preponderance of the evidence that the amount in controversy exceeded CAFA’s jurisdictional minimum.<sup>15</sup> Nevertheless, the District Court found that the class representative was the master of his complaint and could limit his recovery as he saw fit, and thus, by submitting a signed and sworn stipulation, had proved to a legal certainty that the putative class members’ claims would not exceed \$5 million in the aggregate.<sup>16</sup> Accordingly, the District Court remanded the case to Arkansas state court.

The Eighth Circuit Court of Appeals denied Standard Fire’s petition for review, but the Supreme Court granted Standard Fire’s petition for writ of certiorari on August 31, 2012, and held oral argument on January 7, 2013.

At oral argument, counsel for Standard Fire responded to several questions from Justices Kagan and Sotomayor concerning whether CAFA limited the ability of a named plaintiff to stipulate to a limitation of his damages under the “master of the complaint” doctrine.<sup>17</sup> The Justices also asked Standard Fire’s counsel why the stipulation could not stand at least until the class certification stage when the court would determine whether the class representative satisfied the adequacy requirement. Under this theory, the defendant could then remove the case to federal court if there is a finding that the named plaintiff is inadequate – an event that would essentially nullify the jurisdictional stipulation.<sup>18</sup> Justice Ginsburg commented, however, that jurisdiction is judged at the time of removal

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when there is no class yet certified, and thus “at the removal stage the stipulation is inoperative as to the non-named class members.”<sup>19</sup> The Justices also asked Standard Fire’s counsel why putative class members who disagreed with the stipulation could not simply opt out of the class.<sup>20</sup>

Certain of the Justices raised concerns to counsel for Knowles that the use of such stipulations could effectively permit named plaintiffs to manipulate their cases to artificially avoid federal jurisdiction under CAFA and create a loophole that undercuts the purpose of CAFA.<sup>21</sup> Justice Ginsburg inquired as to how the named plaintiff could stipulate on behalf of the entire class when he is not permitted to bind putative class members until a class is certified.<sup>22</sup> Justice Alito noted a potential procedural issue with permitting class representatives to stipulate to a damages cap where the putative class members could not be notified of the amount of their damages and may be limited by this self-imposed damages cap.<sup>23</sup>

A ruling is expected in the *Knowles* case by the end of the current term in June 2013. Whatever the outcome, the Supreme Court’s first substantive ruling concerning CAFA removal will undoubtedly impact the ability of a party to litigate in the forum of its choice. K&L Gates will continue to monitor the *Knowles* matter and to report on future developments on this important class action issue.

For additional information regarding the types of class actions defended by K&L Gates and the K&L Gates lawyers who concentrate in class action defense, please visit our practice group website at <http://www.klgates.com/class-action-litigation-defense-practices/>.

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<sup>1</sup> 28 U.S.C. §§ 1331, 1332(a).

<sup>2</sup> 28 U.S.C. § 1332(a); *see also Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 559 (2005) (holding that diversity jurisdiction is satisfied as long as one named plaintiff in a class action asserts a claim in excess of \$75,000).

<sup>3</sup> Under traditional diversity jurisdiction, defendants could not aggregate the claims of named plaintiffs or putative class members to reach the amount in controversy threshold. *See Exxon Mobil Corp.*, 545 U.S. 571-72 (noting that before CAFA, aggregation of claims to reach amount-in-controversy was not permitted).

<sup>4</sup> 151 Cong. Rec. S1086-02, S1103, reprinted in 2005 WL 292036 (1st Sess. 2005).

<sup>5</sup> *See* 28 U.S.C. §§ 1332(d)(2), (5)(b).

<sup>6</sup> *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 294 (1938).

<sup>7</sup> *Bell v. Hersey Co.*, 557 F.3d 953, 958 (8th Cir. 2009) (reversing District Court's remand order where plaintiff's statement in his complaint that damages were only \$4.99 million was insufficient to prove "it is legally impossible to recover in excess of the jurisdictional minimum").

<sup>8</sup> *Freeman v. Blue Ridge Paper Prods., Inc.*, 551 F.3d 405, 407 (6th Cir. 2008) (holding removal was proper, because the named plaintiff's limitation of damages to less than CAFA's \$5 million minimum threshold was not made in a manner that bound the class and defendant showed by a preponderance of the evidence that the "actual value" satisfied the amount-in-controversy requirement under CAFA).

<sup>9</sup> *Back Doctors Ltd. v. Metro. Prop. & Cas. Ins. Co.*, 637 F.3d 827, 830-31 (7th Cir. 2011) (vacating order remanding case; "what [plaintiff] is willing to accept thus does not bind the class and therefore does not ensure that the stakes fall under \$5 million").

<sup>10</sup> *Back Doctors Ltd.*, 637 F.3d at 830-31.

<sup>11</sup> *Knowles v. Standard Fire Ins. Co.*, No. 4:11-cv-04044, 2011 WL 6013024, at \*2 (W.D. Ark. Dec. 2, 2011).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at \*6.

<sup>14</sup> *Id.* at \*3.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 4-5 (relying on *Bell v. Hersey Co.*, 557 F.3d 953 (8th Cir. 2009)).

<sup>17</sup> Transcript of Oral Argument in *Knowles v. Standard Fire Ins. Co.*, No. 11-1450 (U.S. Jan. 7, 2012) at 15, 53-54, available at [http://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/11-1450.pdf](http://www.supremecourt.gov/oral_arguments/argument_transcripts/11-1450.pdf).

<sup>18</sup> *Id.* at 6-7, 10-11, 21, 27, 40-41.

<sup>19</sup> *Id.* at 36.

<sup>20</sup> *Id.* at 7.

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<sup>21</sup> *Id.* at 27-28, 29, 30, 33-34, 35. Specifically, Chief Justice Roberts asked “What if you had a case where a lawyer brings an action in Miller County and says: I want to represent the class of people with these claims and these claims, whose names begin with A to K. It turns out that's \$4 million. And in the next county, at the same time, he files a case saying, I'd like to represent these people whose names begin L to Z. In each of those cases, it's \$4 million. I take it you don't have any objection to that?” *Id.* at 29:1-9.

<sup>22</sup> *Id.* at 36, 39-41.

<sup>23</sup> *Id.* at 20.