



International Association for the
Study of Insurance Economics

Études et Dossiers

Études et Dossiers No. 303

Annual Liability Regimes Conference

**How to better react to developments in
liability and insurance**

26 – 28 October 2005
Munich

December 2005

**Working Paper Series of
The Geneva Association**

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The Class Action Fairness Act of 2005

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The Class Action Fairness Act of 2005

- Signed February 18, 2005
- S.5 ES, 109th Cong., 1st Sess.
- Senate vote: 72-26; House vote: 279 – 149
- Applies to civil actions commenced on or after date of enactment (not retroactive)
- No applicability to class actions pending or filed before February 18, 2005
- Does not change FRCP 23 or requirements for class certification

The Class Action Fairness Act of 2005

- Central Features:
 - Original jurisdiction
 - Mandatory jurisdiction
 - Discretionary jurisdiction
 - Removal Jurisdiction
 - Interlocutory Appeal
 - Mass Actions
 - Settlement and Notice
 - Effective date and applicability

CAFA Original Jurisdiction Provisions

The Class Action Fairness Act of 2005

- Original Jurisdiction:
 - CAFA incorrectly characterized as removal statute
 - Amends federal diversity statute 28 U.S.C. § 1332

The Class Action Fairness Act of 2005

- Original Jurisdiction:
- Provides federal courts with original diversity jurisdiction over any class action when:
 - (1) aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs;
 - (2) # of putative class members is at least 100;
 - (3) any class member is a citizen of a state or foreign country different than the defendant

The Class Action Fairness Act of 2005

- Two significant modifications of existing federal diversity jurisdiction:
 - (1) permits aggregation of class damages; effectively overrules non-aggregation decision in *Zahn v. Int'l Paper*, 414 U.S. 291(1974)
 - (2) effectively expands federal court jurisdiction for large scale, multistate class actions – eliminates previous impediments to fed. juris. over such actions

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- Statute provides for two types of federal jurisdiction for class actions that meet threshold requirements of minimal diversity and amount in controversy:
 - (1) mandatory jurisdiction
 - (2) discretionary jurisdiction

The Class Action Fairness Act of 2005

- Mandatory Jurisdiction (2 types):
 - Circumstances when a court may not decline jurisdiction;
 - Circumstances when a court must decline jurisdiction

The Class Action Fairness Act of 2005

- Mandatory Jurisdiction: When a federal court may not decline jurisdiction:
 - If 1/3 or fewer of proposed class members are citizens of the state in which the plaintiffs originally filed the action
 - *i.e.*, the federal court must take this class action

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- Mandatory Jurisdiction: When a federal court must decline jurisdiction:
 - (1) if more than 2/3 of class members are citizens of the state in which the action was originally filed;
 - (2) at least one defendant is a citizen of the state in which the action was originally filed;
 - (3) class members are seeking significant relief from the defendant;

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- Mandatory Jurisdiction: When a federal court must decline jurisdiction (cont'):
 - (4) the defendant's alleged conduct forms a significant basis for the plaintiffs' claims;
 - (5) the principal injuries were incurred in the state where the action was originally filed; and
 - (6) in 3 prior years, the same claimants have not asserted the same or similar claims against the defendant

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- When a federal court must decline jurisdiction (additional considerations) (the “local carve out” exception):
 - (1) if 2/3 or more of class claimants, and
 - (2) the “primary” defendants,are citizens of the state in which the action was originally filed

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- Discretionary Jurisdiction:
 - Vests discretion to decline jurisdiction even where proposed class action satisfies minimal diversity and amount-in-controversy requirements
 - Examples:

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- Discretionary Jurisdiction:
 - Court may decline jurisdiction if:
 - greater than 1/3 but less than 2/3 of class members, and
 - the “primary defendants”
 - are citizens of the state in which the case was filed
 - Court must take into account:
 - Whether yielding jurisdiction would be “in the interests of justice” and
 - The “totality of the circumstances”

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The Class Action Fairness Act of 2005

- Discretionary Jurisdiction:
 - Factors guiding evaluation to decline jurisdiction, including whether:
 - (1) claims involve matters of national or interstate interest;
 - (2) claims will be governed by state law in which the action was originally filed, or by the laws of other states;
 - (3) the plaintiffs artfully pleaded the case to avoid federal jurisdiction;

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- Discretionary Jurisdiction (con't):
 - Factors guiding evaluation to decline jurisdiction, including whether:
 - (4) the forum has a nexus with class members, the defendants, and the harms alleged;
 - (5) the numbers of class members is substantially larger from the state in which the action was originally filed than from any other state, or whether the claimants are dispersed among many states; and
 - (6) During the three years prior to the filing of the class action, one or more same or similar actions were filed on behalf of the same or similar claimants

CAFA Removal Provisions

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- Removal Procedures:
 - CAFA works in conjunction with other federal removal statutes at 28 U.S.C. §§ 1441 et seq.
 - Adds new removal provision:
 - 28 U.S.C. § 1453

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- Removal Procedures:
 - Modifies removal procedure in several respects:
 - Timing:
 - Existing diversity cases must be removed to federal court within one year (28 U.S.C. § 1446(b))
 - Under CAFA, class actions are exempt from this deadline

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- Removal Procedures:
 - Modifies removal procedure in several respects:
 - Limitations on removal vis-à-vis defendants:
 - Under existing removal provisions, case may not be removed if any D is a citizen of state in which action is brought;
 - Under CAFA, class actions may be removed regardless of whether any D is a citizen of state in which action is brought

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- Removal Procedures:
 - Modifies removal procedure in several respects:
 - Consent to removal:
 - Under existing removal provisions, all Ds must consent to a removal petition;
 - Under CAFA, state class actions may be removed without the consent of all the Ds

CAFA Interlocutory Appeal Provisions

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- Interlocutory appeal
 - Under current removal statutes, remand orders generally not reviewable (28 U.S.C. § 1447(d))
 - Under CAFA, accelerated discretionary review of district court order granting or denying motion to remand class action

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- Interlocutory appeal
 - appeal must be brought “not less than seven days after entry of order”
 - Appellate courts have discretion to entertain appeal
 - CAFA statute does not provide standards for exercise of discretion

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- Interlocutory appeal
 - If appellate court accepts discretionary review:
 - must complete review no later than 60 days after the date the appeal was filed;
 - or, a 10-day extension “for good cause shown and in the interests of justice”

CAFA Settlement and Notice Provisions

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- Settlements and Notice
 - Preamble to CAFA recites both benefits and abuses of class action litigation
 - To curb most egregious excesses of class action settlement, CAFA contains several provisions relating to settlements

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- Settlements and Notice
 - Restrictions on settlement agreements:
 - Settlements may not pay larger awards to some class members who live in closer proximity to court where litigation was filed
 - In coupon settlements, attorney fee award to be based on value to class members of coupons actually redeemed

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- Settlements and Notice
 - Restrictions on settlement agreements:
 - Coupon settlements: if portion of coupon settlement not used to determine fees, fee award to be based on time attorneys reasonably expended

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- Notice Provisions:

- When proposed settlement filed in court:

- Each D must notify appropriate state and federal officials of each state in which class members reside of the proposed settlement
- Notice must include information about: complaint, settlement, class notice, proposed judgment, names of class members (if feasible)

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Notice and Settlement (approval):

- federal court may not approve class settlement earlier than 90 days after state and federal officials are notified
- If notice to government officials is not provided, a class member may not be bound by any settlement or consent decree

Possible Implications of CAFA

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- Possible Implications of CAFA:
 - CAFA will breed ancillary appellate litigation:
 - first-wave appellate review of originally filed class actions;
 - first-wave appellate review of state-removed class actions;
 - statutory construction of problematic statutory language and fact-bound issues

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- Possible Implications of CAFA:
 - Large-scale multistate class litigation will be filed originally in federal court;
 - Large-scale multistate class litigation will be removed from state court into the federal system
 - Only truly localized class actions will remain in state court; Ps can keep class actions in state court by pleading class of only one-state residents

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- Possible Implications of CAFA:
 - Plaintiffs may regroup and seek to file large scale multistate class actions in plaintiff-friendly federal circuits
 - Defendants may find it easier to defeat class certification in federal court than some state “hell-hole” jurisdictions