

Business & Law Newsletter

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THE CLASS ACTION FAIRNESS ACT: IT MAY AFFECT YOU

The Class Action Fairness Act is designed to correct abuses of past class action procedures by making it easier for defendants in class actions to remove multistate cases to federal court.

The Class Action Fairness Act was enacted on February 18, 2005, and it may affect you. Perhaps you are unknowingly a member of a class action lawsuit. Maybe you have already had the interesting experience of receiving a postcard or letter stating that you or your business are involuntarily a member of a class action lawsuit. Possibly you have received a check for a small amount of money, perhaps just a few dollars or less, for your share of a class action lawsuit you knew nothing about. Or, perhaps your business has been sued in a class action lawsuit. If any of these scenarios has happened to you, or if any of these scenarios occur in the future, you should be aware of the Class Action Fairness Act.

The Class Action Fairness Act was the first federal law enacted in 2005 and is designed to correct abuses of past class action procedures by making it easier for defendants in class actions to remove multistate cases to federal court. The Legislature reformed class action procedures that have historically allowed a small number of plaintiffs to represent large numbers of people in lawsuits, often against insurance companies and large businesses, without prior notice to all the people represented by the class. These procedures often resulted in lawsuits which provided millions of dollars in fees to class action plaintiffs lawyers with little or no benefit to the class members. These procedures also often resulted in unjustified awards to some class members at the expense of other class members. As a result, the Legislature believed abuses of the class action system harmed class members with legitimate claims, adversely affected interstate commerce, unfairly harmed out-of-state defendants, and undermined the national judicial system.

INTENT OF THE NEW LAW

Because of these abuses, the new law is intended to: (1) lessen the number of frivolous class action lawsuits, especially those filed in state court jurisdictions known for exorbitant run-away jury verdicts; (2) curtail the practice of class action plaintiffs lawyers receiving large fees, often in the millions of dollars, in cases where class members receive compensation comprised of coupons or other awards of little or no value; and (3) assure fair and prompt recoveries for class members with legitimate claims.

IT IS EASIER TO GET TO FEDERAL COURT

The Class Action Fairness Act revises the federal jurisdiction statute to grant federal courts original jurisdiction in cases seeking damages in excess of \$5,000,000 and any class member is a citizen of a state different from any defendant. Further, class action lawsuits seeking more than \$5,000,000 must now be heard in federal court when less than one-third of the plaintiffs are from the same state as the primary defendant. However, federal courts may, after analyzing a variety of circumstances, decline to exercise jurisdiction over any such class in which more than one-third but fewer than two-thirds of the class



members and the primary defendant are citizens of the state in which the action was originally filed. Federal courts are required to decline jurisdiction over cases in which the primary defendant and more than two-thirds of the plaintiffs are citizens of the state in which the action was originally filed.

**FOR MORE INFORMATION
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REQUIREMENTS OF PROPOSED SETTLEMENTS AND FEES

The Act also establishes requirements for the calculation of plaintiffs attorneys' fees in cases that provide for a recovery of coupons to class members. More specifically, attorneys' fees are to be based on the value of the coupons actually redeemed by the class members or upon the time the attorneys reasonably expended working on the case. Under the new requirements of the Act, federal courts are to scrutinize all proposed settlements and approve only appropriate and reasonable amounts of attorneys' fees on a case-by-case basis.

UNANSWERED QUESTIONS

Many unanswered questions exist regarding the Act because courts have not yet had time to interpret its provisions. For example, although the Act states federal courts may exercise jurisdiction over cases in which two-thirds or more of the class members and the primary defendants are from the same State, the Act fails to define the term "primary defendants." The courts will therefore be forced to establish the process and methodology for determining which defendants are "primary defendants" in any particular case. It is also unclear as to whether the new requirements for written notice of proposed settlements, which are intended to make proposed settlement notices simpler and clearer, will actually increase litigation expenses for defendant businesses. Because the Act's provisions are directed more towards consumer litigation, analyzing a likely impact on employment-related claims will be difficult until the courts have had time to interpret the Act and apply it to various factual situations.

CONCLUSION

Because businesses are especially vulnerable to class action lawsuits, as well as the costs, expenses, and stress that accompany them, it is important for businesses to learn about and stay apprised of developing law regarding the Class Action Fairness Act. Although the practical impact of this new law is unknown, businesses should be encouraged by the expanded ability to move a class action lawsuit from state court to federal court to decrease the ability of class action plaintiffs to "forum shop" for a biased and "plaintiff-friendly" state court venue. ■

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