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May 2010 www.RIMS.org

Class Actions: Going Federal

by Anthony Rollo & H. Hunter Twiford, III

The Class Action Fairness Act (CAFA) was signed into law by President Bush in 2005. Touted as a major component of tort reform, Congress primarily intended CAFA to curb the practice of "forum shopping," in which plaintiffs' attorneys file large class action lawsuits in state courts known for awarding huge jury verdicts even if that state had little or no connection to the case. Those tactics often resulted in increased pressure on defendants, particularly out-of-state defendants who were at a disadvantage in the eyes of local juries, to settle for disproportionately large sums.

According to the champions of CAFA, the filing of large interstate class actions in state courts also placed too much control over important national issues in the hands of state courts, thereby imposing local views on other states. Congress enacted CAFA to change that and also expanded federal jurisdiction over significant interstate class actions, both by liberalizing the rules to move a class action originally filed in state court to federal court and by eliminating the one-year time limit that previously existed.

Unfortunately, much of CAFA's language is ambiguous, which has resulted in hundreds of federal court decisions attempting to interpret the various provisions of the act. It will take many more years for the disputes to be clarified, as plaintiffs look for ways to skirt CAFA's reach and keep large class actions in state court, while defendants continue to push for a broad application of CAFA to help realize Congress's intent to "federalize" interstate class actions of national importance.

Another Congressional objective behind CAFA was to protect class members themselves, many of whom have historically received little value from confusing class notices and inadequate class action settlements, particularly in "coupon" settlements where class counsel pocketed significant fee awards.

In response to those concerns, CAFA contains consumer protection provisions, providing that in "coupon" settlements, class counsel can no longer base their attorney's fees on a settlement value that assumes a 100% redemption rate. Now, class counsel's fees must be based on the value of the coupons actually redeemed. The act also provides for the use of a "lodestar" method to determine attorney fee awards attributable to injunctive or equitable relief, and a settlement hearing is required to ensure that settlements are fair and reasonable.

Another thing that has become clear is that the CAFA also imposes new, onerous notification requirements on defendants when a case is settled, requiring that detailed notices of proposed settlements be sent to state and federal government officials. Although the purpose of this government oversight is somewhat unclear (as CAFA does not grant any additional powers to those officials who receive the notices), failure to comply with the requirement could have the potentially disastrous effect that class members are not bound to the settlement.

As with the expansion of federal jurisdiction and the new removal rules under CAFA, the true effects of these new consumer protection provisions are still being played out, and their utility will likely be debated over time.

Regardless of the outcome of many issues regarding its application, CAFA already has proven to be a powerful tool available to corporate defendants in their efforts to minimize exposure to large local state court jury awards. By allowing them to litigate more of those class actions filed against them in state court in a federal forum, CAFA's importance in continuing to rein in the abuses of plaintiffs' counsel and in facilitating effective tort reform cannot be overstated. ■

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