

KING & SPALDING LLP
CLIENT ALERT

The Class Action Fairness Act of 2005

March 3, 2005

To Our Friends and Clients:

On February 18, 2005, President Bush signed into law the Class Action Fairness Act of 2005 (109 P.L. 2, 119 Stat. 4 (2005)); thereby drastically changing the practice of commercial litigation through class actions. Most significantly the Act:

- Expands federal court jurisdiction over most multi-state class actions
- Liberalizes removal procedures;
- Increases judicial supervision over class action settlements and attorneys fees
- Requires notice to certain federal and state officials prior to settlement

I. Expansion of Federal Court Jurisdiction Over Most Multi-State Class Actions

A. Jurisdictional Requirements Before Passage of the Act

- Under the former Rule 23, a federal court could exercise jurisdiction if:
 - a federal question existed or
 - the requirements of diversity jurisdiction were met
 - complete diversity existed, meaning all named plaintiffs were diverse from all named defendants, and
 - the amount of each class member's claim exceeded \$75,000.

B. Jurisdictional Requirements Under the Act

- Federal courts will have original jurisdiction over class actions:
 - where the aggregate amount in controversy exceeds five million dollars, and
 - any member of the class of plaintiffs is different from any defendant.
- Federal courts are not to exercise jurisdiction if:
 - greater than two-thirds of the proposed class members are citizens of the same state where the action was filed;
 - at least one defendant against whom significant relief is sought is a citizen of that same state;
 - principal injuries were incurred in that state; and
 - no other class action has been filed within 3 years asserting similar claims against any of the defendants

or

- two-thirds or more of the members of all proposed plaintiff classes and the primary defendants are from the same state where the action was filed.
- When greater than one-third but less than two-thirds of the proposed class members and the primary defendants are from the same state, the federal court has discretion to exercise or decline jurisdiction in accordance with the interests of justice.

II. Liberalization of Removal Procedures

A. Removal Requirements Before Passage of the Act

- Consent of all defendants required before removal
- One year limitation in which to remove proceeding to federal court
- No appeal of trial courts' remand orders

B. Removal Requirements Under the Act

- Any defendant allowed to remove the action, regardless of his state citizenship and without the consent of other defendants
- No one year limitation
- Permitting application for appeal of remand orders to the Court of Appeals within seven days of the order

III. Increase of Judicial Supervision Over Class Action Settlements and Attorneys Fees

- When settlements involve coupons, federal courts must now hold a hearing and make a written finding that the settlement is fair, reasonable and adequate for class members.
- Contingent attorneys fees in coupon settlements are to be based upon the value of redeemed coupons as opposed to their overall value. Fees, not contingent on the outcome of the case, are to be based upon the amount of time class counsel reasonably expended working on the action.

IV. Required Notice to Federal and State Officials Prior to Settlement

- Each defendant participating in a proposed settlement must serve notice of the proposed settlement upon the appropriate state and federal officials, generally the respective Attorney Generals from each defendant's home state and the United States Attorney General.
- A final order approving the settlement cannot be issued earlier than 90 days after service on the appropriate officials.

V. Miscellaneous

- Provisions expanding jurisdiction do not apply to cases:
 - concerning a "covered security" as defined under the Securities Act of 1933;
 - relating to a corporation's internal governance;
 - involving rights, duties, or obligations relating to or created by a security;

- where the primary defendants are states, state officials, or other governmental entities; or
- where the number of members of all proposed plaintiff classes is less than 100.
- For the purposes of the Act's jurisdictional provisions, an unincorporated association is deemed to be a citizen of the state of its principal place of business and the state under whose laws it is organized.

VI. Likely Effects

- Fewer multi-state claims filed in state courts
- Increase of single state claims
- Increased scrutiny of settlements and attorneys fees

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