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## Seventh Circuit Broadly Interprets CAFA Jurisdiction

In a significant decision broadly interpreting the amount-in-controversy requirement for diversity jurisdiction under the Class Action Fairness Act of 2005 (“CAFA”), the United States Court of Appeals for the Seventh Circuit has made it easier for class actions to be brought in, or removed to, federal courts in that Circuit. In *Back Doctors Ltd. v. Metropolitan Prop. & Cas. Ins. Co.*, 2011 WL 1206184 (7th Cir. Apr. 1, 2011), the Court held that the estimate of the amount in controversy by the party invoking federal jurisdiction was sufficient to satisfy jurisdiction unless recovery of that amount was “legally impossible.” Although the decision arose in the context of removal to federal court under CAFA, the decision’s holding as to the standard governing determination of the amount in controversy may potentially be equally applicable to any action, individual or class, invoking diversity jurisdiction.

CAFA greatly expanded federal jurisdiction over putative class actions by, among other things, defining the amount in controversy as the aggregate amount in controversy for all putative class members – \$5 million – instead of, as had been the law, defining the amount in controversy as the amount at issue on each class member’s individual claim. See 28 U.S.C. § 1332(d). Since the passage of CAFA, the Courts of Appeal have adopted different burdens of proof for establishing the amount in controversy in a class action removed from state court. Some have required a showing by a preponderance of the evidence that the amount is satisfied, while others have required a showing of reasonable probability. See, e.g., *Amoche v. Guarantee Trust Life Ins. Co.*, 556 F.3d 41, 50 (1st Cir. 2009) (removing party must show a “reasonable probability” that the jurisdictional minimum is satisfied); *Bell v. Hershey Co.*, 557 F.3d 953, 956 (8th Cir. 2009) (removing party must show by a preponderance of the evidence that the jurisdictional minimum is satisfied, after which remand is only appropriate if there is a “legal certainty” that the claim is for less than that amount); *Lowdermilk v. U.S. Bank Nat’l Ass’n*, 479 F.3d 994, 1000 (9th Cir. 2007) (where the state court complaint pleads an amount in controversy less than jurisdictional amount, the removing party must “prove with legal certainty that CAFA’s jurisdictional amount is met”). In *Back Doctors*, the Seventh Circuit has taken the most liberal view, adopting the standard that a removing party’s estimate of the jurisdictional amount, if supported by proof of the underlying jurisdictional facts, will govern unless it is shown that such a recovery is legally impossible.

In *Back Doctors*, a group of medical providers brought a putative class action in Illinois state court against an insurance company alleging that the defendant’s billing practices violated the Illinois Consumer Fraud and Deceptive Business Practices Act. Plaintiff claimed \$2.9 million in compensatory damages resulting from the allegedly wrongful billing practices. The insurance company removed the action to federal court under CAFA, asserting that the plaintiff’s claim for compensatory damages, when combined with the plaintiff’s claim for punitive damages, satisfied CAFA’s \$5 million threshold for jurisdiction.

The district court granted plaintiff’s motion to remand. The court applied a presumption against removal, stating that doubts regarding subject matter jurisdiction should be resolved against allowing removal. The district court held that the removing defendant must show a “reasonable probability” that the amount in controversy exceeded \$5 million. Finding that the defendant had not made such a showing, the district court ordered the case remanded to state court. The Seventh Circuit granted defendant leave to appeal under 28 U.S.C. § 1453(c) and reversed.

Chief Judge Easterbrook, writing for a unanimous panel, rejected the argument that there was a “presumption against federal jurisdiction in general, or removal in particular,” stating that CAFA “must be implemented according to its terms, rather than in a manner that disfavors removal of large-stakes, multi-state class actions.” 2011 WL 1206184, at \*2.

The Court also rejected the “reasonable probability” language previously used by courts in the Seventh Circuit. The removing party is “entitled to present its own estimate of the stakes” and is “not bound by the plaintiff’s estimate.” *Id.* at \*2. The underlying jurisdictional facts supporting this estimate must be proved by a preponderance of the evidence. *Id.* Once the removing party presents an estimate of the stakes supported by jurisdictional facts, that estimate “controls unless a recovery that large is *legally impossible*” – a standard derived from the Supreme Court’s decision in *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283 (1938). 2011 WL 1206184, at \*2 (emphasis added). Thus, although the plaintiff in *Back Doctors* did not specify the amount of punitive damages it was seeking, because Illinois law allows the recovery of punitive damages, “even a one-to-one ratio of punitive to actual damages would result in a total award exceeding \$5 million, if the class’s position about actual damages is right.” *Id.*

In addition, the Court rejected a common tactic plaintiffs have employed in product liability and other actions to avoid federal jurisdiction by claiming after removal that they have no intent to seek more than the requisite jurisdictional minimum. Thus, in response to plaintiff’s statement in the district court that “it does not ‘now’ want punitive damages” and that, therefore, the \$5 million amount in controversy was not satisfied, Judge Easterbrook first stated the black letter law that “events after the date of removal do not affect federal jurisdiction. *Id.* at \*2–3. He went on to comment that if the plaintiff had made a binding statement in its complaint that it would not seek punitive damages and if that statement were binding under Illinois law, “a state or federal judge might insist that some other person, more willing to seek punitive damages, take over as [class] representative.” *Id.* at \*3. “Our point is not that a federal judge should take steps to keep suits in federal court, but that class representatives’ fiduciary duty might ensure that the amount in controversy exceeds \$5 million no matter where the litigation occurs.” *Id.* These comments may be useful to defendants in opposing class certification motions. In particular, defendants may rely on these comments to support the argument that the named plaintiffs are inadequate class representatives if they deliberately did not seek certain types of monetary relief (*e.g.*, punitive damages) in order to avoid federal jurisdiction. The Court’s reasoning may also extend to situations where a class representative avoids bringing certain types of claims (*e.g.*, fraud) to increase their chances of satisfying the class action requirement that common issues of fact or law predominate over individual issues.

The Seventh Circuit’s decision in *Back Doctors* could have a profound effect not just on cases brought under CAFA, but all cases invoking diversity jurisdiction. Although not explicitly stated by the Court, the holdings that there is no presumption against federal jurisdiction and that a legal impossibility standard applies to determination of the amount in controversy may be applied by other courts to assertions of diversity jurisdiction regardless of whether the action is a class action arising under CAFA or an individual one. But given the previously well-established principle that all doubts as to the propriety of removal are to be resolved in favor of remand, it remains to be seen if courts will construe the Seventh Circuit’s holding in *Back Doctors* broadly to apply to cases removed on grounds other than CAFA.

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