

New 11th Circuit CAFA Decision That May Affect Subject Matter Jurisdiction in Pending Class Actions in Federal Court

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On July 19, a three judge panel of the Eleventh Circuit issued a decision on the requirements of the Class Action Fairness Act of 2005 ("CAFA") that has the potential to inject substantial confusion into Eleventh Circuit class action jurisprudence and may adversely affect subject matter jurisdiction in pending class actions. In *Cappucitti v. DirecTV, Inc.*, No. 09-00627-CV-CAP-1, a case of first impression, the panel ruled that class actions filed in federal court must satisfy the general diversity requirement that at least one plaintiff have \$75,000 in controversy, along with the specific requirements of CAFA that minimal diversity be satisfied and an aggregate of \$5 million for the entire putative class be in controversy.

The panel relied on cases construing the "mass action" portion of CAFA to reach its conclusion, even though a mass action is fundamentally distinct from a class action and contains separate requirements for federal court jurisdiction to be present. To our knowledge, no other court in the country has reached this conclusion outside the mass action context.

It is unclear from the decision whether the court intended its rationale to apply to diversity class actions originally filed in state court and removed to federal court as well as class actions originally filed in federal court by a plaintiff. There appears to be no basis in the decision for not extending the court's rationale to removed cases.

If this decision stands and its rationale applies to removed cases as well as cases originally filed by a plaintiff in federal court, virtually all diversity class actions other than the most egregious personal injury or property damage cases will disappear from federal court. This would include most consumer class actions and economic injury class actions. This seems contrary to the intent of Congress in enacting CAFA in the first place.

If you are involved in diversity class actions in a federal court in the Eleventh Circuit, you should be aware of this decision and its implications on your pending matters.