

## High Court's CAFA Ruling Carries Dangers For Defendants

By **Bibeka Shrestha**

*Law360, New York (March 19, 2013, 10:56 PM ET)* -- Companies fending off class actions see a cause for celebration in the U.S. Supreme Court's ruling for Standard Fire Insurance Co. in its battle to keep high-stakes class actions under the watch of federal judges and out of plaintiff-friendly state courts — but the ruling doesn't come without a few pitfalls for defendants, attorneys told Law360 on Tuesday.

Defense attorneys widely hailed the high court for putting its foot down on what they saw as jurisdictional gamesmanship by plaintiffs attorneys. The high court said plaintiffs hoping to represent class members could not promise to cap their damages to avoid meeting the Class Action Fairness Act's \$5 million threshold, beyond which defendants can remove a lawsuit initially filed in state court to federal court.

Overall, the decision in *The Standard Fire Insurance Co. v. Greg Knowles* is a victory for class action defendants craving a federal venue and the stricter federal standards that come with it, attorneys said. It also follows CAFA's goal of ensuring that big-dollar, interstate class actions remain in federal court, as the Supreme Court's unanimous opinion noted.

But Standard Fire's victory does hold some drawbacks for defendants, according to Michael Pennington, a partner at Bradley Arant Boult Cummings LLP.

"Plaintiffs now have little incentive to limit their damage claims in class actions," Pennington said. "Defendants will lose the benefit of such artificial limits on class damage claims going forward, whether those benefits were real or just theoretical in any given case."

Jeff Scott, co-chair of Greenberg Traurig LLP's class action group, echoed these concerns.

"There were obvious advantages to having plaintiffs counsel concede that damages [would be] capped at \$5 million. ... Getting into federal court is no guarantee of victory for defendants, and the potential exposure in these cases is higher without plaintiffs counsel committing to a cap," Scott said.

Before the Knowles decision, attorneys could use artificial damage caps to argue that named plaintiffs were not adequate class representatives because they were limiting class members' recovery, Pennington said.

Now, that argument might fly only if plaintiffs try to put in a damage cap after winning class certification, when they would actually have the power to bind class members to that type of stipulation. That, however, is an unlikely scenario, according to Pennington.

"It is highly doubtful any class representative in his right mind would seek to maintain such a purported limitation through class certification following this opinion," Pennington said.

Still, defense attorneys are overwhelmingly pleased with the decision. They say they expect more original class action filings in federal court and more attempts by defendants to take the suits to federal forums.

Knowles may also eliminate some of the "bottom-feeding" cases where plaintiffs attorneys try to use favored local jurisdictions to their advantage, according to Scott. Still, there probably won't be a sharp drop in class action filings, he said.

But even if filings don't drop, the ruling should lead to fewer class certifications, since federal certification rules are generally stricter, according to David Anthony, a Troutman Sanders LLP attorney.

The ruling moreover throws into question a tough standard adopted by the Ninth Circuit and other federal circuits, Scott said. That test mandated that to show an artificial cap, defendants must establish to a legal certainty that the actual amount at stake in a class action is different from what the plaintiffs claimed in the complaint.

Knowles may encourage defendants to argue that plaintiffs can't hold back from asserting federal claims to sidestep federal jurisdiction or that they can't omit claims or types of damages that hurt their chances at class certification, Scott said.

There is a silver lining for class members in the ruling, too, according to Fred Isquith, a class action attorney.

The decision makes it clear that class members' damage claims are what they are, and plaintiffs attorneys can't manipulate them for jurisdictional reasons.

"The Supreme Court unanimously, and predictably, confirmed today that class action attorneys owe a responsibility to the entire class of potential claimants from the instant they file a lawsuit," Isquith said.

Aaron Van Oort, an attorney at Faegre Baker Daniels LLP, agreed.

"Now, plaintiffs cannot evade federal jurisdiction simply by selling out the people they claim to represent," Van Oort said.

Standard Fire is represented by Theodore Boutrous Jr. of Gibson Dunn & Crutcher LLP, and Wytan Ackerman of Robinson & Cole LLP.

Knowles is represented by David Frederick of Kellogg Huber Hansen Todd Evans & Figel PLLC and Jonathan Massey of Massey & Gail LLP

The case is The Standard Fire Insurance Co. v. Greg Knowles, case number 11-1450, in the U.S. Supreme Court.

--Editing by Kat Laskowski and Jeremy Barker.

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