



Class Action Legal Update

Seventh Circuit Issues Important Decision on Jurisdiction under the Class Action Fairness Act

The Seventh Circuit recently held that a federal district court retains jurisdiction under the Class Action Fairness Act (CAFA) after denial of class certification. This was an issue of first impression at the appellate level, on which federal district courts were divided. This decision, if followed by other circuits, ensures that putative class actions reach their final resolution in federal court and are not remanded to state court. If a case is remanded, defendants are often concerned that plaintiffs may attempt to obtain certification of a different class, or under different state court rules, or they may attempt to litigate the merits of an important issue on which the defendant would prefer a federal forum.

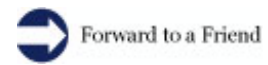
In *Cunningham Charter Corp. v. Learjet, Inc.*, ___ F.3d ___, 2010 WL 199627 (7th Cir. Jan. 22, 2010) (Posner, J.), the Seventh Circuit concluded that CAFA jurisdiction continues after denial of certification on essentially four grounds. First, the court noted that "jurisdiction attaches when a suit is filed as a class action, and that invariably precedes certification." *Id.* at *2. Second, the court noted that "if a state happened to have different criteria for certifying a class from those of Rule 23, the result of a remand because of the federal court's refusal to certify the class could be that the case would continue as a class action in state court. That result would be contrary to the Act's purpose of relaxing the requirements of complete diversity of citizenship so that class actions involving incomplete diversity can be litigated in federal court." *Id.* Third, the court noted that "[o]ur conclusion vindicates the general principle that jurisdiction once properly invoked is not lost by developments after a suit is filed" *Id.* Fourth, the court noted "a desire to minimize expense and delay," explaining that "[i]f at all possible . . . a case should stay in the system that first acquired jurisdiction. It should not be shunted between court systems; litigation is not ping-pong." *Id.* at *3.

The Seventh Circuit recognized, however, that there may be exceptions to the general rule it articulated. The court noted that "[f]rivolous attempts to invoke federal jurisdiction fail," and thus that jurisdiction does not lie if it is "certain from the outset of the litigation that no class could be certified." *Id.* at *1. The court also noted that jurisdiction could potentially be divested if the case becomes moot or if the plaintiff withdraws the class allegations in an amended complaint. On the latter point, however, when a case is properly removed to federal court, a plaintiff generally cannot destroy federal jurisdiction by amending the complaint. See *Rockwell Intern. Corp. v. U.S.*, 549 U.S. 457, 474 n.6 (2007) (cited in *Cunningham Charter*).

Prior to *Cunningham Charter*, no federal appellate opinions directly addressed this issue. The Eleventh Circuit had concluded in a footnote that, even if it was later determined that a class had less than 100 members, that would not divest a federal court of CAFA jurisdiction. *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1268 n.12 (11th Cir. 2009). The First Circuit had vaguely suggested in *dicta*, without analysis, that a federal court might be divested of jurisdiction under CAFA after class certification is denied. *In re TJX Companies Retail Sec. Breach Litig.*, 564 F.3d 489, 492 (1st Cir. 2009).

For further information on this case or Robinson & Cole's class action practice, please contact [Wystan M. Ackerman](#), or another member of the firm's [Class Action Team](#).

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