

Evolving Class Action Removal Standards

Effective Litigation Strategies for Plaintiff and Defense Counsel

A 90-Minute Teleconference Program with Interactive Q&A

Tuesday, June 16, 2009

1:00 p.m. Eastern Time / 12:00 p.m. Central Time /
11:00 a.m. Mountain Time / 10:00 a.m. Pacific Time

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On March 26, 2008, the Third Circuit issued a precedent-setting opinion on the standard for removal from federal to state court under the Class Action Fairness Act (CAFA). The ruling addressed two separate issues of first impression under CAFA's local controversy exception.

The recent Third Circuit decision is one of many in recent years interpreting standards for removal under CAFA. There is currently a circuit split regarding the evidence required in a CAFA removal action to show that the "amount in controversy" standard has been satisfied.

The Third Circuit applied the "legal certainty" standard in two cases in 2006 and 2007, diverging from at least five other circuit courts applying the "preponderance of the evidence" standard. The Eleventh Circuit requires "an unambiguous statement," yet another standard.

This teleconference will examine the Circuit Courts' varying standards for removal and their impact on future cases, strategies for defense counsel for obtaining removal, and tactics plaintiffs' counsel can employ for maneuvering post-removal.

- I. Recent court decisions addressing removal standards
 - A. "Local controversy" standard—*Kaufman v. Allstate New Jersey Insurance Co.* (3d Cir. 2009)
 - B. "Amount in controversy" standards
 1. *Abrego Abrego v. Dow Chemical Co.* (9th Cir. 2006)
 2. *Lowery v. Alabama Power Co.* (11th Cir. 2007)
 3. *Frederico v. Home Depot* (3d Cir. 2007)
 4. *Morgan v. Gay* (3d Cir. 2006)
 5. *Blockbuster v. Galeno* (2d Cir. 2006)
- II. Other recent issues regarding CAFA removal
 - A. Who has burden of proving jurisdiction?
 - B. Effect of post-CAFA amendment to pre-CAFA pleading
 - C. Exceptions
 - D. CAFA appeals
- III. Defense strategies for obtaining removal
- IV. Plaintiffs' strategies for maneuvering post-removal