

Client Alert

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U.S. Supreme Court Issues *Standard Fire Insurance* Opinion: Stipulations Limiting Damages No Longer Insure Against Removal

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The Supreme Court issued its much-anticipated opinion today in *Standard Fire Insurance Co. v. Knowles*, 568 U.S. ___ (2013), holding unanimously that a class action plaintiff cannot avoid removal to federal court under the Class Action Fairness Act of 2005 (“CAFA”) by stipulating, prior to certification of the class, that he or she will not seek damages that exceed \$5 million in total.

Under CAFA, defendants can remove a case to federal court if the aggregated amount in controversy exceeds \$5 million and if there is minimal diversity between the parties. Shortly after CAFA’s enactment, the plaintiffs’ bar employed a strategy of avoiding CAFA jurisdiction by alleging in the complaint that the plaintiff and the class stipulate that they will not seek to recover total damages that exceed \$5 million. This strategy was successful in the Eighth and Ninth Circuits, which held that such stipulations are effective in avoiding CAFA jurisdiction.¹ The Fifth, Seventh, and Tenth Circuits, on the other hand, determined that such stipulations are not binding, particularly if the defendant is able to establish that the actual amount in controversy, absent the stipulation, exceeds \$5 million.² As a result, the plaintiffs’ bar flocked to the Eighth and Ninth Circuits, where many defendants have subsequently found themselves defending against class actions without any hope of removal. Until now.

Standard Fire involves a putative class action filed by the plaintiff, Greg Knowles, in Arkansas state court on behalf of a class of Arkansas policyholders. Knowles alleged that Standard Fire unlawfully failed to include a general contract fee when it made certain homeowner’s insurance loss payments. With respect to the relief sought, he alleged in his complaint that the “plaintiff and Class stipulate they will seek to recover total aggregate damages of less than five million dollars.” He also attached an affidavit in which he stipulated that he “will not at any time during this case ... seek damages for the class ... in excess of \$5,000,000 in the aggregate.” Standard Fire removed the case to federal court under CAFA. The district court remanded the case back to state court, finding that the stipulation controlled even though the total amount in controversy would exceed the \$5 million threshold.

The Supreme Court disagreed, holding that “a plaintiff who files a proposed class action cannot legally bind members of the proposed class before the class is certified.” *Standard Fire Ins. Co. v. Knowles*, No. 11-1450, slip

¹ See *Rolwing v. Nestle Holdings Inc.*, 666 F.3d 1069, 1073-74 (8th Cir. 2012); *Bell v. Hershey Co.*, 557 F.3d 953, 958 (8th Cir. 2009); *Lowdermilk v. U.S. Bank Nat’l Ass’n*, 479 F.3d 994, 999 n.5 (9th Cir. 2007).

² *De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1411 (5th Cir. 1995); *Back Doctors Ltd. v. Metropolitan Prop. & Cas. Ins. Co.*, 637 F.3d 827, 829-31 (7th Cir. 2011); *Frederick v. Hartford Underwriters Ins. Co.*, 683 F.3d 1242, 1247-49 (10th Cir. 2012).

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op. at 4 (Mar. 19, 2013). At the time plaintiff filed his complaint (pre-certification), he lacked authority to bind anyone but himself and thus “has not reduced the value of the putative class members’ claims.” *Id.* “To hold otherwise,” the Court stated, “would, for CAFA jurisdictional purposes, treat a nonbinding stipulation as if it were binding, exalt form over substance, and run directly counter to CAFA’s primary objective: ensuring Federal court consideration of interstate cases of national importance.” Slip op. at 6 (internal quotations omitted).

Defendants who were previously bound by stipulations or allegations limiting damages to an amount below the jurisdictional amount in controversy should consider whether *Standard Fire* provides a basis for removal. Among other issues, the Supreme Court’s decision to invalidate such stipulations — made specifically to dodge federal jurisdiction — may open the door to removals based on an argument that the plaintiff acted in bad faith. In addition, *Standard Fire* applies across the board to all such stipulations (there is nothing unique about the damages limiting stipulation in *Standard Fire*), providing a colorable argument for removal based on a change in law or circumstance. Defendants should keep in mind, however, that a post-*Standard Fire* petition to remove may face an uphill battle because the removal statutes and federal jurisdiction are traditionally narrowly construed. Nonetheless, the issue is worth a second look.

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