



Class Action Litigation ADVISORY ■

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In *Rodriguez*, the Ninth Circuit Made It Easier to Remove Under CAFA

Last week, in *Rodriguez v. AT&T Mobility Services LLC*, No. 13-56149 (9th Cir. Aug. 27, 2013), the Ninth Circuit made it a little easier for defendants to remove cases under the Class Action Fairness Act (CAFA). Taking its cues from the Supreme Court's recent decision in *Standard Fire*, the Ninth Circuit held that a defendant seeking to remove a case under CAFA needs to prove the amount in controversy only by a preponderance of the evidence, not by a legal certainty.

Rodriguez is good news for defendants.

The Ninth Circuit: *Standard Fire* calls for a relaxed standard to proving the amount in controversy under CAFA.

Robert Rodriguez brought a putative class action against AT&T on behalf of retail sales managers in AT&T wireless stores in the Los Angeles area. After AT&T removed the case to federal court, Rodriguez moved to remand the case based on his allegations that the "aggregate amount in controversy is less than" \$5 million. In response, AT&T submitted declarations showing that the amount in controversy "could not be less than roughly \$5.5 million and was likely double that amount." The district court rejected AT&T's evidence and remanded the case to state court, concluding that AT&T had not demonstrated with a "legal certainty" that the case met CAFA's amount in controversy.

That was before *Standard Fire*. In *Standard Fire*, the Supreme Court held that a named plaintiff cannot stipulate away CAFA jurisdiction by disavowing aggregate classwide damages over \$5 million. Although a named plaintiff can bind himself, he cannot bind putative class members. In light of *Standard Fire*, the Ninth Circuit vacated the district court's remand order.

The Ninth Circuit also concluded that *Standard Fire* required a change to the circuit's standards for CAFA removal. As noted, before *Standard Fire*, defendants in the Ninth Circuit had to prove the amount in controversy by a legal certainty. The *Rodriguez* court concluded that *Standard Fire* "effectively overruled" the legal-certainty standard. In its place, the Ninth Circuit adopted a preponderance-of-the-evidence standard.

The trend toward a more liberal removal policy continues.

Rodriguez is the latest in a steady stream of decisions (and the second recent decision from the Ninth Circuit) relaxing the standards for removal under CAFA. Those decisions suggest that *Standard Fire* has caused a shift back toward interpreting CAFA in a manner consistent with Congress's intent to provide a federal forum for large class actions.

For defendants, that is a welcome trend.

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