



Class Action and Insurance Litigation & Regulation ADVISORY ■

MARCH 10, 2014

In *South Florida*, the Eleventh Circuit Finds CAFA's Amount in Controversy Requirement Satisfied by Declaratory Judgment Alone

In *South Florida Wellness Inc. v. Allstate Insurance Co.*, No. 14-10001 (11th Cir. Feb. 14, 2014), the Eleventh Circuit ruled that a plaintiff's declaratory judgment alone can satisfy the Class Action Fairness Act's (CAFA) amount in controversy requirement. The Eleventh Circuit's ruling in *South Florida Wellness* continues the recent trend in the federal courts of strengthening the ability of defendants to remove class actions to federal courts pursuant to CAFA.

The federal district court rules that Allstate's amount-in-controversy figure is too speculative.

In July 2013, South Florida Wellness filed a putative class action in state court alleging that Allstate underpaid for treatment provided by South Florida Wellness to Allstate's insured under the insured's personal injury protection (PIP) policy. Instead of paying 80 percent of the total amount billed, the default payment amount under state law, Allstate paid 80 percent of the amounts listed in a statutory fee schedule. According to South Florida Wellness, Allstate's payment of the fee schedule amounts allegedly was improper because Allstate did not "clearly and unambiguously indicate in the [PIP] policy" that Allstate was opting out of the general payment requirements.¹ South Florida Wellness did not ask for monetary damages, but sought only a declaratory judgment stating that Allstate's PIP policy language "did not clearly and unambiguously indicate that payments would be limited" to the statutory fee schedule.²

Allstate removed the putative class action to federal court under CAFA's federal jurisdiction.³ In support of removal, Allstate submitted an employee affidavit that the amount in controversy was \$68 million,

¹ *S. Fla. Wellness, Inc. v. Allstate Ins. Co.*, No. 14-10001, 2014 WL 576111, at *1 (11th Cir. Feb. 14, 2014).

² *Id.* at *2.

³ Under CAFA, defendants may remove a case from state court to federal court if there is minimal diversity between the parties and the amount in controversy exceeds \$5 million. 28 U.S.C. § 1332(d)(2), (5)-(6).

far greater than CAFA's \$5 million minimum. Allstate arrived at its \$68 million figure by calculating the difference between the amounts paid based on the statutory fee schedule and the amounts that would have been paid based on the total amount billed for the entire proposed class. The federal district court, however, remanded the case back to state court finding that Allstate's amount in controversy calculation was "too speculative . . . because Allstate had failed to show that a declaratory judgment [for the plaintiff] will necessarily trigger a flow of money" to the proposed class members.⁴

The Eleventh Circuit finds Allstate satisfied CAFA's removal requirements by a preponderance of the evidence.

On appeal, the Eleventh Circuit ruled Allstate's removal to federal court was proper and that Allstate's amount in controversy calculation was not too speculative to confer federal jurisdiction. The Eleventh Circuit disagreed with and rejected the district court's holding that a declaratory judgment did not translate into a monetary recovery, reasoning that such a conclusion is "contrary to human nature and the nature of lawyers."⁵ Instead, the panel concluded that the amount in controversy is "how much will be put at issue during the litigation" and not "how much the plaintiffs are ultimately likely to recover."⁶ The Eleventh Circuit ultimately determined that Allstate had established by a preponderance of evidence the amount in controversy, noting that "[e]stimating the amount in controversy is not nuclear science; it does not demand decimal-point precision."⁷

South Florida continues the trend towards a liberal removal policy and permits defendants flexibility in their amount in controversy arguments.

The Eleventh Circuit's decision in *South Florida* continues the trend of strengthening the ability of defendants to remove cases to federal court under CAFA, while simultaneously limiting the ability of class action plaintiffs to avoid federal jurisdiction. Further, while the precise parameters are unclear and while class defendants should continue to take care to corroborate removal petitions, *South Florida* appears to also give class action defendants some flexibility in their amount in controversy calculations.

In addition to allowing defendants to remove to federal court when only declaratory relief is sought, the Eleventh Circuit joined the Ninth Circuit in applying the preponderance of evidence standard to the amount in controversy requirement. While it remains to be seen whether other circuits will adopt the preponderance of evidence standard, the adoption of a more relaxed standard is an encouraging and welcome development for defendants, who generally prefer to be in federal court for class action adjudication.

This advisory was written by Tiffany Powers, Stephanie Driggers and Amanda Kelley.

⁴ *S. Fla. Wellness*, 2014 WL 576111 at *2 (internal citations omitted).

⁵ *Id.* at *4.

⁶ *Id.* at *3.

⁷ *Id.* at *4.

To receive similar advisories in the future, please go to **Class Action Advisories**. Be sure to put “**subscribe**” in the subject line.

If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

Cari Dawson

cari.dawson@alston.com

404.881.7766

Click [here](#) for a list of Alston & Bird’s class action attorneys.

Tiffany Powers

tiffany.powers@alston.com

404.881.4249

Click [here](#) for a list of Alston & Bird’s insurance litigation attorneys.

ALSTON & BIRD LLP

WWW.ALSTON.COM

© ALSTON & BIRD LLP 2014

ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777

BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719

CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111

DALLAS: 2828 North Harwood Street ■ 18th Floor ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899

LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213-576-1100

NEW YORK: 90 Park Avenue ■ 12th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444

RESEARCH TRIANGLE: 4721 Emperor Blvd. ■ Suite 400 ■ Durham, North Carolina, USA, 27703-85802 ■ 919.862.2200 ■ Fax: 919.862.2260

SILICON VALLEY: 275 Middlefield Road ■ Suite 150 ■ Menlo Park, California, USA, 94025-4004 ■ 650-838-2000 ■ Fax: 650.838.2001

WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.756.3300 ■ Fax: 202.756.3333