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Chapter 2

Class Action Fairness Act of 2005: Federal Jurisdiction, Exceptions to the Exercise of Jurisdiction and Burdens of Proof

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Synopsis

§ 2.01. Introduction.

On February 18, 2005, following nine long years of debates, hearings, and several revisions, President George W. Bush signed into law the Class Action Fairness Act of 2005 (referred to here as CAFA or the Act). President Bush commented that the Act signaled a critical step toward ending the lawsuit culture in our community.

By expanding the scope of federal jurisdiction over class actions, the proponents of CAFA hoped to ameliorate certain abuses perceived to be occurring in many of the class actions being litigated in state courts:

- class action settlements in which virtually all benefits went to the attorneys, rather than the class members themselves;
- inefficiency associated with virtually identical class actions being filed in numerous jurisdictions, as forum shopping exercises;
- routine, early certification orders being entered in class actions in certain "magnet" jurisdictions, associated with increased filings in such jurisdictions; and
- questionable application by one state court of the law of other states following certification of multi-state classes.[1]

Rule 23 of the Federal Rules of Civil Procedure requires, among many other things, court approval of class action settlements. The Act heightens a court's burden to ensure that proposed class action settlements are fair and reasonable. The Act also places more responsibility on all counsel to assist the court in that endeavor.

The scope of this chapter, however, is limited to the jurisdictional aspects of CAFA, including its statutory exceptions to the exercise of this expanded jurisdiction as well as the associated burdens of proof. Congress stated three specific purposes in enacting CAFA, and it is the second enumerated purpose – the desire to "restore the intent of the framers of the United States Constitution by providing for Federal Court consideration of interstate cases of national importance under diversity jurisdiction"[2] – which is the focus of this chapter.

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1 For example, in *Blackhawk Oil Co. v. Exxon Corp.*, 969 P.2d 337 (Okla. 1998), the Oklahoma Supreme Court upheld certification of a multi-state class which included 168 natural gas producers from twenty states who sold natural gas to Exxon and who were not paid for slop oil (a byproduct of the compression process) which Exxon collected and sold without any accounting to the gas producers. This class certification was upheld despite the fact that the actions sounded in breach of contract and in tort, and would require the Oklahoma court to interpret and apply the substantive laws of 20 different states.

2 Class Action Fairness Act of 2005, Pub. L. No. 109-2.