Stipulation Limiting Damages Cannot Circumvent CAFA Jurisdiction

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On March 19, 2013, a unanimous Supreme Court rejected the idea that a stipulation by a class action plaintiff, prior to certification, that he and the class would not seek damages that exceed $5 million in total, removes a case from the scope of The Class Action Fairness Act of 2005 ("CAFA").[1] Such a stipulation should have been disregarded by the district court, concluded the Supreme Court, as it cannot tie the hands of the uncertified class.

The *Knowles* case was brought as a putative class action in Arkansas state court against The Standard Fire Insurance Company ("Defendant"). The plaintiff, Greg Knowles ("Plaintiff"), claimed that Defendant breached a contract due to its underpayment of insurance claims. Plaintiff had requested payment for hail damage to his home under his policy but was not fully reimbursed.[2] He sought relief for himself and others similarly situated.

In the class action complaint, Plaintiff stated that neither his nor any individual class member's claim was equal to or greater than seventy-five thousand dollars, inclusive of costs and attorneys' fees, individually or on behalf of any class member, and that the total aggregate damages of the plaintiff and all class members, inclusive of costs and attorneys' fees, were less than five million dollars.[3] Plaintiff also stated that he and the class stipulated they would seek to recover total aggregate damages of less than five million dollars.[4] Exhibit A to the complaint was a "Sworn and Binding Stipulation," signed by Plaintiff, affirming he would not seek at any time during the pendency of the case damages for himself or any other class member in excess of seventy-five thousand dollars or seek damages as a class in excess of five million dollars (inclusive of costs and fees).[5]

Defendant removed the case to federal court arguing that Plaintiff had fraudulently framed the class definition to limit recovery to two years (rather than five years) under the applicable statute of limitations, and that Plaintiff's counsel had failed to sign a stipulation that they would not seek or accept attorneys' fees that would allow the total amount to exceed state jurisdictional limits. Defendant also asserted that Plaintiff lacked the authority to bind the other class members by agreeing to a limited recovery.[6]

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[1] This case arises from an unpublished decision of the District Court for the Western District of Arkansas. *Knowles v. Standard Fire Ins. Co.*, No. 4:11-CV-04044, 2011 WL 6013024 (W.D. Ark. Dec. 2, 2011), *cert granted*, 133 S. Ct. 90 (2012).
[2] The charge at issue is known as the general contractors' overhead and profit ("GCOP") and is a fee routinely assessed by contractors when repairing damaged property. *Id.* at *1.
[3] *Id.* at *2.
[4] *Id.*
[5] *Id.*
[6] *Id.* at *1.

In response to the removal, Plaintiff filed a motion to remand, citing his binding stipulation and the fact that as plaintiff, he was the master of his complaint and could limit his claims.[7] After discussing the relevant initial legal burden for the defendant, which the court deemed satisfied, the district court focused on whether the plaintiff had satisfied his burden that his claim fell under the five million dollar threshold of CAFA.[8] The court initially affirmed that "[t]he law in this circuit is clear that a binding stipulation sworn by a plaintiff in a purported class action will bar removal from state court if the stipulation limits damages to the state jurisdictional minimum," citing the Eighth Circuit case *Bell v. Hershey Co.*, 557 F.3d 953 (8th Cir. 2009).[9] And it noted that the Arkansas legislature passed a statute codifying *Bell* and expressly allowing such a stipulation.[10] The court rejected Defendant's argument that the stipulation was invalid for lack of adequately binding language, noting, *inter alia*, that "[m]agic words" are not required.[11] The court also rejected Defendant's argument that because counsel did not sign the stipulation, attorneys' fees and costs would not be limited, noting that the stipulation is explicitly inclusive of such costs and fees.[12] Defendant expressed concern about the possibility of an amended complaint and how that might raise the amount of damages sought, but that too was quickly dispensed of by the district court. "If Plaintiff were to amend his Complaint after remand . . . it follows that Defendant would have the right to remove again, should removal be justified."[13]

Finally, the court turned to alleged due process concerns for the class when as-yet-unknown class members have had their damages limited, but rejected such concerns and stated that putative class members could opt out if they felt adversely affected by the limitations.[14] Thus, the court determined that Plaintiff demonstrated that the aggregate damages were below the CAFA threshold and remanded the case back to state court.[15]

The Eighth Circuit denied permission to appeal and denied both a rehearing *en banc* and a panel rehearing.[16] Defendant (now "Petitioner") sought review by the Supreme Court, which granted certiorari on the basis of a split between the Tenth Circuit (which had held that a proposed class action representative's attempt to limit damages in a complaint was not dispositive with respect to calculating the amount in controversy) and the Eighth Circuit (which had held that a precertification binding stipulation limiting damages can be used to defeat CAFA jurisdiction).[17]

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[7] *Id.*
[8] *Id.* at *3-4.
[9] *Id.* at *4.
[10] *Id.* at *5.
[11] *Id.* at *4.
[12] *Id.* at *5.
[13] *Id.*
[14] *Id.* at *6.
[15] *Id.*
[16] Petition for a Writ of Certiorari at 9, *Standard Fire Ins. Co. v. Knowles*, No. 11-1450 (U.S. May 30, 2012). After requesting a response to Defendant's petition for rehearing, the Eight Circuit issued an opinion affirming a remand under CAFA based on a stipulation by the named plaintiff limiting damages in *Rolwing v. Nestle Holdings, Inc.*, 666 F.3d 1069 (8th Cir. 2012), *abrogated by Standard Fire Ins. Co. v. Knowles*, No. 11-1450, 2013 WL 1104735 (U.S. Mar. 19, 2013).
[17] *Standard Fire Ins. Co. v. Knowles*, No. 11-1450, 2013 WL 1104735, at *2 (U.S. Mar. 19, 2013).

The Supreme Court, on consideration, stated that the statute tells the District Court to determine whether it has jurisdiction by adding up the value of the claim of each person in the proposed class and determining if it exceeds $5 million.[18] If it does, the District Court has jurisdiction. The District Court had determined that the sum would have exceeded $5 million but for the stipulation. The Court then turned to whether the stipulation makes a "critical difference."[19]

On consideration, the Court determined the stipulation does not. Of paramount importance is the fact that the stipulation is *nonbinding*; a plaintiff who files a proposed class action cannot legally bind members of the proposed class before the class is certified.[20] "Because his precertification stipulation does not bind anyone but himself, [Plaintiff (now "Respondent")] has not reduced the value of the putative class members' claims."[21]

The Court explains that the amount to which Respondent has stipulated is "in effect contingent" as there are ways Respondent may not end up as the class representative and that the stipulation could be excised during the certification stage in state court.[22] Moreover, to conclude that CAFA forbids the federal court to consider the possibility that a nonbinding, amount-limiting stipulation may not survive the class certification process would treat the non-binding stipulation as binding and could have the effect of "allowing the subdivision of a $100 million action into 21 just-below-$5-million state-court actions simply by including nonbinding stipulations" — conflicting with the purpose of the statute.[23]

The Court did not consider Respondent's alternative argument that a stipulation is binding to the extent it limits attorney's fees so that the amount in controversy remains below the CAFA threshold, as Respondent's stipulation did not provide for that option.[24]

In ruling that the District Court should have ignored the stipulation, the Court vacated the judgment below and remanded the case for further proceedings.[25]

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[18] *Id.* at *3.
[19] *Id.*
[20] *Id.*
[21] *Id.* at *4.
[22] *Id.* at *4-5.
[23] *Id.* at *5.
[24] *Id.*
[25] *Id.* at *6.

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