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CAFA: Third Circuit holds that denial of class certification does not divest district court of CAFA jurisdiction

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Takeaway: A federal court should not lose jurisdiction under the Class Action Fairness Act (CAFA) when it denies a motion for class certification. In a prior post – *Getting it wrong – remanding a removed class action back to state court after the denial of class certification* (April 29, 2019) – we reported on a district court's decision (erroneous, we believe) to remand a class action to state court after a denial of certification, under the theory the action could no longer satisfy CAFA's $5 million jurisdictional threshold. In contrast to the district court decision discussed in our prior post, the Third Circuit recently joined the growing number of federal appellate courts recognizing that a denial of certification does not divest a federal court of CAFA jurisdiction.

The Third Circuit case involved a putative class action against Ford Motor Company where the class plaintiff asserted claims for breach of express warranty, violation of the New Jersey Consumer Fraud Act (NJCFA), breach of the duty of good faith and fair dealing, and common law fraud, all based on alleged defects in the fuel tanks of certain Ford F-Series and E-Series vehicles. See *Coba v. Ford Motor Co*., --- F.3d ---, No. 17-2933, 2019 WL 2911065 (3rd Cir., July 8, 2019). The class representative moved for class certification. Ford moved for summary judgment. The district court initially granted summary judgment in Ford's favor, dismissing three of the plaintiff's four claims. Simultaneously with this initial summary judgment grant, the district court denied the motion for class certification as moot, even though it had yet to dispose of the plaintiff's NJCFA claim. The district court later entered a final summary judgment order disposing of the NJCFA claim.

On appeal, the Third Circuit examined whether the district court had jurisdiction to rule on the merits of the case (by granting summary judgment in its final order) after it already had denied class certification, arguably stripping the case of its CAFA jurisdictional hook. Characterizing the issue as one of first impression in the Third Circuit, the Court of Appeals framed the issue as follows: "If a federal court properly exercises jurisdiction pursuant to § 1332(d) [CAFA] at the time a claim is filed or removed, does a subsequent denial of class certification divest the court of subject-matter jurisdiction?" 2019 WL 2911065, at *3.

"In accordance with every other Circuit Court to address this question," the Third Circuit ruled, "we conclude that it does not." *Id*. In support of this ruling, the panel cited the following appellate decisions: *F5 Capital v. Pappas*, 856 F.3d 61, 75–77 (2d Cir. 2017); *Louisiana v. Am. Nat. Prop. Cas. Co*., 746 F.3d 633, 639–40 (5th Cir. 2014); *Metz v. Unizan Bank*, 649 F.3d 492, 500–01 (6th Cir. 2011); *Buetow v. A.L.S. Enters., Inc*., 650 F.3d 1178, 1182 n.2 (8th Cir. 2011); *United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO, CLC v. Shell Oil Co* ., 602 F.3d 1087, 1089 (9th Cir. 2010) (*United*

Steel); *Cunningham Charter Corp. v. Learjet, Inc.*, 592 F.3d 805, 806–07 (7th Cir. 2010); *Vega v. T-Mobile USA, Inc*., 564 F.3d 1256, 1268 n.12 (11th Cir. 2009). *Id*. at *3 n.2.

In further support of its ruling, the panel quoted approvingly from the Ninth Circuit's decision in *United Steel*: "[h]ad Congress intended that a properly removed class action be remanded if a class is not eventually certified, it could have said so." *Id*. (quoting *United Steel*, 602 F.3d at 1091).

As we pointed out in our prior post, despite this growing body of appellate authority, sometimes a district court will remand a class action to state court (perhaps as a docket-clearing mechanism), based on the mistaken belief that the denial of certification divests a federal court of CAFA jurisdiction. To avoid the risk of an improper remand to state court, a class defendant should consider preemptively addressing this "continuing jurisdiction" issue as part of the class certification-related briefing.