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Plaintiffs Attys Say Sky's Not Falling After CAFA Ruling

By **Bibeka Shrestha**

Law360, New York (March 25, 2013, 7:01 PM ET) -- Plaintiffs' attorneys see no reason to weep over the U.S. Supreme Court's recent ruling that individuals who bring class actions can't cap damages to dodge federal jurisdiction, telling Law360 that the decision trumpeted by the defense bar over the past week isn't actually a game changer.

Some experts have painted Standard Fire Insurance Co.'s win at the high court as a major victory for defendants fighting across the U.S. to keep big-dollar class actions out of hostile state courts. But most of those high-stakes legal battles are already under the eyes of federal judges, plaintiffs-side lawyers said on Monday.

And while the high court ruling quashed attempts by plaintiffs to artificially cap their damages to avoid a $5 million jurisdictional threshold set by the Class Action Fairness Act, it's not that common for plaintiffs to stipulate that they would seek less than that amount to avoid litigation in front of federal judges, they said.

The Supreme Court held that before class certification, named plaintiffs have no power to bind potential class members to a damage cap, a ruling that they say will have little fallout for class action litigators on the plaintiffs' side.

Here's how plaintiffs firms responded when Law360 asked them for their take on last week's high-profile decision:

Steven Toll, Cohen Milstein Sellers & Toll PLLC

"The Supreme Court's decision in Standard Fire Insurance v. Knowles is simply a 'non-event' for the vast majority of class actions. It struck down an artificial stipulation to limit damages. But, how many class actions involve damages under $5 million? Virtually none that I know of. Thus, this is not some huge victory for defendants and is not a decision that will have any impact in the area of class action litigation against major companies involved in fraud or other misconduct. Many of those cases are brought in federal court under federal statutes and of course the decision has zero impact on those cases anyway. Thus, the reach of this decision is miniscule at best."

Vince Parrett, Motley Rice

It certainly doesn't limit or bar class actions going forward. It simply means that many if not most of them will be in federal court. Defense lawyers' spin aside, I really don't see this as a significant victory for them. This decision does not say that plaintiffs cannot bring class actions. It simply says that if plaintiffs have multimillion dollar damages, then their class action must be brought in federal court. That's not a game-changing win for defendants who

caused and can and will be liable for multimillion dollar damages — albeit in federal court. Nothing for them to cheer about.

Joe Whatley Jr., WhatleyKallas LLC

"I do not believe that the opinion will have a significant impact. Since CAFA was adopted, I cannot recall ever limiting the damages that we claim to avoid federal jurisdiction. The opinion will apply only to a very few cases. These days, class actions are almost always in federal court."

Matt Edling, Cotchett Pitre & McCarthy LLP

"The number of class actions with non-diverse parties, which fall within the specific CAFA exceptions and where the amount in controversy is less than $5 million, were relatively small in number to begin with. The practice at issue in Standard Fire was sui generis. While, Standard Fire makes the jurisdictional pleading decision clear, its reach is narrow. There are specific CAFA excepted class cases — generally those where locality of the harm is state-centric — the amount in controversy is rarely a determinative factor. For the majority of plaintiff class actions practitioners, I imagine this decision has little impact on their practice."

Standard Fire is represented by Theodore Boutrous Jr. of Gibson Dunn & Crutcher LLP, and Wystan Ackerman of Robinson & Cole LLP.

Knowles is represented by David Frederick of Kellogg Huber Hansen Todd Evans & Figel PLLC and Jonathan Massey of Massey & Gail LLP

The case is The Standard Fire Insurance Co. v. Greg Knowles, case number 11-1450, in the U.S. Supreme Court.

--Editing by Sarah Golin.

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