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## Class Action Fairness Act of 2005 Enacted

By: Nan Roberts Eitel and Aimee M. Quirk

President George W. Bush signed the Class Action Fairness Act of 2005 (the "Act") into law on February 18, 2005. The Act overhauls the current class action litigation system by providing a federal forum for many class actions and mandating increased judicial scrutiny of coupon settlements and attorneys' fees in such cases. The new law applies to any civil action filed on or after February 18, 2005. Highlights of the Act include:

**Expansion of Federal Jurisdiction** – The Act expands federal diversity jurisdiction for class actions to what lawyers call "minimal diversity," rather than the rule of "complete diversity" now required to file a case in, or remove it to, federal court. Federal courts will now have jurisdiction over class actions if any defendant is a citizen of a different state from at least one member of the plaintiff class and if the combined claims of all class members exceed \$5 million, exclusive of interest and costs. Federal jurisdiction, however, is not permitted where the primary defendants are states, state officials, or other governmental entities against whom the district court may be foreclosed from ordering relief or where the proposed plaintiff class is fewer than 100. Further, the Act provides that a court *may* decline to exercise federal jurisdiction over a class action in which more than one-third but less than two-thirds of the proposed plaintiff class and the primary defendants are citizens of the same state. A court *must* decline to exercise federal jurisdiction where, among other things, two-thirds or more of the proposed plaintiff class and a primary defendant are citizens of the same state.

**Increased Removal Rights** – If federal jurisdiction exists, a class action may be removed to a federal district court even if a defendant is a citizen of the state where the suit is filed. Before the Act, the presence of a "local defendant" prevented removal even if federal jurisdiction otherwise existed. Moreover, a class action may now be removed by any defendant without the consent of all defendants, and the one-year limitation for cases not initially removable does not apply. The Act also allows removal of "mass actions" — actions in which the claims for monetary relief of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact, but which were not filed as class actions. Finally, the Act authorizes broader and expedited federal appellate review of orders granting or denying remand of removed cases.

**Judicial Scrutiny of Coupon Settlements and Resulting Attorneys' Fees** – In cases in which the proposed settlement involves coupons to class members, the Act requires that the court conduct a hearing and provides that a coupon settlement may be approved only after the court makes written findings that the settlement is fair, reasonable, and adequate for class members. The Act further requires that the fees of plaintiffs' counsel be related to the value of the settlement to class members or the amount of time class counsel reasonably expended working on the action.

Although the implications of the Act will play out in courts across the country, many predict that early battles will be fought over identifying the plaintiff class and their citizenship, as well as the potential damages sought. Before the Act, one only had to consider the citizenship and value of the claims of the named plaintiffs, not the absent class. With jurisdiction resting on an assessment of the absent class's citizenship and the aggregated value of their claims, the jurisdictional inquiry may require substantial discovery or production of evidence that previously did not occur until later in the class certification process or even after certification. Defendants may have to produce detailed customer lists simply to determine whether

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fewer than two-thirds of the class have a different citizenship than a primary defendant. Similarly, the evidence required to establish \$5 million in dispute for the entire class is likely more substantial than that required to establish \$75,000 in dispute for only the named plaintiff or plaintiffs. Thus, like the citizenship inquiries, proving jurisdictional amount may require significant discovery or production of evidence at a very early stage of the litigation.

*Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact our Class Action Defense practice group:*

Nan Roberts Eitel  
Jones Walker  
201 St. Charles Ave., 49th Fl.  
New Orleans, LA 70170-5100  
ph. 504.582.8356  
fax 504.589.8356  
email [neitel@joneswalker.com](mailto:neitel@joneswalker.com)

### Class Action Defense Practice Group

H. MARK ADAMS  
JEFFREY M. BAUDIER  
EDWARD H. BERGIN  
ROBERT B. BIECK  
MATTHEW T. BROWN  
THOMAS A. CASEY, JR.  
MICHAEL A. CHERNEKOFF  
MICHELE W. CROSBY  
MARK A. CUNNINGHAM  
NAN ROBERTS EITEL  
MADELEINE FISCHER  
LEON GARY, JR.  
COVERT J. GEARY  
AMY L. GLOVINSKY  
JOHN G. GOMILA  
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