

CLASS ACTION PRACTICE GROUP

CLIENT ALERT

**CONGRESS PASSES MAJOR CLASS ACTION REFORM;
FEDERAL COURT JURISDICTION EXPANDED**

The Armstrong Teasdale LLP Class Action Practice Group wants you to be aware of the most significant development in class action practice and procedure in decades. On Thursday, February 10, 2005, the Senate passed the Class Action Fairness Act of 2005 by a 72-26 vote, and on Thursday, February 17, 2005, the House of Representatives passed the Senate version of the bill by a 279-149 vote. President Bush has indicated he will sign the bill into law.

The Act alters the future of class action practice and will likely ensure that more class actions are litigated in federal court. The Act removes the biggest jurisdictional hurdles defendants have faced in the past, which precluded removal of state court class actions to federal court based on diversity jurisdiction grounds. The Act eliminates the requirements that all plaintiffs be citizens of different states from all defendants and that each putative class member have individual claims totaling over \$75,000. Instead, the Act allows removal of a class action if any putative class member and any defendant are citizens of different states and the aggregate amount in controversy exceeds \$5 million. Subject to an analysis of certain enumerated factors, a federal district court may decline to exercise jurisdiction if more than one-third but less than two-thirds of the members of the proposed class and the primary defendant are

citizens of the state in which the action was originally filed. Further, a federal district court must decline to exercise jurisdiction over a class action in which more than two-thirds of the members of the proposed plaintiff classes and the primary defendants are citizens in the state in which the action was originally filed. Another significant aspect of the legislation is the limitation on coupon settlements, which links the attorneys' fees to the coupon redemption rate or the actual hours spent working on the case. Based on these changes to the law, future multi-state class actions that previously would have been mired in state court will now be removable to federal courts.

The initial impact of the Act will take some time to gauge as the Act does not apply retroactively to class actions that are currently pending in state courts. The retroactivity provision was a significant point of disagreement in previous versions of the bill and was one of the factors that led to the legislation's failure in prior sessions. Nevertheless, Supreme Court and court of appeals precedents significantly limit federal court jurisdiction to hear class cases involving differing laws of multiple states. This presents an additional hurdle to plaintiffs for certification of class actions in federal court, and could substantially limit the number of class actions certified in the wake of the Act.

The new legislation will streamline the process of removal jurisdiction and eliminate much of the gamesmanship and forum shopping that has occurred under previous law, but defendants should be aware of other potential implications of the Act. Initially, substantial litigation could arise relating to the implementation of the law and determination of federal court jurisdiction in individual cases. Structuring settlements under the new law will require a coordinated strategy because coupon settlements, and the corresponding attorneys'

fees, will be subject to a close review by the court and this may foreclose many settlement strategies currently in use. The legislation may also lead to many smaller class actions filed in multiple state courts, instead of large national class actions. Such attempts to "plead around" the Act will be subject to challenge. This approach could result in smaller, localized state court class actions, with some risk of inconsistent results - and will require defendants to adopt a comprehensive litigation strategy.

**For more information about the Act, please contact
one of our Class Action Practice Group Leaders listed below,
or visit our website at:**

www.armstrongteasdale.com/PracticeAreas/Litigation/ClassAction

GLENN E. DAVIS

One Metropolitan Square
Suite 2600
St. Louis, Missouri 63102
314-621-5070

gdavis@armstrongteasdale.com

BRANT M. LAUE

2345 Grand Boulevard
Suite 2000
Kansas City, Missouri 64108
816-221-3420

blaue@armstrongteasdale.com

J. KENT LOWRY

3405 West Truman Boulevard
Suite 210
Jefferson City, Missouri 65109
573-636-8394

klowry@armstrongteasdale.com

This Client Alert is a summary for general information and discussion only. It should not be construed to be a complete analysis of the matters presented and may not be relied upon as legal advice.

"ADVERTISING MATERIAL: COMMERCIAL SOLICITATIONS ARE PERMITTED BY THE MISSOURI RULES OF PROFESSIONAL CONDUCT BUT ARE NEITHER SUBMITTED TO NOR APPROVED BY THE MISSOURI BAR OR THE SUPREME COURT OF MISSOURI."

St. Louis
One Metropolitan Square
St. Louis, Missouri 63102-2740
(314) 621-5070

Kansas City
2345 Grand Boulevard
Kansas City, Missouri 64108
(816) 221-3420

Jefferson City
3405 West Truman Boulevard
Jefferson City, Missouri 65109
(573) 636-8394

Springfield, IL
3201 Pleasant Run, Suite A
P.O. Box 13317
Springfield, IL 62791
(217) 726-8200

New York, NY
230 Park Avenue
New York, New York 10169
(212) 551-7790

Washington, DC
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 454-2800

Shanghai
1376 Nan Jing Xi Lu
Shanghai Centre - Suite 718
Shanghai 200040
P.R. China
011-8621-6279-8808

Sydney
Level 31, No. 1 O'Connell Street
Sydney, NSW 2000
Australia
+61 29-262-6700