

# CAFA UPDATE: THE STATE OF THE LAW

**William B. Rubenstein**

Harvard Law School  
Cambridge, Massachusetts

© 2007 William Rubenstein. This outline provides an overview of court decisions interpreting the Class Action Fairness Act of 2005, as of August 23, 2007.

## I. DATE CONTROVERSIES

CAFA applies only to cases “commenced” on or after its effective date of February 18, 2005. Numerous issues have arisen interpreting this commencement/effective date provision.

### A. Commencement at Filing or Removal?

Every circuit court to decide this issue has held that cases commence when they are initially filed, not when they are removed. (However, there are some exceptions where state law specifies that cases do not commence when filed, but, for instance, when service is effectuated.)

FIRST: *Natale v. Pfizer, Inc.*, 424 F.3d 43 (1st Cir. 2005)

SEVENTH: *Knudsen v. Liberty Mut. Ins. Co.*, 411 F.3d 805 (7th Cir. 2005); *Pfizer, Inc. v. Lott*, 417 F.3d 725 (7th Cir. 2005)

NINTH: *Bush v. Cheaptickets, Inc.*, 425 F.3d 683 (9th Cir. 2005); *Progressive West Insurance Company v. Preciado*, 479 F.3d 1014 (9th Cir. 2007)

TENTH: *Pritchett v. Office Depot, Inc.*, 420 F.3d 1090 (10th Cir. 2005)

### B. Relation Back

The most common issue in date controversy cases is whether an amended complaint filed post-CAFA (when the initial complaint was filed pre-CAFA) suffices to commence a new case for CAFA purposes. All circuit courts to address the issue held that whether an amended complaint commences a new action for CAFA purposes depends on whether the complaint relates back to the original complaint under state law: if the complaint does “relate back” then it commences under the pre-CAFA date, if it does not “relate back” then the new, post-CAFA, filing date is its commencement date and CAFA applies. A recent Ninth Circuit case, *Progressive West Insurance Company v. Preciado*, 479 F.3d 1014 (9th Cir. 2007), found that California had no relevant “relation back” doctrine, which led a subsequent Ninth Circuit panel to opine that the “relation back” doctrine is inapplicable in California CAFA cases. *McAtee v. Capital One, F.S.B.*, 479 F.3d 1143, 1149 (9th Cir. 2007).

Explicitly applying the “relation back” rule:

SIXTH: *Hall v. State Farm Mut. Auto. Ins. Co.*, 215 Fed. Appx. 423 (6th Cir. 2007)

SEVENTH: *Santamarina v. Sears*, 466 F.3d 570 (7th Cir. 2006); *Phillips v. Ford Motor Co.*, 435 F.3d 785 (7th Cir. 2006), *Schorsch v. Hewlett-Packard Co.*, 417 F.3d 748 (7th Cir. 2005); *Knudsen v. Liberty Mut. Ins. Co.*, 411 F.3d 805 (7th Cir. 2005)

EIGHTH: *Plubell v. Merck & Co.*, 434 F.3d 1070 (8th Cir. 2006)

TENTH: *Prime Care of Ne. Kan., LLC v. Humana Ins. Co.*, 447 F.3d 1284 (10th Cir. 2006)

Implicitly applying the “relation back” rule:

FIRST: *Natale v. Pfizer, Inc.*, 424 F.3d 43 (1st Cir. 2005)

FIFTH: *Braud v. Transp. Serv. Co. of Ill.*, 445 F.3d 801 (5th Cir. 2006)

There are a few cases suggesting, in *dicta*, that federal and not state law might govern the relation back question.

FIFTH: *Braud v. Transp. Serv. Co. of Ill.*, 445 F.3d 801, 808 (5th Cir. 2006)

SEVENTH: *Schillinger v. Union Pac. R.R. Co.*, 425 F.3d 330, 335 (7th Cir. 2005)

FIRST/Dist: *Moniz v. Bayer A.G.*, 447 F. Supp. 2d 31, 35 (D. Mass. 2006)

FIFTH/Dist: *Werner v. KPMG LLP*, 415 F. Supp. 2d 688, 701 (S.D. Tex. 2006)

### C. New/Substituted Defendants

Two circuits have held that a new case commences when a new defendant is added (i.e., there is a new case as to that defendant), regardless of relation back, though the Ninth Circuit recently held that because “relation back” is inapplicable under California law, the addition of a new defendant did not commence a new case even against that defendant.

FIFTH: *Braud v. Transp. Serv. Co.*, 445 F.3d 801 (5th Cir. 2006)

SEVENTH: *Schillinger v. Union Pac. R.R.*, 425 F.3d 330 (7th Cir. 2005)

NINTH: *McAtee v. Capital One, F.S.B.*, 479 F.3d 1143, 1149 (9th Cir. 2007)

#### **D. New/Substituted Plaintiff**

Where new or substituted plaintiffs in the amended complaint do not add new claims, courts have held that the amended complaint relates back to the pre-CAFA complaint.

SECOND/Dist: *In re Methyl Tertiary Butyl Ether Prods. Liab. Litig.*, 2006 WL 1004725 (S.D.N.Y. Apr. 17, 2006)

SEVENTH: *Phillips v. Ford Motor Co.*, 435 F.3d 785 (7th Cir. 2006)

SEVENTH/Dist *Moll v. Hasbro, Inc.*, 2007 WL 2229001 (S.D. Ill. Aug. 2, 2007); *Bemis v. Allied Prop. & Cas. Ins. Co.*, 2006 WL 1064067 (S.D. Ill. Apr. 20, 2006); *In re General Motors Corp. Dex-Cool Prods. Liab. Litig.*, 2006 WL 644793 (S.D. Ill. Mar. 9, 2006), *aff'd Natale v. General Motors Corp.*, 2006 WL 1458585 (7th Cir. May 8, 2006); *In re GMC Dex-Cool Prods. Liab. Litig.*, 2006 WL 2818773 (S.D. Ill. Sept. 27, 2006); *In re Sears, Roebuck & Co. Tools Mktg. & Sales Practices Litig.*, 2006 WL 1517779 (N.D. Ill. May 24, 2006)

EIGHTH/Dist: *Berry v. Volkswagen of Am., Inc.*, 2006 WL 344774 (W.D. Mo. Feb. 15, 2006)

NINTH/Dist: *Morgan v. American Intern. Group, Inc.*, 2005 WL 2172001 (N.D. Cal. Sept. 8, 2005)

TENTH/Dist: *Plummer v. Farmers Group, Inc.*, 388 F. Supp. 2d 1310 (E.D. Okla. 2005); *Cuesta v. Ford Motor Co.*, 2006 WL 1207608 (E.D. Okla. May 1, 2006)

#### **E. Redefined/Expanded Class Definition**

When an amended complaint redefines or expands a class definition, courts have held that the amended complaint does not commence a new suit unless the amendment (1) adds a new claim or (2) exposes the defendant to liability that it did not have notice of from the original complaint.

- SEVENTH: *Schorsch v. Hewlett-Packard Co.*, 417 F.3d 748 (7th Cir. 2005); *Knudsen v. Liberty Mut. Ins. Co.*, 435 F.3d 755 (7th Cir. 2006); *Schillinger v. Union Pacific R. Co.*, 425 F.3d 330 (7th Cir. 2005)
- TENTH/Dist: *Cuesta v. Ford Motor Co.*, 2006 WL 1207608 (E.D. Okla. May 1, 2006); *Judy v. Pfizer, Inc.*, 2005 WL 2240088 (E.D. Mo. Sept. 14, 2005)
- ELEVENTH/Dist: *Waldman v. Cingular Wireless, LLC*, 2007 WL 1970858 (S.D. Fla. July 3, 2007); *Senterfitt v. SunTrust Motg., Inc.*, 385 F. Supp. 2d 1377 (S.D. Ga. 2005)

## II. JURISDICTIONAL ISSUES

CAFA expands federal subject matter jurisdiction. Numerous issues have arisen about how to interpret the jurisdictional components of CAFA.

### A. Burden of Establishing Federal Jurisdiction

All five federal circuits that have considered the issue have held that the party seeking removal to federal court bears the burden of establishing federal jurisdiction (some district court decisions had suggested the opposite).

- SECOND: *DiTolla v. Doral Dental IPA of N.Y., LLC*, 469 F.3d 271 (2d Cir. 2006); *Blockbuster, Inc. v. Galeno*, 472 F.3d 53 (2d Cir. 2006)
- THIRD: *Morgan v. Gay*, 471 F.3d 469 (3d Cir. 2006)
- SEVENTH: *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 448 (7th Cir. 2005)
- NINTH: *Abrego v. Dow Chem. Co.*, 443 F.3d 676, 685 (9th Cir. 2006)
- ELEVENTH: *Miedema v. Maytag Corp.*, 450 F.3d 1322, 1328-29 (11th Cir. 2006); *Evans v. Walter Indus.*, 449 F.3d 1159 (11th Cir. 2006), *reh'g and reh'g en banc denied*, 180 Fed. Appx. 146 (11th Cir. 2006)

### B. Burden of Remand

Though a few district courts have held otherwise, all circuit courts that have decided the issue have held that once federal jurisdiction has been established, the party opposing jurisdiction

bears the burden of proving that remand to state court is appropriate, i.e. that one of the exceptions to CAFA jurisdiction apply. However, lower courts have adopted different stances as to whether defendants can be compelled to produce information that would assist plaintiffs in moving to remand.

FIFTH: *Preston v. Tenet Healthsystem Mem'l Med. Ctr., Inc.*, 485 F.3d 804 (5th Cir. 2007); *Frazier v. Pioneer Americas LLC*, 455 F.3d 542, 546 (5th Cir. 2006)

SEVENTH: *Hart v. FedEx Ground Package Sys.*, 457 F.3d 675 (7th Cir. 2006)

NINTH: *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018 (9th Cir. 2007)

ELEVENTH: *Evans v. Walter Indus.*, 449 F.3d 1159 (11th Cir. 2006), *reh'g and reh'g en banc denied*, 180 Fed. Appx. 146 (11th Cir. 2006)

### C. Satisfaction of the Amount in Controversy

Many circuit and district court cases address the sufficiency of evidence under CAFA's amount in controversy requirement. Jurisdictional amount issues under CAFA reprise some of the burden issues outlined above, with the general approach following the conventional rules (1) that the proponent of federal jurisdiction must demonstrate that the amount in controversy requirement is met "by a preponderance of the evidence," and (2) that the case will be remanded only if it is "legally certain" that the recovery (from plaintiff's perspective) or cost of complying with the judgment (from defendant's) will be less than the jurisdictional floor. However, the Ninth Circuit imposes a higher burden on the proponent of federal jurisdiction. Courts in various circuits have also struggled with how to approach the defendant's burden when the complaint fails to specify damages, with some courts requiring discovery or additional briefing on the issue and others rejecting supplemental information gathering.

FIRST/Dist: *McMorris v. TJX Companies, Inc.*, 2007 WL 656308 (D.N.H. June 26, 2007)

SECOND: *DiTolla v. Doral Dental IPA of N.Y.*, 469 F.3d 271 (2d Cir. 2006)

THIRD: *Morgan v. Gay*, 471 F.3d 469 (3d Cir. 2006)

THIRD/Dist: *Clean Air Council v. Dragon Int'l Group*, 2006 WL 2136246 (M.D. Pa. July 28, 2006); *Duraku v. BB&T Bank*, 2006 WL

- 1805887 (D.N.J. June 29, 2006); *Reibsten v. Cont'l Tire N. Am., Inc.*, 2007 WL 1030486 (E.D. Pa. Apr. 2, 2007); *Lamond v. Pepsico, Inc.*, 2007 WL 1695401 (D.N.J. June 8, 2007)
- FOURTH/Dist: *Chavis v. Fidelity Warranty Services, Inc.*, 415 F. Supp 2d 620 (D.S.C. 2006); *Lanier v. Norfolk S. Corp.*, 2006 WL 1878984 (D.S.C. July 6, 2006)
- SIXTH/Dist: *Brown v. Jackson Hewitt, Inc.*, 2007 WL 642011 (N.D. Ohio Feb. 27, 2007); *Kendrick v. Standard Fire Ins. Co.*, 2007 WL 1035018 (E.D. Ky. Mar. 31, 2007); *Vanyo v. CitiFinancial, Inc.*, 2007 WL 1795959 (N.D. Ohio, June 20, 2007); *Pittman v. Chase Home Finance, LLC*, 2007 WL 2156395 (N.D. Ohio. July 25, 2007)
- SEVENTH: *Home Depot, Inc. v. Rickher*, 2006 WL 1727749 (7th Cir. May 22, 2006); *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446 (7th Cir. 2005)
- SEVENTH/Dist *Buller v. Owner Operator Indep. Driver Risk Retention Group, Inc.*, 461 F. Supp. 2d 757 (S.D. Ill. 2006); *Fiore v. First Am. Title Ins. Co.*, 2005 WL 3434074 (S.D. Ill., Dec. 13, 2005); *Musgrave v. Aluminum Co. of Am., Inc.*, 2006 WL 1994840 (S.D. Ind. 2006); *Condes v. State Farm Mut. Auto. Ins. Co.*, 2007 WL 317037 (N.D. Ill. Jan. 24, 2007); *Atteberry v. Esurance Ins. Servs., Inc.*, 473 F. Supp. 2d 876 (N.D. Ill. 2007); *Clark v. Wynn's Extended Care*, 2007 WL 922244 (N.D. Ill. Mar. 23, 2007); *Espinosa v. Philip Morris USA, Inc.*, 2007 WL 917383 (N.D. Ill. Mar. 26, 2007)
- EIGHTH/Dist: *Wood v. Teris, LLC*, 2006 WL 2091865 (W.D. Ark. July 26, 2006); *Ongstad v. Piper Jaffray & Co.*, 407 F. Supp. 2d 1085 (D.N.D. 2006)
- NINTH: *Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 683 (9th Cir. 2006); *Lowdermilk v. U.S. Bank National Ass'n.*, 479 F.3d 994 (9th Cir. 2007)
- NINTH/Dist: *Sanchez v. Wal-Mart Stores, Inc.*, 2007 WL 1345706 (E.D.Cal. May 8, 2007); *Davis v. Homecomings Financial*, 2007 WL 905939

- (W.D. Wash., Mar. 22, 2007); *Berry v. American Express Pub. Corp.*, 381 F.Supp.2d 1118 (C.D. Cal. 2005)
- TENTH/Dist: *Plummer v. Farmers Group, Inc.*, 388 F. Supp. 2d 1310 (E.D. Okla. 2005)
- ELEVENTH: *Lowery v. Alabama Power Co.*, 483 F.3d 1184 (11th Cir. 2007); *Miedema v. Maytag Corp.*, 450 F.3d 1322 (11th Cir. 2006)
- ELEVENTH/Dist: *Wheeler v. Allstate Floridian Indem. Co.*, 19 Fla. L. Weekly Fed. D. 871 (N.D. Fla. Apr. 26, 2006); *Senterfitt v. SunTrust Motg., Inc.*, 385 F. Supp. 2d 1377 (S.D. Ga. 2005); *Main Drug, Inc. v. Aetna U.S. Healthcare Inc.*, 455 F. Supp. 2d 1323 (M.D. Ala. 2006); *Eufaula Drugs, Inc. v. TDI Managed Care Servs.*, 2006 WL 986976 (M.D. Ala. Apr. 14, 2006); *Scott v. Ing Clarion Partners, LLC*, 2006 WL 3191184 (N.D. Ga. Oct. 31 2006)
- DC/Dist: *Wexler v. United Air Lines, Inc.*, 2007 WL 2186132 (D.D.C. July 31, 2007)

#### D. Class Certification and Jurisdiction

Lower courts have generally found that the denial of class certification, or withdrawal of a request for class certification, does not automatically divest a court of jurisdiction under CAFA, with one exception being where there was no other ground for federal jurisdiction.

- SECOND/Dist: *Falcon v. Philips Elec. N. Am. Corp.*, 489 F. Supp. 2d 367 (S.D.N.Y. 2007). *But see McGaughey v. Treistman*, 2007 WL 24935 (S.D.N.Y. Jan. 4, 2007) (denial of class certification divested court of jurisdiction where plaintiffs failed to satisfy traditional diversity requirements in the alternative).
- FIFTH/Dist: *Garcia v. Boyar & Miller, P.C.*, 2007 WL 1556961 (N.D. Tex. May 30, 2007)
- SEVENTH/Dist: *Genenbacher v. CenturyTel Fiber Co. II, LLC*, 2007 WL 1452031 (C.D. Ill. May 15, 2007)

### E. Mass Action Jurisdiction

The Eleventh Circuit recently addressed CAFA's "mass action" provision and the threshold jurisdictional requirements for removing an action to federal court. In a lengthy discussion of the issue, the court held that the mass action provisions required (1) an amount in controversy in aggregate of at least \$5 million; (2) minimal diversity; (3) monetary claims of over 100 class members; and (4) common questions of law and fact. Significantly, the court held that § 1332(d)(11)(B)(i) did not require each plaintiff's claim to be greater than \$75,000 for removal to be appropriate, but that those claims that fall below the jurisdictional threshold should be remanded upon such a determination.

ELEVENTH: *Lowery v. Alabama Power Co.*, 483 F.3d 1184 (11th Cir. 2007)

### III. CAFA JURISDICTIONAL EXCEPTIONS

#### A. Securities—(28 U.S.C. § 1332(d)(9))

Some 2006 cases read CAFA's "securities exceptions" broadly, hence sending even non-Delaware cases back to state court.

SECOND/Dist: *Estate of Pew v. Cardarelli*, 2006 WL 3524488 (N.D.N.Y. Dec. 6, 2006)

EIGHT/Dist: *Williams v. Tex. Commerce Trust Co.*, 2006 WL 1696681 (W.D. Mo. June 15, 2006)

NINTH/Dist: *But see Davis v. Chase Bank U.S.A., N.A.*, 453 F. Supp. 2d 1205 (C.D. Cal. 2006) (holding that credit card agreements cannot be considered securities)

#### B. Local Controversy/Home State Exception—(28 U.S.C. § 1332(d)(3) & (4))

CAFA requires remand to state court of very local controversies and provides district court discretion to remand somewhat local controversies. *See* 28 U.S.C. §§ 1332(d)(3) & (4). On motions to remand, most disputes center on the citizenship of the plaintiff class and the significance of an in-state defendant.

##### 1. Class Citizenship



Most courts have rejected evidence of residency as sufficient to establish the citizenship of the class, although some courts have relaxed that standard or have ordered plaintiffs to engage in additional discovery to make such a determination.

- THIRD/Dist: *Hirschbach v. NVE Bank*, 2007 WL 2119414 (D.N.J. July 24, 2007); *Duraku v. BB&T Bank*, 2006 WL 1805887 (D.N.J. June 29, 2006); *Schwartz v. Comcast Corp.*, 2006 WL 487915 (E.D. Pa. Feb. 28, 2006); *Schwartz v. Comcast Corp.*, 2005 WL 1799414 (E.D. Pa. July 28, 2006)
- FOURTH/Dist: *Eakins v. Pella Corp.*, 455 F. Supp. 2d 450 (E.D.S.C. 2006)
- FIFTH: *Preston v. Tenet Healthsystem Mem'l Med. Ctr., Inc.*, 485 F.3d 804 (5th Cir. 2007)
- FIFTH/Dist: *Martin v. Lafon Nursing Facility of the Holy Family*, 2007 WL 162813 (E.D. La. Jan. 18, 2007)
- SIXTH/Dist: *Ford Motor Credit Co. v. Jones*, 2007 WL 2236618 (N.D. Ohio July 31, 2007); *Kendrick v. Standard Fire Ins. Co.*, 2007 WL 1035018 (E.D. Ky. Mar. 31, 2007); *Nichols v. Progressive Direct Ins. Co.*, 2007 WL 1035014 (E.D. Ky. Mar. 31, 2007)
- SEVENTH/Dist: *Kiston v. Bank of Edwardsville*, 2006 WL 3392752 (S.D. Ill. Nov. 22, 2006); *Musgrave v. Aluminum Co. of Am., Inc.*, 2006 WL 1994840 (S.D. Ind. 2006)
- ELEVENTH: *Evans v. Walter Indus, Inc.*, 449 F.3d 1159 (11th Cir. 2006), *reh'g and reh'g en banc denied*, 180 Fed. Appx. 146 (11th Cir. 2006)
- ELEVENTH/Dist: *Scott v. Ing Clarion Partners, LLC*, 2006 WL 3191184 (N.D. Ga. Oct. 31 2006)

## 2. Significant/Primary Defendant

Courts have held that the issue of whether a defendant is a “significant” or “primary” defendant for jurisdictional purposes depends on both the absolute amount of relief sought from that defendant and the relative amount of relief in relation to other defendants.

FIFTH/Dist: *Caruso v. Allstate Ins. Co.*, 469 F. Supp. 2d 364 (E.D. La. 2007); *Escoe v. State Farm Fire and Cas. Co.*, 2007 WL 1207231 (E.D. La. Apr. 23, 2007); *Gauntt v. La. Citizens Prop. Ins. Corp.*, 2007 WL 128801 (E.D. La. Jan 16, 2007); *Robinson v. Cheetah Transp.*, 2006 WL 468820 (W.D. La. Feb. 27, 2006)

SIXTH/Dist: *Nichols v. Progressive Direct Ins. Co.*, 2007 WL 1035014 (E.D. Ky. Mar. 31, 2007); *Adams v. Federal Materials Co., Inc.*, 2005 WL 1862378 (W.D. Ky. July 28, 2005)

SEVENTH/Dist: *Kiston v. Bank of Edwardsville*, 2006 WL 3392752 (S.D. Ill. Nov. 22, 2006)

ELEVENTH: *Evans v. Walter Indus, Inc.*, 449 F.3d 1159 (11th Cir. 2006), *reh'g and reh'g en banc denied*, 180 Fed. Appx. 146 (11th Cir. 2006)

**C. Civil Rights Exception—(28 U.S.C. § 1332(d)(5))**

FIFTH: *Frazier v. Pioneer Americas LLC*, 455 F.3d 542 (5th Cir. 2006)

**IV. JURISDICTIONAL APPEALS**

**A. “Not Less Than Seven Days” Appeal Deadline**

CAFA states that appeals from remand decisions must be made “not less than seven days after entry of the order.” 28 U.S.C. § 1453(c)(1). This appears to be a typographical error, with the section actually meaning to state that appeals must be filed “not more than seven days” after entry of the remand order. All circuit courts to consider the issue have so held.

THIRD: *Morgan v. Gay*, 466 F.3d 276 (3d Cir. 2006)

NINTH: *Amalgamated Transit Union v. Laidlaw Transit Servs., Inc.*, 435 F.3d 1140, 1146 (9th Cir. 2006)

TENTH: *Pritchett v. Office Depot, Inc.*, 420 F.3d 1090, 1093 n.2 (10th Cir. 2005)

ELEVENTH: *Miedema v. Maytag Corp.*, 450 F.3d 1322 (11th Cir. 2006)

**B. 60-Day Appellate Decision Deadline**

CAFA gives federal circuit courts sixty days to review remand orders brought up on appeal and accepted for review, § 28 U.S.C. 1453(c)(2). A number of courts have briefly addressed the issue of when the 60-day deadline begins, generally holding that it begins when the appeal is accepted by the court, not filed by the parties.

SECOND: *DiTolla v. Doral Dental IPA of N.Y., LLC*, 469 F.3d 271 (2d Cir. 2006)

FIFTH: *Patterson v. Dean Morris, LLP*, 444 F.3d 365 (5th Cir. 2006)

SEVENTH: *Hart v. FedEx Ground Package Sys.*, 457 F.3d 675 (7th Cir. 2006)

NINTH: *Amalgamated Transit Union v. Laidlaw Transit Servs., Inc.*, 435 F.3d 1140, 1145 (9th Cir. 2006)

ELEVENTH: *Evans v. Walter Indus.*, 449 F.3d 1159 (11th Cir. 2006), *reh'g and reh'g en banc denied*, 180 Fed. Appx. 146 (11th Cir. 2006)

**V. CASES REFERENCING CAFA'S SETTLEMENT PROVISIONS**

When evaluating the fairness of settlements, some courts have cited CAFA as support (1) for heightened judicial scrutiny of settlements, particularly coupon settlements; and (2) for the need to avoid windfalls in the form of fees. There are not yet, however, any reported decisions approving or rejecting a settlement for a case brought under CAFA.

Recent settlement decisions referencing CAFA include:

SECOND: *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646 (7th Cir. 2006)

SEVENTH: *Masters v. Wilhelmina Model Agency*, 473 F.3d 423 (2d Cir. 2007)

FIRST/Dist.: *In re Compact Disc Minimum Advertised Price Antitrust Litigation*, 236 F.R.D. 38 (D. Me. 2006)