No. 11-1450

In The Supreme Court of the United States

THE STANDARD FIRE INSURANCE COMPANY,

Petitioner,

v.

GREG KNOWLES, individually and on behalf of all others similarly situated within the State of Arkansas,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF OF THE MANUFACTURED HOUSING INSTITUTE, AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY, AMERICAN NATIONAL GENERAL INSURANCE COMPANY, ANPAC LOUISIANA INSURANCE COMPANY, PACIFIC PROPERTY & CASUALTY COMPANY, AND AMERICAN NATIONAL COUNTY MUTUAL INSURANCE COMPANY, AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE[1]

Amici are companies not based in Arkansas (and a trade association representing such companies) that have been sued in class actions in the courts of Miller County, Arkansas. They have firsthand experience defending against the tactics of class action lawyers in Miller County. They can explain, from a unique, on-the-ground perspective, the effect of class action lawyers' efforts to prevent out-of-state defendants from removing cases to federal court under the Class Action Fairness Act (CAFA), 28 U.S.C. §§ 1332(d), 1453 (2006 & Supp. I 2012). Amici have experienced many abuses of the class action device described in this brief: forum-shopping, unreasonable discovery demands, judicial unwillingness to address merits issues prior to class certification, attorney gamesmanship, and never-ending delays.

- The Manufactured Housing Institute is a national trade association that represents all segments of the factory-built housing industry. Members of the Institute have been targeted by class actions filed in Miller County. The Institute is interested in protecting the rights of its members and other defendants

[1] This brief was authored by amici and its counsel listed on the front cover, and was not authored in whole or in part by counsel for a party. No one other than amici or its counsel has made any monetary contribution to the preparation or submission of this brief. Amici have the consent of the parties to file this brief. Letters indicating their consent have been submitted by the parties.

facing large, state court class actions by removing those actions to federal court under CAFA.

• The five ANPAC entities are insurance companies: American National Property and Casualty Company and American National General Insurance Company are Missouri corporations; ANPAC Louisiana Insurance Company is a Louisiana corporation; Pacific Property & Casualty Company is a California corporation; and American National County Mutual Insurance Company is a Texas corporation. These entities were five of 584 defendants included in the nationwide *Hensley* class action pending in Miller County. Plaintiffs claimed the class received less than they were owed in payments on uninsured and underinsured motorist claims. Yet none of these entities insured class members. Three of the five ANPAC entities did not even conduct business in Arkansas; the remaining entities conducted only 2% of their business in Arkansas when the class action was filed. When the ANPAC entities did not settle in *Hensley* – unlike most defendants – they were severed out and sued in the *Basham* class action. Both class actions are discussed in this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

This class action arises from Miller County, Arkansas, which is located in the southwestern corner of the state. *See* Beverly J. Rowe, *Miller County,*

Encyclopedia Ark. Hist. & Culture.[2] Its county seat is Texarkana, which straddles the border between Arkansas and Texas. *Id.* Miller County is predominantly rural, and its entire population is less than 45,000 persons. *Id.*

This small, rural county has become fertile ground for class action lawyers. Class action lawyers have worked to establish Miller County as a CAFA-free zone – a safe harbor in which a confluence of litigation tactics and judicial indifference have coalesced to defeat defendants' rights to remove large class actions to federal court. Using Miller County as home base, class action lawyers have dragooned scores of out-of-state corporations into settling cases for vast sums bearing no meaningful relationship to their merits.

CAFA entitles out-of-state defendants to remove certain class actions to federal court. *See* 28 U.S.C. § 1453(b). The class action bar in Miller County and some surrounding jurisdictions seeks to deprive defendants of their removal right by stipulating that the class will not seek more than $5 million in a particular action. The primary issue in this case is whether such a stipulation is effective and lawful. Respondent Knowles included such a stipulation in his complaint when he filed this case in Miller County. Standard Fire removed, contending that Knowles

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[2] Available at http://www.encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=790 (last updated Mar. 27, 2012).

actually sought damages exceeding $5 million and that the stipulation was an improper effort to avoid federal jurisdiction under CAFA. The district court and the Eighth Circuit gave effect to the stipulation and determined the case should proceed in state court in Miller County. This court granted the petition for a writ of certiorari to resolve the issue.

This amicus brief does not directly address the propriety of these stipulations. Instead, this brief explains what happens when the class action bar deploys these stipulations to defeat removal jurisdiction. This brief provides the back story to this case – the sordid tale of what is really happening in the trial courts of Miller County. We describe the numerous advantages those courts give to the class action bar. We describe the tactics employed by the class action bar to vex and harass out-of-state defendants into coughing up large settlements (mostly to the benefit of class counsel) simply to escape Miller County.

The stipulation here is one of several devices employed to frustrate the purpose of Congress to reign in abusive class actions in jurisdictions harboring a long history of hostility to out-of-state defendants. To fully appreciate how the class action bar is thwarting Congress's intent, it is necessary to understand what is happening in Miller County.

ARGUMENT

I. CONGRESS INTENDED TO STOP STATE TRIAL COURTS FROM RESOLVING MOST LARGE CLASS ACTIONS BECAUSE THOSE COURTS DID NOT PROVIDE OUT-OF-STATE DEFENDANTS WITH FAIR FORA.

A. CAFA was enacted to protect out-of-state defendants from abusive state court class action practices prevalent in "magnet jurisdictions."

Congress determined that large state court class actions frequently "(A) harmed class members with legitimate claims and defendants that have acted responsibly; (B) adversely affected interstate commerce; and (C) undermined public respect for our judicial system." CAFA, Pub. L. No. 109-2, § 2, 119 Stat. 4. Congress recognized that plaintiffs' lawyers were "gam[ing] the system" to avoid removal of class actions in order to remain in "lawsuit-friendly" state courts. S. Rep. No. 109-14, at 10-12 (2005). Plaintiffs' lawyers had filed disproportionate numbers of class actions in certain "magnet" jurisdictions where "state court judges are less careful than their federal court counterparts about applying the procedural requirements that govern class actions." *Id*. at 13-14; *see also* 151 Cong. Rec. S1225-26 (daily ed. Feb. 10, 2005) (statement of Sen. Vitter) (describing plaintiffs' lawyers "effort[s] to maximize their fees"). Several of these "magnet" jurisdictions were small, rural counties sharing features in common with Miller County, Arkansas. *See id.*

Congress explicitly recognized that these state court class action filings presented a nationwide threat to business and commercial activities requiring a nationwide solution.

First, class actions constitute "judicial blackmail" in plaintiff-friendly jurisdictions. They force out-of-state defendants to enter into large settlements in marginal and frivolous cases. S. Rep. No. 109-14, at 20-21; 151 Cong. Rec. S1225-26 (daily ed. Feb. 10, 2005) (statement of Sen. Vitter) (explaining how the class bar files "cookie-cutter" lawsuits "against major players in a targeted industry" and out-of-town defendants are forced to settle because of the unfavorable actions by local trial judges).

Second, many state courts deprive defendants of basic procedural protections afforded by federal courts. *See* CAFA § 2, 119 Stat. at 4-5; S. Rep. No. 109-14, at 21-24; 150 Cong. Rec. S7709 (daily ed. July 7, 2004) (statement of Sen. Dodd); 151 Cong. Rec. S1333 (daily ed. Feb. 14, 2005) (statement of Sen. Obama) ("when cases are tried in counties only because it's known that those judges will award big payoffs, you get quick settlements without ever finding out who's right and who's wrong").

Third, most such class actions end in settlements where class counsel receive excessive attorney fees and class members receive little or nothing of value. *See* S. Rep. No. 109-14, at 14-20; *see also* 151 Cong. Rec. S1225-26 (daily ed. Feb. 10, 2005) (statement of Sen. Vitter).

Finally, Congress noted that class action counsel played games with the prior requirement that each class member have claims in excess of $75,000. *See* S. Rep. No. 109-14, at 10-11 ("[C]lass action lawyers typically misuse the jurisdictional threshold to keep their cases out of federal court. For example, class action complaints often include a provision stating that no class member will seek more than $75,000 in relief, even though they can simply amend their complaints after the removal to seek more relief and even though the class action seeks millions of dollars in the aggregate.").

B. CAFA embodies the constitutional concern for supplying out-of-state defendants with fair fora.

In enacting CAFA, Congress sought to "restore the intent of the framers of the United States Constitution by providing for Federal court consideration of interstate cases of national importance under diversity jurisdiction." CAFA § 2(b), 119 Stat. at 5; *see also* S. Rep. No. 109-14, at 6 ("This Committee believes that the current diversity and removal standards as applied in interstate class actions have facilitated a parade of abuses, and are thwarting the underlying purpose of the constitutional requirement of diversity jurisdiction"); 151 Cong. Rec. S1235 (daily ed. Feb. 10, 2005) (statement of Sen. Sessions) (arguing that CAFA is consistent with the Founders' views that out-of-state defendants should be protected from the "home cooking" of state courts).

Chief Justice Marshall observed that the Constitution "established national tribunals for the decision of controversies between aliens and a citizen, or between citizens of different states" because of the Framers' "apprehensions" that "the tribunals of the states will administer justice as impartially as those of the nation." *Bank of the U.S. v. Deveaux*, 9 U.S. (5 Cranch) 61, 87 (1809); *see also Burgess v. Seligman,* 107 U.S. 20, 34 (1883) ("[T]he very object of giving to the national courts jurisdiction to administer the laws of the states in controversies between citizens of different states was to institute independent tribunals, which, it might be supposed, would be unaffected by local prejudices and sectional views"); Joseph Story, *Commentaries on the Constitution* § 1684 (1833) (diversity jurisdiction provides noncitizens with "national and impartial" tribunals).

Congress was well aware of the unfair treatment defendants in large class actions had received in many state courts, and it expanded the diversity jurisdiction in enacting CAFA to ensure that those defendants had access to a neutral forum.

C. Miller County is one of the "magnet jurisdictions" targeted by CAFA.

The percentage of Miller County lawsuits alleging tort claims – the claims around which most class

actions revolve[3] – far outpaces the national average. Across the nation, tort filings make up 5% of civil cases in state courts. Nat'l Ctr. for State Courts, *Civil Caseload Composition,* Court Statistics Project.[4] But in Miller County, tort cases make up 13.7% of all filings, between double and triple the comparable percentage of tort actions filed nationwide. *See* Ark. Judiciary, *Civil Caseload Summary 2010,* 31-32 (2012).[5]

Roughly 7,500 class actions are filed nationwide each year, which amounts to one class action for every 41,333 mericans. Deborah R. Hensler, *The Future of Mass Litigation: Global Class Actions and Third-Party Litigation Funding*, 79 Geo. Wash. L. Rev. 306, 308 n.7 (2011). In Miller County, however, in 2011, class counsel for respondent Knowles alone filed at least one class action for every 8,692 residents. *Cf.* Rowe, *supra;* with Appendix 1, *infra* (together with *Basham*, showing a partial list of 2011 class actions

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[3] Francis E. McGovern, *Class Actions and Social Issue Torts in the Gulf South*, 74 Tul. L. Rev. 1655, 1657-59 (2000). Respondent Knowles has sued petitioner on a breach of contract theory for allegedly failing to pay general contractors' overhead and profit, *see* Pet. App. 69a-70a, but class action lawyers in Miller County have pleaded tort theories alleging the same failures, *see, e.g., infra* at 11 & n.7.

[4] Available at http://www.courtstatistics.org/civil/civilcomposition (last visited Oct. 18, 2012).

[5] Available at http://courts.arkansas.gov/10_cal_report/index.cfm (last visited Oct. 18, 2012).

filed in Miller County by the same class counsel representing Knowles).

Both the disproportionate number of tort filings, as well as the unfair practices employed by the trial courts in Miller County (discussed *infra*), have caused observers to identify Miller County as a state-court "magnet" jurisdiction that exemplifies the problems Congress sought to fix through CAFA. Nan S. Ellis, *The Class Action Fairness Act of 2005: The Story Behind the Statute,* 35 J. Legis. 76, 93 n.115 (2009) (noting Miller County is one of "the most famous magnet jurisdictions"); *see also* Am. Tort Found., *Judicial Hellholes 2006*, at 22 (2006) ("Miller County hosts more tort cases relative to its population than any other county in the state. . . . Miller County also appears to host more than its fair share of major class action lawsuits. . . . Miller County also is home to large awards and unfair rulings. . . . Not surprisingly, the legal environment in Miller County has led companies to settle rather than risk going to trial. . . . Of course, when [a recent major class action] settled for $90 million this year, $30 million went to the Miller County lawyers while the plaintiffs received zero cash – just coupons toward future advertising."); Inez H. Friedman-Boyce, *Head's Up on the Class Action Fairness Act of 2005,* 49 Bos. B.J. 6 (Sept./Oct. 2005)

(noting Miller County is a "magnet jurisdiction" for class action filings).[6]

II. IN MILLER COUNTY, THE CLASS ACTION BAR EMPLOYS SEVERAL INTERRELATED STRATEGIES TO COERCE LARGE SETTLEMENTS WHILE DEPRIVING DEFENDANTS OF THEIR CAFA REMOVAL RIGHTS.

A. Miller County courts refuse to intercede when class action lawyers make abusive discovery requests.

Defendants in Miller County class actions are commonly subject to inappropriate and burdensome discovery with no meaningful relief available from trial or appellate courts. *See Chiodini v. Lock*, 281 S.W.3d 728, 732 (Ark. 2008) ("This court has further held that discovery matters are not amenable to interlocutory review."); John O'Brien, *Insurers: Keeping Class Action in Arkansas Will Force Settlement*, Legal News Line, Apr. 3, 2012;[7] Michelle Massey,

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[6] *Basham v. Am. Nat'l Cnty. Mut. Ins. Co.,* No. 12-8018 (8th Cir. filed Sept. 17, 2012) and *Goodner v. Clayton Homes, Inc.,* No. 12-8021 (8th Cir. filed Sept. 20, 2012) are class actions currently pending in the Eighth Circuit that involve the same issues as *Knowles*. Both cases arise from the same state judicial district as this case. These cases are not included on the chart in Appendix 1 showing recent class action filings.

[7] Available at http://www.legalnewsline.com/class-action/235713-insurance-keeping-class-action-in-arkansas-will-force-settlement.

Arkansas "Click Fraud" Class Action Settled, Southeast Texas Record, May 8, 2008.[8]

The discovery requests often impose peculiarly onerous burdens and unnecessarily high costs on defendants. *See id.*; *cf., e.g.,* Defendants' Motion for a Protective Order Regarding Plaintiffs' Notice of Deposition of Chief Executive Officer Tom Wilson at 8-18*, Feely v. Allstate Cnty. Mut. Ins. Co.*, No. CV-2004-294-3A (Miller Cnty. Cir. Ct. Apr. 20, 2010); Letter from Circuit Judge Kirk D. Johnson to Hawley Holman and John Goodson, Counsel for Allstate Cnty. Mut. Ins. Co. (May 11, 2010), (together, ordering the deposition, in Miller County, of Allstate's CEO Thomas Wilson, though he lacked information on pertinent issues and several Allstate employees with superior knowledge had already testified); Defendants' Status Report on Discovery at 9-10, *Meredith v. Clayton Homes, Inc*., No. CV-2005-72-2 (Miller Cnty. Cir. Ct. May 22, 2008) (describing how defendants had to open their IBM mainframe computer and furnish a user account to plaintiffs' counsel, and pay more than $1.4 million, to comply with court-ordered follow-up discovery).

Class action lawyers' discovery demands are often so broad that they include requests not "reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). Because Miller

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[8] Available at http://www.setexasrecord.com/news/212088-arkansas-click-fraud-class-action-settled.

County courts do not sufficiently police plaintiffs' discovery requests, defendants must then spend extraordinary and unnecessary sums to comply with those requests. If class action lawyers were not evading removal under CAFA, federal district courts would be limiting these unduly burdensome discovery requests. *See* Fed. R. Civ. P. 26(b)(2)(C).

Several examples serve to illustrate the problem. Like petitioner Standard Fire in this case, Farmers Insurance Co. is one of many insurance companies that has been sued for allegedly failing to account for general contractors' overhead in paying homeowners' claims. Michelle Massey, *Farmers Seeks Bond to Cover Discovery Costs in Arkansas Class Action*, Southeast Texas Record, Feb. 25, 2010.[9] The class action against Farmers was filed in 2004, and Farmers filed motions seeking a protective order and certain limits to the discovery demanded by plaintiffs. *Id*. The trial court declined to rule on Farmers' motions for six years. *Id.* During that time, Farmers estimated it incurred at least $6 million in costs attempting to produce millions of pages of documents in a unique format. *Id*.

In the same case, class action lawyers demanded copies of all of the claims files of Foremost Insurance Company Inc. stretching back to 1996. Michelle Massey, *Class Counsel Attempts to Disqualify Defense*

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[9] Available at http://www.setexasrecord.com/news/225007-farmers-seeks-bond-to-cover-discovery-costs-in-arkansas-class-action.

Attorney in Foremost Insurance Case, Southeast Texas Record, Mar. 13, 2008.[10] Foremost objected that complying with this demand would require it to devote thousands of attorney hours to reviewing and redacting more than 600,000 individual claim files, at a cost that might exceed $45 million. *Id.* In response, the Miller County court ordered Foremost to produce the claims files *without* redactions and *within* 10 days. *Id.* The court later allowed plaintiffs to select sample claims files from a complete list furnished by Foremost, *id.*, but the court did not indicate that was the end of the matter, so Foremost had no choice but to conduct the full review it had sought to avoid. And even as the court afforded the class action lawyers nearly unlimited discovery, it denied Foremost's straightforward request to inspect the named plaintiff's property, the subject of the lawsuit. Michelle Massey, *"Failure to Communicate" Could Lead to $45M in Discovery Costs*, Southeast Texas Record, Aug. 8, 2007.[11]

In yet another example, a trial court rejected multiple insurance companies' requests for a protective order permitting them to redact personal information (such as financial and health information) from the hundreds of thousands of individual claims

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[10] Available at http://www.setexasrecord.com/news/209240-class-counsel-attemps-to-disqualify-defense-attorney-in-foremost-insurance-case.

[11] Available at http://www.setexasrecord.com/news/198990-failure-to-communicate-could-lead-to-45-m-in-discovery costs.

files required to be produced. Michelle Massey, *"Colossus" Class Action Costing Defendants More Than $293 Million,* Legal News Line, Aug. 2, 2007.[12]

Another vexing problem arises for out-of-state defendants with meritorious objections to personal jurisdiction. The Miller County courts have ruled that a defendant waives its objection to personal jurisdiction by seeking a protective order in discovery. *See, e.g.*, Order on Motion to Dismiss at 7, *Hensley v. Computer Sciences Corp.*, No. CV-2005-059-3 (Miller Cnty. Cir. Ct. Aug. 29, 2008). Yet the courts often do not schedule hearings on motions challenging personal jurisdiction until long after the defendant has been sued, and merits discovery proceeds in the meantime. *See, e.g.,* Initial Scheduling Order at 2-3, *Basham v. Am. Nat'l Cnty. Mut. Ins. Co.*, No. 2005-59-3A (Miller Cnty. Cir. Ct. Sept. 16, 2011) (setting a hearing date on personal jurisdiction motions eight months hence). Thus, in a cruel irony, the defendant has no choice but to participate in costly (and entirely unnecessary) discovery in order to preserve the argument that it cannot be sued in Miller County in the first place.

Burdensome and expensive discovery is often unreasonable. But it is particularly unreasonable when the expense is so disproportionate to the amount in controversy. Mandating the expenditure of millions of

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[12] Available at http://www.setexasrecord.com/news/198752-colossus-class-action-costing-defendants-more-than-293-million.

dollars in discovery when plaintiffs have stipulated to seek less than $5 million is financially irrational.

The practical effect of this crushingly expensive discovery has been to force defendants to settle class actions before they can obtain rulings on class certification or the merits of claims and defenses. *See* Michelle Massey, *Sanctioned Insurance Company Petitions Arkansas Supreme Court,* Southeast Texas Record, Dec. 29, 2009.[13] In this environment, it is immaterial whether defendants have meritorious objections to class certification or valid defenses to liability. Many defendants in Miller County have reached the point where it is simply too expensive to try to vindicate themselves.

B. Although class action lawyers have stipulated not to seek more than $5 million, they have recovered staggering attorney fees in recent class actions.

Respondent Knowles contends that he may stipulate to seek less than $5 million, even if the class he wants to represent might otherwise be eligible for a greater recovery. But the experience in Miller County shows that such stipulations are illusory. Recent settlements have required defendants to pay class action lawyers far more than $5 million in attorney fees alone. *See* O'Brien, *supra*.

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[13] Available at http://www.setexasrecord.com/news/223896-sanctioned-insurance-company-petitions-arkansas-supreme-court.

Although exact figures are difficult to obtain because of the absence of electronic dockets, at least twenty-three class actions have settled in Miller County in the last few years. In those cases, the class action lawyers sought and were granted nearly $400 million in fees based solely on their own estimates of the potential value of the settlements to class members. *See infra* Appendix 2.[14] These settlements were crafted in cases filed before CAFA's enactment, but the cases nonetheless included damages stipulations under then-applicable law (purporting to confine each class member's claims to $75,000, including fees). *See* Appendix 2, Excerpts from Notice of Removal, *Goodner v. Clayton Homes, Inc.*, No. 12-4001 (W.D. Ark. Jan. 6, 2012), ECF No. 1, at 17-21 (showing a partial list of class action settlements in class actions brought by the same class action counsel involved in this case).

Respondent Knowles and plaintiffs in other post-CAFA cases have stipulated they will not seek more than $5 million for their classes (including fees). But recent history in Miller County teaches that settlements will inevitably exceed the stipulated amounts because defendants must settle to avoid endless

[14] Class action counsel have never fully documented how much class members have actually received in prior class action settlements. *See, e.g., Big Money for Lawyers,* Ark. Times, Dec. 14, 2011, www.arktimes.com/arkansas/big-money-for-lawyers/content?oid=1974950.

litigation and prohibitively expensive (and largely unnecessary) discovery.

Moreover, as is the case here, class action lawyers have defined the class period to include only part of the relevant statute of limitations period. *See, e.g.,* Pet. App. 47a-48a. This leaves open the possibility that class action lawyers will later sue the same defendant on the same theory, this time by defining the class period as the remaining years of the statute of limitations period.

There are several incentives for class action lawyers to employ this artifice. Class action lawyers cannot file class actions seeking more than $5 million without exposing the class to CAFA removal, so in an effort to remain in federal court they stipulate to seek less than $5 million. But class action lawyers do not want to limit their recovery to $5 million for any particular controversy, so they splice what should be a single class into artificial units, for example, segments of a statute of limitations period. Class action lawyers then file multiple class actions corresponding to the segments of the statute of limitations period, each one purporting to seek less than $5 million. By stipulating and splicing in this fashion, class action lawyers continue to seek and obtain (in the aggregate) settlements far greater than CAFA's removal threshold. For an individual defendant, the specter of serial class actions, each alleging the same theory of wrongdoing, imposes intolerable and unwarranted settlement pressure.

C. Miller County trial courts favor class action lawyers in their inconsistent rulings.

While defense motions can linger undecided for years (*see infra* at 20-22), trial courts will often entertain plaintiffs' motions quickly. *See* Michelle Massey, *Reporter Asked to Leave Hearing in Colossus Class Action*, Southeast Texas Record, May 16, 2008.[15]

Similarly, while trial courts allow class action counsel to obtain most discovery material they request, trial courts typically reject defendants' efforts to obtain even basic discovery material from plaintiffs. For example, in *Basham v. Computer Sciences Corp.,* No. CV-2005-59-3A, order at 4 (Miller Cnty. Cir. Ct. Sept. 16, 2011) (order denying motion for leave to serve written discovery), a defendant sought discovery to determine the adequacy of putative class representatives and class counsel. Among other things, the defendant sought to examine prior settlements that had provided huge payouts to class action counsel in order to assess the benefits actually provided to class members. This information was also relevant to assessing mitigation of damages, offset, and joint and several liability issues. The trial court found that the discovery could not be relevant because the court had previously approved those settlements as fair. *See id.* at 7-10. The court added that it had denied

[15] Available at http://www.setexasrecord.com/news/212470-reporter-asked-to-leave-hearing-in-colossus-class-action.

defendants' ability to serve interrogatories regarding prior settlements in related class actions in Miller County filed by the same class action counsel and that it adhered to strict discovery limitations on defendants. *Id.* at 10-11.

In short, while plaintiffs can obtain almost any discovery they want, defendants cannot secure basic discovery on critical issues for their defenses.

D. Arkansas class action law deviates from federal class action law in ways that afford class action lawyers tactical advantages in Miller County.

Federal law requires trial courts (before certifying a class) to engage in "a rigorous analysis" to confirm that the prerequisites in Fed. R. Civ. P. 23 are satisfied. *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 161 (1982). Arkansas has rejected that approach, *Lenders Title Co. v. Chandler*, 107 S.W.3d 157, 162 (Ark. 2003), and has replaced it with a strong predisposition in favor of class certification – a "'certify now, decertify later' approach," *Farmers Union Mut. Ins. Co. v. Robertson*, 370 S.W.3d 179, 187 (Ark. 2010). And while federal law compels an examination of merits questions that bear upon the issue of certification, *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551-52 (2011), the Arkansas Supreme Court has "repeatedly held that we will not delve into the merits of a case when reviewing an order denying

or granting class certification," *THE/FRE, Inc. v. Martin*, 78 S.W.3d 723, 728 (Ark. 2002).

Class action lawyers in Miller County have manipulated the merits rule to pernicious effect. They have argued, and the Miller County courts have accepted, that this rule forbids a trial court from considering *any* motion addressing the merits until *after* the court has resolved the certification issue. *See, e.g.*, *Basham v. Am. Nat'l Cnty. Mut. Ins. Co.,* No. 2005-59-3A (Miller Cnty. Cir. Ct. Oct. 24, 2011) (order granting plaintiff's motion to defer) (refusing, in October 2011, to rule on defense motions to dismiss a class action, filed in 2008, because class certification had not yet been adjudicated); Michelle Keahey, *Judge in Ark. Colossus Class Action Did Not "Play,"* Legal News Line, Apr. 25, 2012.[16] This means that a defendant with a valid motion to dismiss, or a comparable dispositive legal argument, cannot even be heard on that matter prior to class certification.

The case of Charles Loper, Jr., and his financial planning company illustrates the problem. *See* Marilyn Tennissen, *Owner Says $1M Spent to Defend Frivolous Suit Against Estate-Planning Companies*, Southeast Texas Record, Aug. 24, 2012.[17] In 2007, three

[16] Available at http://www.legalnewsline.com/in-the-spotlight/235935-judge-in-ark-colossus-class-action-did-not-play.

[17] Available at http://www.setexasrecord.com/news/246307-owner-says-1m-spent-to-defend-frivolous-suit-against-estate-planning-companies.

Texarkana residents filed a class action against numerous estate planning companies alleging they were duped into buying useless living trusts. *Id*. Loper and his company were named as defendants, along with numerous others. *Id*. Loper and his company spent $1 million in legal fees and five years in litigation. Finally, class representatives admitted they had no idea why Loper and his company had been included in the class action and they were dismissed as defendants. *Id*.

E. Class action lawyers shop for the forum that will avoid an examination of the merits. They also delay resolution and impede defendants' rights through tactical severance.

In November 2011, plaintiffs in a class action in Sebastian County, Arkansas, who challenged insurers' use of a claims adjustment software called Colossus amended their complaint to add numerous additional insurance companies. Keahey, *supra*. Defendants moved to dismiss the claims. *Id*. Class action counsel sought to delay a ruling on these motions, arguing it was improper to rule on dispositive motions until after a class certification motion could be resolved (an argument the Miller County trial courts typically accept). *Id*. But the Sebastian County judge refused. *Id*. The class action lawyers then voluntarily dismissed the class action and refiled the same class action in Miller County one hour and 43 minutes later. *Id*.

In another recent class action filed in Miller County, when defendants removed the case to federal court under CAFA, class action counsel voluntarily dismissed the complaint so it could be refiled in state court with fewer causes of action. *Thatcher v. Hanover Ins. Grp., Inc.*, 659 F.3d 1212, 1213 (8th Cir. 2011). The Eighth Circuit intervened and reversed, noting that "we have repeatedly stated that it is inappropriate for a plaintiff to use voluntary dismissal as an avenue for seeking a more favorable forum." *Id*. at 1214; *see id.* at 1215 (decrying plaintiffs' "improper forum-shopping measure"). On remand, the federal district court saw through class counsel's forum-shopping efforts:

> [P]laintiff has not provided to the Court any good reason why it wants to voluntarily dismiss its case, re-file in state court and eliminate the first three counts stated in his amended complaint (unjust enrichment, fraud and constructive fraud). The obvious reason – as admitted by plaintiff in his presentations – is to avoid removal of the class action to federal court upon it being re-filed as a breach of contract action only. That clearly amounts to improper forum shopping and the analysis need proceed no further. . . . [Plaintiff and his attorneys] are not to be permitted to shop for a new and hopefully more favorable forum if it turns out that their complaint – as drawn – places them in a court not of their liking.

Thatcher v. Hanover Ins. Grp., Inc., No. 10-4172, 2012 WL 1933079, at *11 (W.D. Ark. May 29, 2012).

Another example of forum-shopping involves suing the same defendant multiple times in multiple jurisdictions. In *Meredith v. Clayton Homes, Inc.*, No. CV-2005-72-2 (Miller Cnty. Cir. Ct., dismissed May 29, 2009), class action counsel settled a case, and the court approved a settlement with $15 million in fees for class action counsel. Plaintiffs fully released their claims as part of the settlement. Yet a short time later, class action counsel filed a new class action in a neighboring jurisdiction against the same defendant on behalf of named plaintiffs who had released their claims in the prior settlement. *See* Pet. for Permission to Appeal at 5, *Goodner v. Clayton Homes, Inc.*, No. 12-8021 (8th Cir., filed Sept. 20, 2012).

After finding a favorable forum – typically in Miller County – class action lawyers have also severed one or more defendants for tactical effect. Severed defendants lose their ability to protect the use of confidential documents they produced in the initial action; Miller County courts rule that severed defendants lack "standing" to protect those materials in the original case. Michelle Massey, *Insurance Companies Respond to Colossus Class Action Severance*, Southeast Texas Record, June 26, 2008;[18] *see also* Brief in Support of Motion to Enforce Protective Order at 1, *Hensley v. Computer Sciences Corp.*, No. CV-2005-59-3 (Miller Cnty. Cir. Ct. Aug. 13, 2008).

[18] Available at http://www.setexasrecord.com/news/213524-insurance-companies-respond-to-colossus-class-action-severance.

The trial court then treats the severance as restarting the clock on the newly-severed case, creating further delays before dispositive defense motions can be heard. *Insurance Companies Respond to Colossus Class Action Severance*, *supra*.

After severing defendants in the Colossus case described above, and adding a new plaintiff, the trial court refused to move the new case forward, sitting for two years on various motions including a motion requesting nothing more than a scheduling order. Michelle Massey, *Last Defendant in Colossus Class Action Awaits Judge's Rule on Motions,* Southeast Texas Record, Mar. 15, 2010.[19] The class action lawyers also waited many months, "for 'strategic reasons,'" before notifying defendants that the newly-added plaintiff, James Basham, had died. ANPAC Defendants' Response in Opposition to Motion for Substitution of Parties at 2, *Basham v. Computer Scis. Corp.*, No. CV-2005-59-3A (Miller Cnty. Cir. Ct. Oct. 20, 2010).

CONCLUSION

The ills that Congress identified and sought to remediate in CAFA remain present in numerous state court "magnet" jurisdictions across the Nation. Nowhere are these ills more deeply rooted than in Miller

[19] Available at http://www.setexasrecord.com/news/225360-last-defendant-in-colossus-action-awaits-judges-rule-on-motions.

County, as this brief demonstrates. The Congressional purpose behind CAFA will fail if class action lawyers remain free to evade federal jurisdiction by suing in state courts unconcerned with their tactics. This Court should emasculate those tactics, and uphold Congress's purpose, by adopting the petitioner's position and by authorizing removal notwithstanding a damages stipulation.

Respectfully submitted,

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Counsel for Amici Curiae

APPENDIX 1

Excerpts from Notice of Removal,
***Goodner v. Clayton Homes, Inc.*, No. 12-4001**
(W.D. Ark. Jan. 6, 2012), ECF No. 1 at 22-25.

Case 4:12-cv-04001-SOH Document 1
Filed 01/06/12 Page 1 of 42 PageID #: 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION**

THOMAS GOODNER, and LINDA GOODNER, individually and On Behalf of a Class of All Other Similarly Situated Individuals; Plaintiffs, v. CLAYTON HOMES, INC., CMH HOMES, INC., and VANDERBILT MORTGAGE & FINANCE, INC.; Defendants.	Case No. 12-4001

NOTICE OF REMOVAL

(Filed Jan. 6, 2012)

* * *

40. In 2011 alone, Plaintiffs' counsel filed more than 25 class action complaints that purport to stipulate to damages below $5 million in order to try to evade federal jurisdiction. As evidenced by the chart below, the damage cap in this Complaint is nothing more than a thinly veiled scheme to evade Congress' decision to open federal courts to defendants in large, interstate class actions.

NON-EXHAUSTIVE LIST OF RECENT ARKANSAS STATE COURT CLASS ACTION COMPLAINTS FILED BY *GOODNER* PLAINTIFFS' COUNSEL[69]

CASE STYLE	DOES THE COMPLAINT PURPORT TO CAP DAMAGES?
Thompson v. Apple, Inc., Case No. CV-2011-2 (Circuit Court of Carroll County, Ark.)	Yes[70]
Tomlinson v. Skechers, U.S.A., Inc., Case No. CV 11-1217 (Circuit Court of Washington County, Ark.)	Yes[71]
Tomlinson v. FitnessIQ, LLC Civil Action No. CV-11-239-2 (Circuit Court of Washington County, Ark.)	Yes[72]

[69] This non-exhaustive list is based on a review of court filings in certain Arkansas counties conducted during the short time period after service of the Complaint in this civil action and before removal. The list is non-exhaustive because many Arkansas counties, such as Miller County, do not have an on-line database of their cases so there is not a practicable way to search for all cases in which the *Goodner* plaintiffs' counsel have filed Arkansas state court class action complaints.

[70] Exhibit 62 hereto.

[71] Exhibit 63 hereto.

[72] Exhibit 64 hereto.

Tomlinson v. Reebok International, LTD., Case No. CV-11-122-6 (Circuit Court of Washington County, Ark.)	Yes[73]
Knowles v. The Standard Fire Insurance Co., Case No. CV-2011-0239-3 (Circuit Court of Miller County, Ark.)	Yes[74]
Smith v. American Bankers Insurance Co. of Florida, Case No. CV 2011-259-I (Circuit Court of Crawford County, Ark.)	Yes[75]
Thatcher v. The Hanover Insurance Group, Inc., Case No. CV-2010-527-1 (Circuit Court of Miller County, Ark.)	Yes[76]
Overby v. L. A. Gear, Inc. Case No. CV 11-238-2 (Circuit Court of Washington County, Ark.)	Yes[77]

[73] Exhibit 65 hereto.

[74] Exhibit 66 hereto.

[75] Exhibit 67 hereto.

[76] Exhibit 68 hereto.

[77] Exhibit 69 hereto.

Overby v. ACI Internatioanl [sic]*, Inc.,* Case No. CV-11-2201-6 (Circuit Court of Washington County, Ark.)	Yes[78]
Brady v. Collective Brands, Case No. CV-11-237-4 (Circuit Court of Washington County, Ark.)	Yes[79]
Brady v. Payless Shoe Source, Inc., Case No. CV-11-2200-6 (Circuit Court of Washington County, Ark.)	Yes[80]
Stagg v. New Balance Athletic Shoe, Inc., Case No. CV-11-241-2 (Circuit Court of Washington County, Ark.)	Yes[81]
Baxter v. Skype, Inc. Case No. CV-11-56-4 (Circuit Court of Washington County, Ark.)	Yes[82]

[78] Exhibit 70 hereto.

[79] Exhibit 71 hereto.

[80] Exhibit 72 hereto.

[81] Exhibit 73 hereto.

[82] Exhibit 74 hereto.

Baxter v. BuySafe, Inc. Case No. CV-11-60-7 (Circuit Court of Washington County, Ark.)	Yes[83]
Baxter v. Kia Motors America, Inc. Case No. CV-11-53-4 (Circuit Court of Washington County, Ark.)	Yes[84]
Baxter v. Philips Electronics North America Corporation Case No. CV-11-54-4 (Circuit Court of Washington County, Ark.)	Yes[85]
Baxter v. ShopLocal, LLC Civil Action No. CV-11-61-7 (Circuit Court of Washington County, Ark.)	Yes[86]
*Desiree Beam v. E*Trade Financial Corporation* Civil Action No. CV-11-64-4 (Circuit Court of Washington County, Ark.)	Yes[87]

[83] Exhibit 75 hereto.

[84] Exhibit 76 hereto.

[85] Exhibit 77 hereto.

[86] Exhibit 78 hereto.

[87] Exhibit 79 hereto.

Forrest v. C3 Metrics, Inc. Civil Action No. CV-11-62-2 (Circuit Court of Washington County, Ark.)	Yes[88]
Forrest v. YouTube, LLC Civil Action No. CV-11-55-2 (Circuit Court of Washington County, Ark.)	Yes[89]
Hague v. American Sporting Goods Corp. Civil Action No. CV-11-240-2 (Circuit Court of Washington County, Ark.)	Yes[90]
Kimbrough v. Nordstrom, Inc. Civil Action No. CV-11-57-4 (Circuit Court of Washington County, Ark.)	Yes[91]
Kimbrough v. Pandora Media, Inc. Civil Action No. CV-11-63-4 (Circuit Court of Washington County, Ark.)	Yes[92]

[88] Exhibit 80 hereto.

[89] Exhibit 81 hereto.

[90] Exhibit 82 hereto.

[91] Exhibit 83 hereto.

[92] Exhibit 84 hereto.

Nguyen v. Metacafe, Inc. Civil Action No. CV-11-51-4 (Circuit Court of Washington County, Ark.)	Yes[93]
Pinkelton v. Mattel, Inc. Civil Action No. CV-10-4012-4 (Circuit Court of Washington County, Ark.)	Yes[94]
Roller v. TV Guide Online Holdings, LLC Civil Action No. CV-11-52-4 (Circuit Court of Washington County, Ark,)	Yes[95]
Oliver v. Mona Vie, Inc., Case No. CV-2010-644-1 (Circuit Court of Miller County, Ark.)	Yes[96]
Nicholas v. American Modern Home Insurance Co., Case No. CV-2011-0270-2 (Circuit Court of Miller County, Ark.)	Yes[97]

* * *

[93] Exhibit 85 hereto.

[94] Exhibit 86 hereto.

[95] Exhibit 87 hereto.

[96] Exhibit 88 hereto.

[97] Exhibit 89 hereto.

APPENDIX 2

Excerpts from Notice of Removal,
***Goodner v. Clayton Homes, Inc.*, No. 12-4001**
(W.D. Ark. Jan. 6, 2012), ECF No. 1 at 17-21.

Case 4:12-cv-04001-SOH Document 1
Filed 01/06/12 Page 1 of 42 PageID#:1

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION**

THOMAS GOODNER, and LINDA GOODNER, individually and On Behalf of a Class of All Other Similarly Situated Individuals; Plaintiffs, v. CLAYTON HOMES, INC., CMH HOMES, INC., and VANDERBILT MORTGAGE & FINANCE, INC.; Defendants.	Case No. 12-4001

NOTICE OF REMOVAL

(Filed Jan. 6, 2012)

* * *

awarded $19.6 million in plaintiffs' attorneys' fees per case. This pattern and practice, as evidenced by the chart below and the referenced attached exhibits, demonstrates Plaintiffs' counsel's practice of evading federal court jurisdiction through creative pleading

only to reach Arkansas state court class action settlements for exorbitant sums.[11]

* * *

[11] Notably, twenty-three (23) of the twenty-four (24) class action settlements listed in this chart were settled in Miller County, which is in the same Judicial circuit as Lafayette County, the county where Plaintiffs filed their Complaint. *See* Ark. Code Ann. § 16-13-3201(b).

NON-EXHAUSTIVE LIST OF ARKANSAS STATE COURT CLASS ACTION SETTLEMENTS IN WHICH *GOODNER* PLAINTIFFS' COUNSEL WERE PLAINTIFFS' CLASS COUNSEL[12]

CASE STYLE	DOES THE COMPLAINT PURPORT TO CAP DAMAGES?	ASSESSMENT BY PLAINTIFFS' COUNSEL OF VALUE OF CLASS ACTION SETTLEMENT	PLAINTIFFS' ATTORNEYS' FEE
Meredith v. Clayton Homes, Inc.; *CMH Homes, Inc.*, Case No. CV-2005-72-2 (Circuit Court of Miller County, Ark.) ("*Meredith*")	Yes[13]	$77.3-$92.4 million[14]	$15,000,000[15]
Beasley v. Prudential General Insurance Co., Case No. CV-2005-58-1 (Circuit Court of Miller County, Ark.) ("*Beasley*") • Hartford Settlement • LM Property & Casualty Settlement	Yes[16]	$88 million[17] $40.7 million[18]	$20,000,000[19] $8,900,000[20]
Lovelis v. TitleFlex Corp., Case No. CIV-2004-211 (Circuit Court of Clark County, Ark.) ("*TitleFlex*")	Yes[21]		$29,200,000[22]
Johnson v. State Auto Mutual Insurance, et al. Case No. CV-2010-114-3 Circuit Court of Miller County, Ark.) ("*Johnson*")	Yes[23]		$9,500,000[24]

[12] This non-exhaustive list is based on a review of court filings in certain Arkansas counties conducted during the short time period after service of the Complaint in this civil action and before removal. The list is non-exhaustive because many Arkansas counties, such as Miller County, do not have an on-line database of their cases so there is not a practicable way to search for all cases in which the *Goodner* plaintiffs' counsel were plaintiffs' class counsel in class action settlements.

[13] *Meredith* Plaintiffs' Original Class Complaint, Exhibit 10 hereto; *Meredith* Plaintiffs' First Amended Class Action Complaint, Exhibit 11 hereto.

[14] *Meredith* Plaintiffs' Memorandum of Law in Support of Joint Motion for Final Approval of Class Action Settlement ¶¶ 3, 9 (excerpt attached as Exhibit 7 hereto); *Meredith* Class Counsels' Application for Attorneys' Fees, Costs, etc .¶¶ 2, 6, 8 (excerpt attached as Exhibit 8 hereto).

[15] *Meredith* Final Order ¶ 8, Exhibit 9 hereto.

[16] *Beasley* Plaintiffs' Original Class Complaint, Exhibit 12 hereto.

[17] *Beasley* Class Counsels' Application for Attorneys' Fees (June 12, 2006), excerpt attached as Exhibit 13 hereto; *Beasley* Plaintiff's Brief in Support of the Joint Motion for Final Approval of the Settlement (June 12, 2006), excerpt attached as Exhibit 14 hereto.

[18] *Beasley* Class Counsels' Application for Attorneys Fees (March 28, 2007), excerpt attached as Exhibit 15 hereto.

[19] *Beasley* Final Order and Judgment (June 13, 2006), Exhibit 16 hereto.

[20] *Beasley* Final Order and Judgment (March 29, 2007), Exhibit 17 hereto.

[21] *TitleFlex* Plaintiffs' Original Class Complaint, 2004 WL 4979307 (Ark. Cir.).

[22] *TitleFlex* Final Order and Judgment, 2007 WL 6509200 (Ark. Cir. Feb. 1, 2007).

[23] *Johnson* Plaintiff's Class Complaint, Exhibit 18 hereto.

[24] *Johnson* Final Order and Judgment (June 28, 2010), Exhibit 19 hereto.

Grammer v. Sunbeam Products, Inc., 2008 WL 2713362, Case No. CV-2004-407-2 (Circuit Court of Miller County, Ark.) ("*Grammer*")	Yes[25]		$7,500,000[26]
Droste v. Farmers Insurance Exchange, Case No. CV-2004-294-3 (Circuit Court of Miller County, Ark.) ("*Droste*")	Yes[27]	$883 million[28]	$37,185,000[29]
Alexander v. Nationwide Mutual Insurance Co. Case No. CV-2009-120-3 (Circuit Court of Miller County, Ark. ("*Alexander*")	Yes[30]		$32,000,000[31]
Chivers v. State Farm & Casualty Co., Case No. CV-2010-251-3 (Circuit Court of Miller County, Ark.) ("*Chivers*")	Yes[32]	$130-189 million[33]	$40,000,000[34]
Feely v. Allstate, Case No. CV-2004-294-3A (Circuit Court of Miller County, Ark.) ("*Feely*")	Yes[35]	$1,405 million[36]	$63,900,000[37]
Atkinson v. General Casualty Co. of Wisconsin, Case No. CV-2007-126-3 (Circuit Court of Miller County, Ark.) ("*Atkinson*")	Yes[38]	$13.9 million[39]	$1,595.000[40]

[25] *Grammer* Plaintiff's Original Class Complaint, Exhibit 20 hereto.

[26] *Grammer* Final Order and Judgment, 2008 WL 2713362 (Ark. Cir. May 15, 2008).

[27] *Droste* Fourth Amended Complaint, Exhibit 21 hereto.

[28] *Droste* Class Counsel's Application for Attorneys' Fees (Jan. 21, 2011), excerpt attached as Exhibit 22 hereto.

[29] *Droste* Final Judgment (Jan. 24, 2011), Exhibit 23 hereto.

[30] *Alexander* Plaintiffs' Class Complaint, Exhibit 24 hereto.

[31] *Alexander* Final Order and Judgment (July 27, 2009), Exhibit 25 hereto.

[32] *Chivers* Plaintiffs' Class Complaint, Exhibit 26 hereto.

[33] *Chivers* Class Counsels' Application for Attorneys' Fees (Oct. 4, 2010), excerpt attached as Exhibit 27 hereto.

[34] *Chivers* Final Order and Judgment (Oct. 5, 2010), Exhibit 28 hereto.

[35] *Feely* Plaintiffs' First Amended Class Complaint, Exhibit 29 hereto.

[36] *Feely* Class Counsel's Application for Attorneys' Fees (May 5, 2011), excerpt attached as Exhibit 30 hereto.

[37] *Feely* Final Order and Judgment (May 6, 2011), Exhibit 31 hereto.

[38] *Atkinson* Plaintiffs' Class Action Complaint, Exhibit 32 hereto.

[39] *Atkinson* Class Counsels' Application for Attorneys' Fees (August 8, 2007), excerpt attached as Exhibit 33 hereto.

[40] *Atkinson* Final Order and Judgment (August 10, 2007), excerpt attached as Exhibit 34 hereto.

Cazares v. Allstate Assurance Co., Case No. CV-2009-72-3 (Circuit Court of Miller County, Ark.) ("*Cazares*")	Yes[41]	$440-$783 million[42]	$36,208,000[43]
Easley v. The Ohio Casualty Insurance Co. Case No. CV-2007-139-3 (Circuit Court of Miller County, Ark.) ("*Easley*")	Yes[44]	$15.2 million[45]	$3,995.000[46]
Gooding v. Grange Indemnity Insurance Co. Case No. CV-2007-456-3 (Circuit Court of Miller County, Ark.) ("*Gooding*")	Yes[47]	$12.7 million[48]	$3,160,801[49]
Hunsucker v. American Standard Insurance Company of Wisconsin, Case No. CV-2007-155-3 (Circuit Court of Miller County, Ark.) ("*Hunsucker*")	Yes[50]	$184 million[51]	$27,495,000[52]
Soto v. USAA Casualty Insurance Co., Case No. CV-2009-132-2 (Circuit Court of Miller County, Ark.) ("*Soto*")	Yes[53]	$49 – $79.6 million[54]	$8,000,000[55]
Sweeten v. American Empire Insurance Co., Case No. CV-2007-154-3 (Circuit Court of Miller County, Ark.) ("*Sweeten*")	Yes[56]	$10.1 million[57]	$3,000,000[58]

[41] *Cazares* Plaintiffs' Class Action Complaint, Exhibit 35 hereto.

[42] *Cazares* Class Counsel's Application for Attorneys' Fees (June 19, 2009), excerpt attached as Exhibit 36 hereto.

[43] *Cazares* Final Order and Judgment (June 19, 2009), excerpt attached at Exhibit 37 hereto.

[44] *Easley* Plaintiff's Class Action Complaint, Exhibit 38 hereto.

[45] *Easley* Class Counsels' Application for Attorneys' Fees (August 2, 2007), excerpt attached as Exhibit 39 hereto.

[46] *Easley* Final Order and Judgment (August 6, 2007), excerpt attached as Exhibit 40 hereto.

[47] *Gooding* Plaintiff's Class Action Complaint, Exhibit 41 hereto.

[48] *Gooding* Class Counsel's Application for Attorneys' Fees (Feb. 29, 2008), excerpt attached as Exhibit 42 hereto.

[49] *Gooding* Final Order and Judgment (March 4, 2008), excerpt attached at Exhibit 43 hereto.

[50] *Hunsucker* Plaintiff's Class Action Complaint, Exhibit 44 hereto.

[51] *Hunsucker* Class Counsels' Application for Attorneys' Fees (August, 2007), excerpt attached as Exhibit 45 hereto.

[52] *Hunsucker* Final Order and Judgment (August 10, 2007), excerpt attached as Exhibit 46 hereto.

[53] *Soto* Plaintiffs' Class Action Complaint, Exhibit 47 hereto.

[54] *Soto* Class Counsel's Application for Attorneys' Fees (July 1, 2009), excerpt attached as Exhibit 48 hereto.

[55] *Soto* Final Order and Judgment (August 3, 2009), excerpt attached as Exhibit 49 hereto.

[56] *Sweeten* Plaintiffs' Class Action Complaint, Exhibit 50 hereto.

[57] *Sweeten* Class Counsels' Application for Attorneys' Fees (August 17, 2007), excerpt attached as Exhibit 51 hereto.

[58] *Sweeten* Final Order and Judgment (August 20, 2007), excerpt attached as Exhibit 52 hereto.

Webb v. The First Liberty Insurance Corp., Case No. CV-2007-418-3 (Circuit Court of Miller County, Ark.) ("*Webb*")	Yes[59]	$38 million[60]	$7,500,000[61]
Warmack-Muskogee Limited Partnership v. PriceWaterHouseCoopers LLP; KPMG LLP; Bearingpoint, Inc.; Ernst & Young; CAP Gemini, Case No. E2001-504-3 (Circuit Court of Miller County, Ark.) ("*Warmack-Muskogee*") • PriceWaterhouseCoopers Settlement • KPMG Settlement • Ernst & Young Settlement • Bearing Point Settlement			$18,157,000[62] $5,666,667[63] $6,000,000[64] $5,666,667[65]
Lane's Gifts and Collectibles v. Yahoo, Inc., et al. Case No. CV-2005-52-1 (Circuit Court of Miller County, Ark.) ("*Lane's Gift*") • Google Settlement • MIVA, Inc. Settlement		$3.9 million[66]	$30,000,000[67] $1,287,200[68]
TOTALS		$3.39 billion to $3.83 billion	$420,916,335

* * *

[59] *Webb* Plaintiff's Class Action Complaint, Exhibit 53 hereto.

[60] *Webb* Class Counsel's Application for Attorneys' Fees (Feb. 28, 2008), excerpt attached as Exhibit 54 hereto.

[61] *Webb* Final Order and Judgment (March 3, 2008), excerpt attached as Exhibit 55 hereto.

[62] *Warmack-Muskogee* Final Order and Judgment (March 5, 2004), Exhibit 56 hereto.

[63] *Warmack-Muskogee* Final Order and Judgment (June 24, 2004), Exhibit 57 hereto.

[64] *Warmack-Muskogee* Final Order and Judgment (November 12, 2004), Exhibit 58 hereto.

[65] *Warmack-Muskogee* Final Order and Judgment (June 24, 2004), Exhibit 59 hereto.

[66] *Lane's Gift* Class Counsel's Application for Attorneys' Fees (April 29, 2008), excerpt attached as Exhibit 60 hereto.

[67] *Lane's Gift* Final Order and Judgment (July 26, 2006), Exhibit 61 hereto.

[68] *Lane's Gift* Final Order and Judgment, 2008 WL 2713363 (Ark. Cir. April 30, 2008).