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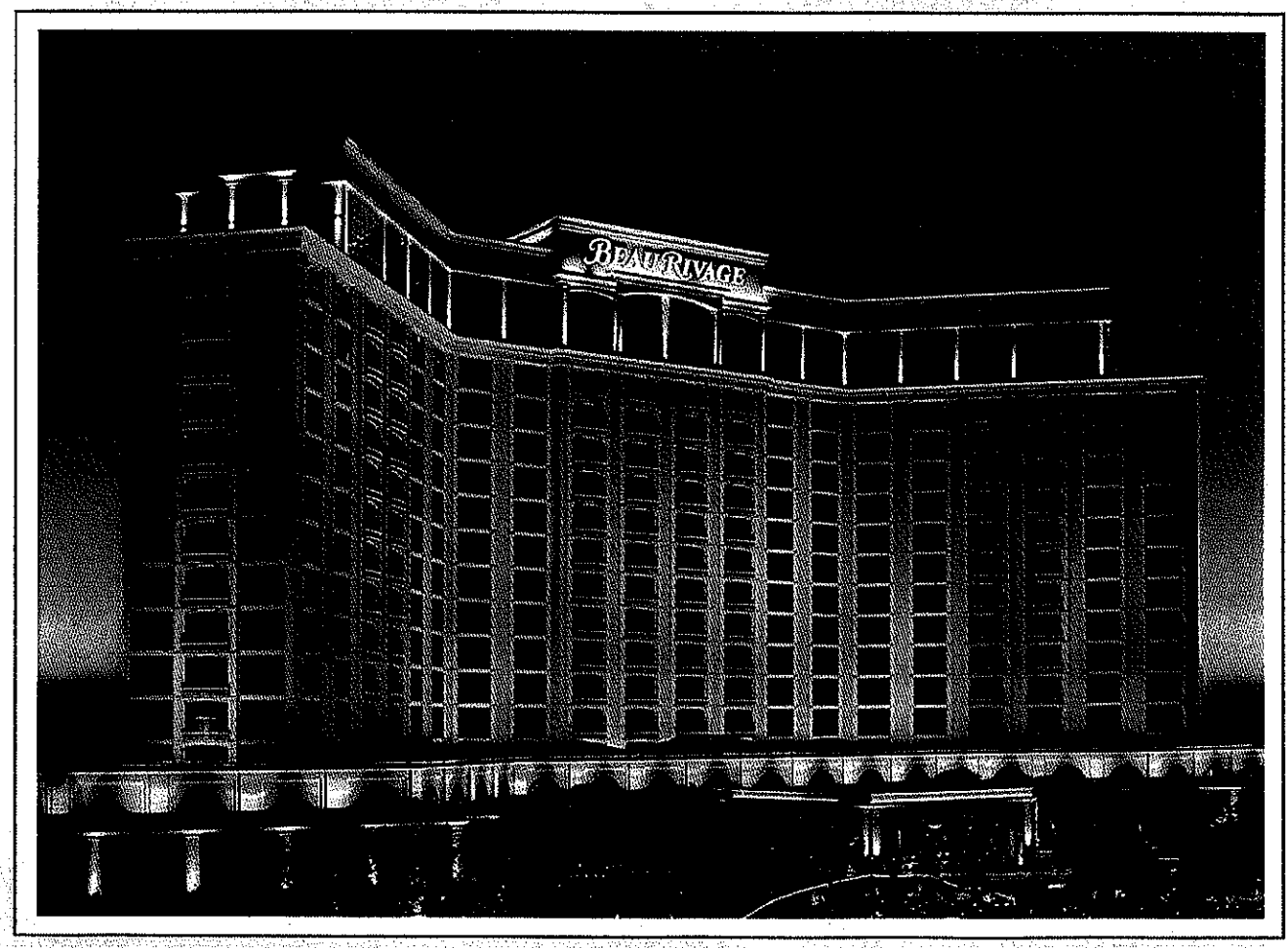

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RECENT DEVELOPMENTS IN PROVING THE AMOUNT IN CONTROVERSY

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In the 1990's, the Alabama defense bar routinely removed class actions to federal court B believing that federal court would be a more defendant friendly venue. The plaintiff's bar responded with carefully pleaded complaints, remand motions, and allegations, or in some instances, stipulations that they were not seeking the minimum amount in controversy. And while the individual relief in such cases might not have exceeded the statutory amount in controversy, the total damages could still be staggering. As discussed below, a substantial body of case law developed over time regarding: (1) the standard of proof necessary to satisfy the amount in controversy requirement, (2) whether all class members must meet the amount in controversy, (3) whether (and under what and with what conditions) allegations or stipulations by plaintiffs below the amount in controversy should be accepted. Now the Class Action Fairness Act (ACAFA) overlies this debate, complicating existing issues and raising new ones.

This article considers two points. First, it examines the traditional burden of proof associated with the amount in controversy requirement under the statute enabling the federal courts' diversity jurisdiction, as well as under the more recently enacted CAFA.[1] Second, the article examines in greater detail examples where a party either has, or has not, carried that burden of proof. In doing so, the article seeks to offer guidance to practitioners facing challenges on the amount in controversy front B including challenges in the form of stipulations or affidavits that the amount in controversy cannot be met. Such stipulations are not infrequently seen in non-CAFA cases, and in many instances, they prove fatal to federal court jurisdiction.[2] Inevitably they will arise in the CAFA context.[3] Moreover, as CAFA applies both to original jurisdiction and removal, a defendant may sometimes be attempting to defeat the amount in controversy rather than establishing it.

I. ALLOCATING THE BURDEN OF PROOF AS TO THE AMOUNT IN CONTROVERSY

The most commonly encountered amount-in-controversy-requirement is that of 28 U.S.C. 1332, which requires as part of a federal court's exercise of original diversity jurisdiction that "the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs...."[4] CAFA amended section 1332 and added a parallel provision for class actions. Now, federal courts shall exercise original jurisdiction over class actions where (in general) (1) minimal diversity is present, (2) over 100 class members are included, and (3) "the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs ...."[5]

With regard to the $75,000 amount in controversy threshold, it is well settled that the burden of proving that the threshold has been met rests with the party invoking federal jurisdiction.[6] Despite legislative history that clearly expresses intent to reverse this burden', the majority of decisions hold that this traditional rule applies equally with regard to the $5,000,000 threshold set by CAFA. In *Miedema v. Maytag Corporation*, the Eleventh Circuit Court of Appeals rejected a contrary argument by the removing defendant, finding that nothing in CAFA supported the conclusion that Congress intended to reverse "the traditional, well-established rules that govern the placement of the burden of proof ...."[8] In reaching this conclusion, the Miedema Court relied both upon an earlier decision[9] from the circuit that had been rendered after the completion of briefing by the parties, as well as published decisions from the Seventh and Ninth Circuit Courts of Appeals,[10] all of which had found that the traditional allocation of the burden of proof had not been changed by CAFA.

The rationale of these decisions is difficult to assail. CAFA nowhere expressly addresses the allocation of burden of proof as related to the invocation of federal court jurisdiction. The scattering of federal district courts that have held CAFA did reassign the burden of proof rely solely on the legislative history.[11] Yet, as cases like *Brill and Miedema*[12] and the Supreme Court's decision in *Exxon Mobil Corp. v. Allapattha Services, Inc.*[13] recognize, legislative history does not have the force and effect of law. Moreover, it does not appear that any circuit court of appeal to date has reached a conclusion different than that advanced by the Seventh, Ninth and Eleventh Circuits on the subject of traditional burden allocations – although the Fifth and the Eleventh do allocate the burden of proof to the opponent of jurisdiction for purposes of CAFA's *exceptions* to jurisdiction, including determining the percentage of class members from the filing state.[14]

II. PROVING THE AMOUNT IN CONTROVERSY

A. What Proof May Suffice as General Matter?

Historically, the rule has been (and remains) that the amount in controversy as stated in the plaintiff's complaint controls, if apparently made in good faith.[15] Thus, if a complaint seeks more than the jurisdictional minimum – be it $75,000, $5,000,000 or other – the defendant does not dispute same and there is no apparent reason to doubt the amount sought, the amount in controversy threshold will be deemed satisfied. If, on the other hand, a defendant challenges the stated amount, the defendant must prove to a legal certainty that the amount in controversy requirement has not been met.[16] In the context of removals, if the state court complaint does not expressly state an amount sought (i.e., the requested relief is an indeterminate amount), the removing defendant(s) must establish that the amount in controversy has been met by a preponderance of the evidence.[17]

The Eleventh Circuit has counseled removing defendants (as well as plaintiffs seeking a remand) that "it is undoubtedly best to include all relevant evidence" with their respective filings.[18] However, the Eleventh Circuit also has held that "the district court when necessary [may] consider post-removal evidence in assessing removal jurisdiction."[19] The sort of evidence the court should consider includes "summary-judgment-type evidence relevant to the amount in controversy at the time of removal."[20] In expressly holding that summary judgment type evidence could be considered by the district court post-removal, the Eleventh Circuit in *Williams* (a pre-CAFA case) was forced to remand the case to the district court for further findings, because the only fact supporting the amount in controversy requirement was the refusal by the plaintiff to stipulate that her claim was worth less than $75,000, and that was insufficient.[21] By comparison, the Eleventh Circuit in Sierminski (also pre-CAFA) affirmed the district court's jurisdiction, on the basis of a post-removal declaration submitted by the defendant that included a declaration from the defendant's human resources director as to the plaintiff's salary and benefits, "detailed calculations" that indicated the plaintiff's damages exceeded the jurisdictional threshold, as well as requests for admission concerning the amount in controversy that the plaintiff had refused to answer within the time provided for by the rules.[22]

Given the Eleventh Circuit's approval of the use of "summary-judgment type evidence" in support of jurisdiction, a wide variety of proof is available. As recently noted by the Seventh Circuit, a

removing defendant might satisfy its burden through contention interrogatories, state court admissions, a calculation based upon the complaint's allegations, reference to a plaintiff's informal estimates or settlement demands, affidavits from the defendant's employees or experts about how much it would cost to satisfy the plaintiff's demands (e.g., what compliance with an injunction would cost the defendant), or other methods, as the circumstances warrant.[23] Care should be exercised, however, with any such evidentiary proffer, as the extent to which a court will require[24] and test supporting data will vary depending upon the court. Moreover, a defendant naturally will want to ensure that the proper balance is struck between satisfying its evidentiary burdens and not providing its opponent a roadmap for liability.

Take for example the Eleventh Circuit's decision in *Mediema*. There, a plaintiff filed a class action in state court alleging defects in various ranges and ovens designed and manufactured by Maytag Corporation. Maytag removed the action to federal court under CAFA, and to support of the amount in controversy requirement, offered a declaration by its information analyst – based upon her research into the ranges and ovens at issue – that a total of 6,729 ranges and ovens were implicated by the complaint and that the total value of those appliances was $5,931,971, an amount in excess of CAFA's $5,000,000 jurisdictional threshold. Affirming the district court's remand of the case to state court, the Eleventh Circuit concluded that Maytag's evidentiary proffer failed to "establish the requisite amount in controversy by a preponderance of the evidence."[25]

In reaching this conclusion, the court methodically picked apart the information analyst's declaration. The court first noted that the declaration failed to offer any "explanation as to how [it] arrived at the conclusion that the 6,729 [] units had a 'total value' of $5,931,971." The court then noted that deposition testimony from the analyst, taken after removal and for the purpose of testing the declarations of the analyst, further belied the reliability of the declaration. The court observed that the analyst used the "most recent manufacturer's suggested retail price" in calculating damages, but did not indicate whether that price actually reflected the compensatory damages sought in the action. The court also observed that Maytag had estimated the 6,729 units figure not upon actual sales data, but upon production registrations and the national average of registrations as a factor of appliances already sold. Such a calculus presumed – inappropriately in the eyes of the court – that the Florida registration rate for appliances was the same as the national average.[26] The court thus affirmed the district court's conclusion that Maytag had failed to prove by a preponderance of the evidence that the jurisdictional threshold was satisfied in the case.

By comparison, the removal in *Brill* satisfied the amount in controversy requirement because the court was able to objectively determine that the controversy exceeded $5,000,000. In *Brill*, the class sought damages against Countrywide Home Loans under the Telephone Consumer Protection Act for Countrywide's sending of unsolicited facsimile advertisements.[27] Because the Act provides for damages of up to $1,500 per fax, upon proof of a willful violation of the Act, and because Countrywide conceded that it sent at least 3,800 unsolicited faxes, the potential damages exceeded $5,000,000.[28]

A separate but related issue arises in the context of proving the value of injunctive relief. In a non-CAFA case, the value of a claim for injunctive relief "is the monetary value of the object of the litigation that would flow to the plaintiffs if the injunction were granted."[29] The Eleventh Circuit, however, has not expressly ruled that this perspective must apply in CAFA cases.[30] Although the Eleventh Circuit refused to find CAFA's legislative history dispositive of the question of whether CAFA altered the traditional burdens allocated to proponents of federal jurisdiction, the question of whether CAFA might have altered the rule of how to value of injunctive relief would appear to present a different question.[31] Moreover, a party must prove the value of injunctive relief through real, objective evidence. Speculative estimates will not suffice.[32] This standard policy may support allowing a defendant to use that information more readily obtainable by it in proving value.[33]

B. What Proof May Be Necessary To Refute a Claim that the Amount Controversy Does Not Meet the Jurisdictional Minimum?

A different scenario presents when a plaintiff stipulates that the amount in controversy is less than the jurisdictional minimum (i.e., the complaint affirmatively states that less than $75,000 is sought). For these cases, the Eleventh Circuit has held that the defendant must show "to a legal certainty that plaintiff's claim must exceed" the jurisdictional minimum.[34] This test, a functional converse to the "legal certainty" test of St. Paul,[35] has been described by the Eleventh Circuit has described this burden as "strict", "heavy"[36] and "daunting",[37] although the court has stated that the extent of the burden does not mean a defendant will never prevail.[38]

> A defendant could remain in federal court if he showed that, if plaintiff prevails on liability, an award below the jurisdictional amount would be outside the range of permissible awards because the case is clearly worth more than [the jurisdictional minimum]. The standard is an objective one; plaintiff's or plaintiff's counsel's subjective intent in drafting the prayer is not the true issue.[39]

The burden imposed is not without an appreciation of the fact that a plaintiff may, at some later date, seek more than the stipulation. The driving force behind the burden rests with the respect the Eleventh Circuit has concluded should be due the representations and valuations made by the plaintiff's attorney, as an officer of the court.[40]

The question then becomes what sort of evidence will satisfy this "objective standard." The answer, it would seem, is evidence that lends itself to objective quantification and verification. As noted by one court, "where a plaintiff makes a contract-based claim and it is shown that he would, as a matter of law, be entitled to a fixed amount in excess of the jurisdictional amount upon prevailing, then such a claim would be sufficient to confer removal jurisdiction."[41] Removal jurisdiction also would be appropriate, in the face of a stipulation, "where a plaintiff brings a tort claim for physical injuries and seeks to recover the value of medical bills that exceed the jurisdictional amount."[42] The idea is straightforward: if, objectively speaking, the true measure of damages is greater than the stipulation, the measure of damages will control.

Measured against a case such as *Miedema*, a requirement of this sort of proof would appear correct. As noted above, the Court found flaw with the proof adduced in *Miedema* because the Court either did not understand, or did not agree with, the manner in which the defendant reached its jurisdictional number. In other words, the Court could not objectively verify the measure of damages. Had the Court been able to do so, the removal may well have stuck.

An open question lies at the intersection of cases brought under CAFA, and plaintiff stipulations as to the amount in controversy. As noted above, in cases involving a plaintiff stipulation, the burden of proving that the case does have a jurisdictionally sufficient amount in controversy is strict, heavy and

daunting. But, regardless of how persuasive a court deems committee reports or legislative history, there can be no doubt that Congress intended to and did expand the role of the federal courts in class action litigation when it enacted CAFA. Is that intent fulfilled, where a potential class of plaintiffs, through their counsel, stipulates that an amount in controversy is less than the $5,000,000 threshold -- say $4,999,999?[43]

To this end, might a court take a harder look at the stipulation, where a defendant shows through objective evidence that the stipulation appears inconsistent with the true measure of damages in the case? Granted the traditional rule is that questions regarding jurisdiction should be resolved in favor of remand.[44] Yet, the Eleventh Circuit in *Evans* appeared to have no qualms whatsoever rejecting an affidavit by an attorney in support of a CAFA jurisdictional exception.[45] Indeed, it would seem easy to reconcile, on the one hand, the policy that an attorney statements be given deference, given that the source of the statement is an officer of the court, with the policy, on the other hand, that the court determine jurisdiction based on summary-judgment type information (as opposed to imperfect presumptions).

III. CONCLUSION

Fights over the amount in controversy will continue. They will occur on old fronts (e.g., class or other controversies removable under the operative, pre-CAFA sections of 28 U.S.C § 1332(a)), as well as new ones (e.g., the mass action provisions of CAFA in 28 U.S.C. § 1332(d)(11)(B)(i), which extend jurisdiction to those mass action participants who satisfy the amount in controversy requirements). In this regard, practitioners should not forget the Supreme Court's recent pronouncement that the supplemental jurisdiction statute provides jurisdiction over a group of plaintiffs where one satisfies the amount in controversy.[46]

In all these cases, however, the nature of proof will be important. To the extent that objective, verifiable evidence can be adduced supporting the amount in controversy, that evidence should be the evidence adduced. Such evidence, of course, is especially critical in situations where a plaintiff or class attempts to stipulate to an amount in controversy less than the applicable jurisdictional threshold. However, prudence counsels in favor of such evidence upon any removal B or, as the case may be, initial federal court filing B if at the least to eliminate one fight from having to be fought at all.

[1] Pub. L. 109-2, 119 Stat. 4 (2005).

[2] *See, e.g., Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1097 (11th Cir. 1994); *Lindsay v. Am. Gen. Life & Accident Ins. Co.*, 133 F. Supp. 2d 1271, 1279 (N.D. Ala. 2001); *Cowan v. Combined Ins. Co.*, 67 F. Supp. 2d 1312, 1318 (M.D. Ala. 1999).

[3] *See, e.g., Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 449 (7th Cir. 2005) (observing in dicta that the plaintiff class had not "set a cap on recovery -- as it might have done if the plaintiff had represented that the class would neither seek nor accept more than $5 million in aggregate.").

[4] 28 U.S.C. § 1332(a). Other statutes with amount-in-controversy requirements include 15 U.S.C. § 2072, 15 U.S.C. § 6104, and 22 U.S.C. § 6082.

[5] 28 U.S.C. § 1332(d)(2). In determining whether the amount in controversy is met, CAFA directs the court to aggregate the claims of the individual class members. See 28 U.S.C. 1332(d)(6) ("In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs.").

[6] *See, e.g., Thomson v. Gaskill*, 315 U.S. 442, 446 (1942) ("The policy of the statute conferring diversity jurisdiction upon the district courts calls for its strict construction. Accordingly, if a plaintiff's allegations of jurisdictional facts are challenged by the defendant, the plaintiff bears the burden of supporting the allegations by competent proof." (citations omitted)); *Evans v. Walter Indus.*, 449 F.3d 1159, 1164 (11th Cir. 2006) (noting "traditional rule that the party seeking to remove the case to federal court bears the burden of establishing federal jurisdiction" including proving the amount in controversy); *Garcia v. Koch Oil Co. of Texas, Inc.*, 351 F.3d 636, 638 (5th Cir. 2003) ("The party seeking to invoke federal diversity jurisdiction bears the burden of establishing both that the parties are diverse and that the amount in controversy exceeds $75,000."); *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 376 (9th Cir. 1997) ("[W]here the plaintiff does not claim damages in excess of $50,000 and the defendant offers no facts whatsoever to show that the amount in controversy exceeds $50,000, then the defendant has not borne the burden on removal of proving that the amount in controversy requirement is satisfied.").

[7] S.Rep.No. 109-14, at 39 & 42.

[8] 450 F.3d 1322, 1330 (11th Cir. 2006).

[9] *Evans, supra* note 6, at 1164 ("CAFA does not change the traditional rule that the party seeking to remove the case to federal court bears the burden of establishing federal jurisdiction.").

[10] *See Brill*, 427 F.3d at 448 (rejecting the argument that a Senate Judiciary Committee report evidenced an intent by Congress to reassign the burden of proof in cases brought under CAFA, stating "The rule that the proponent of federal jurisdiction bears the risk of non-persuasion has been around for a long time. To change such a rule, Congress must enact a statute with the President's signature (or by a two-thirds majority to override a veto). A declaration by 13 Senators will not serve."); *Abrego v. Dow Chem. Co.*, 443 F.3d 676, 686 (9th Cir. 2006) ("We join our sister circuit [the Seventh Circuit, as expressed in *Brill*] and hold that CAFA's silence, coupled with a sentence in a legislative committee report untethered to any statutory language, does not alter the longstanding rule that the party seeking federal jurisdiction on removal bears the burden of establishing that jurisdiction.").

[11] *See, e.g., Natale v. Pfizer, Inc.*, 379 F. Supp. 2d 161, 168 (D. Mass. 2005), *aff'd on other grounds*, 424 F.3d 43 (1st Cir. 2005); *see also Brill, supra*, at 448 (collecting cases); *Werner v. KPMG LLP*, 415 F. Supp. 2d 688, 694-95 (S.D. Texas 2006) (collecting cases).

[12] 450 F.3d at 1328 ("'[W]hile a committee report may ordinarily be used to interpret unclear language contained in a statute, a committee report cannot serve as an independent statutory source having the force of law.'" (quoting United States v. Thigpen, 4 F.3d 1573, 1577 (11th Cir. 1993) (en banc)]).

[13] 125 S. Ct. 2611, 2626 (2005) ("As we have repeatedly held, the authoritative statement is the statutory text, not the legislative history or any other extrinsic material.").

[14] In two recent opinions, the Fifth Circuit Court of Appeals has declined to address the question of whether CAFA changes the traditional burden of proof rules with regard to the invocation of federal court jurisdiction. *See Frazier v. Pioneer Ams. LLC*, No. 06-30434, 2006 U.S. App. LEXIS 16848, at *6-*7 (5th Cir. July 6, 2006) (noting that it was "facially apparent" from record before it that that "at least $5 million [was] in controversy"); *Patterson v. Dean Morris*, LLP, 448 F.3d 736, 739 (5th Cir. 2006) (finding the burden of proof question irrelevant to the outcome, but nonetheless acknowledging *Brill* and its holding). It is worth noting, however, that *Frazier* does hold that proof of certain exceptions to the exercise by a federal court of original jurisdiction pursuant to CAFA should be borne by the party seeking to invoke the exception. *See Frazier, supra*, at *8; *see also Evans*, 449 F.3d at 1164 ("[W]hen a party seeks to avail itself of an express statutory exception to federal jurisdiction granted under CAFA, as in this case, we hold that the party seeking remand bears the burden of proof with regard to that exception.").

[15] *See St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938).

[16] *See St. Paul, supra; see also Meridian Sec. Ins. Co. v. Sadowski*, 441 F.3d 536, 540-43 (7th Cir. 2006). As noted above, CAFA provides for original jurisdiction. Thus, instances may arise where a defendant will need to prove, to a legal certainty, that the amount in controversy alleged by a plaintiff class does not, in fact, exceed CAFA's jurisdictional threshold of $5,000,000. *See Brill*, 427 F.3d at 448-49 ("Once the proponent of jurisdiction has set out the amount in controversy, only a 'legal certainty' that the judgment will be less forecloses federal jurisdiction." (citing St. Paul)).

[17] *See, e.g., Friedman v. New York Life Ins. Co.*, 410 F.3d 1350, 1353 (11th Cir. 2005).

[18] *Sierminski v. Transouth Fin. Corp.*, 216 F.3d 945, 949 (11th Cir. 2000).

[19] *Id.; see also Williams v. Best Buy Co.*, 269 F.3d 1316, 1319 (11th Cir. 2001) ("When the complaint does not claim a specific amount of damages, removal from state court is proper if it is facially apparent from the complaint that the amount in controversy exceeds the jurisdictional requirement. If the jurisdictional amount is not facially apparent from the complaint, the court should look to the notice of removal and may require evidence relevant to the amount in controversy at the time the case was removed.").

[20] *Williams, supra* (quoting *Sierminski, supra*, and *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997), and approving procedure described in *Singer*).

[21] *Williams*, 269 F.3d at 1320 (noting also that the absence of record evidence on the amount in controversy issue could not be attributed entirely to the defendant, as the plaintiff had not challenged the district court's jurisdiction).

[22] *See Sierminski*, 216 F.3d at 947, 949.

[23] *See Meridian*, 441 F.3d at 541-42.

[24] For instance, in a recent unpublished decision, the Eleventh Circuit found proof of the amount in controversy sufficient where the notice of removal (1) quantified one of plaintiff's claims as approaching $67,000, (2) referenced other, additional non-quantified claims, and (3) the record included a statement by the plaintiff before trial that "no question existed about the district court's jurisdiction." *Allen v. Toyota Motor Sales, U.S.A., Inc.*, 155 Fed.Appx. 480, 482 (11th Cir. 2005).

[25] Miedema, 450 F.3d at 1331. It should not go unnoticed that *Miedema* cited *Williams* in articulating the defendant's burden of proof with respect to the amount in controversy. *See id.* at 1330.

[26] *See id.* at 1330-32.

[27] *See Brill*, 427 F.3d at 447.

[28] *See id.* at 447, 449.

[29] *Leonard v. Enter. Rent a Car*, 279 F.3d 967, 973 (11th Cir. 2002).

[30] *But see Berry v. American Express Pub. Corp.*, 381 F. Supp. 2d 1118, 1123 (C.D. Cal. 2005) (stating that amount in controversy could be determined from either the perspective of the aggregate value to the class or the cost to comply for the

defendant, but finding amount not met on facts); compare *Snyder v. Harris*, 394 U.S. 332 (1969).

[31] *See* S.Rep.No. 109-14 at 42-43 (noting explicitly that federal jurisdiction exists if "the value of the matter in litigation exceeds $5,000,000 either from the viewpoint of the plaintiff or the viewpoint of the defendant").

[32] *See Cohen v. Office Depot, Inc.*, 204 F.3d 1069, 1079 (11th Cir. 2000); *Ericsson GE Mobile Comms., Inc. v. Motorola Comms. & Elecs., Inc.*, 120 F.3d 216, 221-22 (11th Cir. 1997).

[33] *Cf. Evans*, 449 F.3d at 1164 n.3 (noting that the plaintiff should bear the burden of proving that an exception to CAFA jurisdiction applied, because "placing the burden of proof on the plaintiff in this situation...places the burden on the party most capable of bearing it.").

[34] *Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1095 (11th Cir. 1994).

[35] *See Fitzgerald v. Besam Automated Entrance Sys.*, 282 F. Supp. 2d 1309, 1313-14 (S.D. Ala. 2003) (comparing the "legal certainty" tests of *St. Paul* and *Burns*).

[36] *Id.*

[37] *Tapscott v. MS Dealer Serv. Corp.*, 77 F.3d 1353, 1357 (11th Cir. 1996).

[38] *Burns*, 31 F.3d at 1096.

[39] *Id.* (citation omitted). In so holding, the Eleventh Circuit found "instructive" the Fifth Circuit's decision in *Kliebert v. Upjohn Co.*, 915 F.2d 142 (5th Cir.1990). *Burns* at 1096. *Kliebert* also held that a defendant could succeed in removing a case in the face of a stipulation below the amount in controversy only upon a showing that an award below the jurisdictional minimum would be "outside the permissible range of awards." *Kliebert*, 915 F.2d at 146. A district court must conclude so, the Fifth Circuit held, based upon either a review of "the pleadings or, at the most, summary judgment-type evidence." *Id.*

[40] *See, e.g., Burns*, 31 F.3d at 1095 ("Every lawyer is an officer of the court. And, in addition to his duty of diligently researching his client's case, he always has a duty of candor to the tribunal. So, plaintiff's claim, when it is specific and in a pleading signed by a lawyer, deserves deference and a presumption of truth."). Some district courts have taken the approach of inviting defendant's to seek sanctions in the event a plaintiff chooses to ignore the stipulation. *See, e.g., Brooks v. Pre-Paid Legal Servs.*, 153 F. Supp. 2d 1299, 1302 (M.D. Ala. 2001) ("[S]hould Plaintiffs disregard their demand and pursue or accept damages in excess of $75,000, then upon motion by opposing counsel, sanctions will be swift in coming and painful upon arrival."). The problem with such an approach, however, is that it essentially leaves the federal court – which by virtue of the stipulation has concluded it does not have jurisdiction – nonetheless policing the actions of the parties, and in a state forum no less. Additionally, Rule 60 of the Federal Rules of Civil Procedure limits the power of a court to set aside a judgment or order on the basis of "fraud, ... misrepresentation or other misconduct of an adverse party" to one year after the judgment or order has been entered. In short, while the threat of sanctions may be a sufficient assurance for some defendants, it is really not a resolution consistent with federal court authority.

[41] *Lindsay v. Am. Gen. Life & Accident Ins. Co.*, 133 F. Supp. 2d 1271, 1277 (N.D. Ala. 2001).

[42] *Id. Lindsay* does serve as a cautionary tale for the defendant who chooses not to submit evidence at the time of removal, believing that any additional evidence can be submitted later. As both *Sierminski* and *Williams* noted, the obligation of the district court to consider evidence post-removal is discretionary. *See Sierminski*, 216 F.3d at 949; *Williams*, 269 F.3d at 1319. In *Lindsay*, the court chose not to allow the defendant the opportunity, concluding that the post-removal discovery the defendant proposed to conduct would not suffice to carry its burden, and that it did not desire to "have a mini-trial on the merits of a plaintiff's claims to determine the threshold amount-in-controversy jurisdictional question ...." *Lindsay*, 133 F. Supp. 2d at 1279.

[43] Actually, on this point the legislative history may be instructive. CAFA does not say how to the value amount in controversy (i.e., whether to look at the amount in controversy from the plaintiff's perspective or the defendant's). *Cf. Exxon*, 125 S. Ct. at 2626 ("Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms."). The legislative history provides that the matter should be valued based on whichever perspective is higher. S.Rep.No. 109-14 at 42 - 43 (jurisdiction exists if "the value of the matter in litigation exceeds $5,000,000 either from the viewpoint of the plaintiff or the viewpoint of the defendant").

[44] *See, e.g., Miedema*, 450 F.3d at 1328-29 (and cases cited).

[45] *See Evans*, 449 F.3d at 1166.

[46] *See Exxon*, 125 S. Ct. at 2615. Exxon left open the question of whether the class representative had to be the party who met the amount in controversy, or whether an unnamed class member should discharge that obligation for the class or group of plaintiffs.

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