

Class action law isn't retroactive

The Ninth Circuit U.S. Court of Appeals ruled Thursday that a federal law shifting class actions from state to federal court doesn't apply to complaints filed before its effective date.

In *Bush v. Cheaptickets*, C.D.O.S. 8811, Judge Jay Bybee, writing for a unanimous three-judge panel, dismissed several companies' arguments that the Class Action Fairness Act governs a suit filed in state court the day before the law went into effect.

The decision is "a good thing," said Mary Alexander, a San Francisco plaintiff lawyer who lobbied against the fairness law as former president of the Association of Trial Lawyers of America. "The defense bar wanted everything in federal court, so they wanted it retroactive to all cases pending."

In his opinion, Bybee wrote that the federal statute clearly went into effect on Feb. 18, 2005, and that suits filed the previous day — like the *Cheaptickets* suit — could therefore stay in state court, even if the defendants hadn't been served.

Anthony Rollo, a partner at McGlinchey Stafford in New Orleans who defends class actions — and is the editor of the CAFA Law Blog (www.cafalawblog.com) — said plaintiff lawyers rushed to file suit in state courts in the days before the law went into effect.

With the Ninth Circuit's opinion, he said, three federal appeals courts have agreed that the law is not retroactive, and for good reason. "That's what the statute says," Rollo said.

He expects a profusion of appeals court decisions on the issue, thanks to a provision in the law allowing automatic, expedited appeal of decisions to remand, which would normally not be allowed.

"The number of decisions coming out is growing by orders of magnitude," he said.

— Justin Scheck