

CLIENT ALERT

Supreme Court Confirms Lower Defense Burden for Removing Class Actions from State Court

DECEMBER 15, 2014

The Supreme Court has issued a game-changing ruling that should come as welcome news to defendants seeking to remove class actions from state to federal court. In a 5-4 ruling today, the Supreme Court held in *Dart Cherokee Basin Operating Co. v. Owens*, No. 13-719, that a defendant's notice of removal need not include evidence establishing that the amount in controversy exceeds the jurisdictional threshold. Instead, the notice of removal is sufficient as long as the defendant makes a plausible *allegation*. This holding eliminates a frequent argument made by plaintiffs in motions to remand—that is, that the removing defendants failed to include “evidence” regarding the amount in controversy. As a result, defendants should have increased success in removing class actions and keeping them in federal court.

In *Owens*, a plaintiff filed a class action lawsuit in Kansas state court, alleging that defendants underpaid royalties owed to the purported class members under certain oil and gas leases. The complaint sought “a fair and reasonable amount” in damages. Defendants removed the case to federal district court pursuant to the Class Action Fairness Act of 2005 (CAFA), which gives federal courts jurisdiction over certain class actions if the class has more than 100 members, the parties are minimally diverse, and the amount in controversy exceeds \$5 million. In the notice of removal, the defendants alleged that the amount in controversy totaled more than \$8.2 million. The plaintiff moved to remand, arguing that this allegation was not supported by any “evidence.” In response, the defendants submitted a declaration that included a detailed damages calculation indicating the amount in controversy exceeded \$11 million. In response, the plaintiff did not contest this calculation but argued that it came too late and should have been contained in the notice of removal.

The district court agreed with the plaintiff and granted remand. Ordinarily, remand orders are not reviewable, but defendants cited an exception for CAFA-based removals (28 U.S.C. § 1453(c)(1)) and petitioned the Tenth Circuit for permission to appeal. The Tenth Circuit denied the petition by a vote of 2-1. The defendants then moved for *en banc* review, and a divided Tenth Circuit denied rehearing.

In its decision this morning, the Supreme Court vacated the Tenth Circuit's judgment, rejecting the plaintiff's argument that a defendant must provide “evidence” in the notice of removal that the amount in controversy meets the jurisdictional threshold.

In reaching this decision, the Court first noted that under the plain language of 28 U.S.C. § 1446(a), a defendant need only have a “short and plain statement of the grounds for removal.” The Court pointed out that this language tracks the language of the general pleading requirement in Rule 8(a) of the Federal Rules of Procedure, and further explained that Congress did this intentionally, in an effort to “clarify that courts should ‘apply the same liberal rules [to removal allegations] that are applied to other matters of pleading.’” Under Rule 8(a), a plaintiff’s amount in controversy allegation is accepted as true if made in good faith. Rule 8(a) does not require a plaintiff to submit “evidence” in its complaint supporting the allegation.

The Court found that it would be “anomalous” to treat “commencing plaintiffs” and “removing defendants” differently and concluded that a defendant’s amount in controversy allegation should be accepted as long as it is not contested by plaintiff or questioned by the court. If the allegation is contested or questioned, then pursuant to the Federal Courts Jurisdiction and Venue Clarification Act of 2011 (JVCA), both the plaintiff and the defendant are to submit evidence, and the court will decide by a preponderance of the evidence whether the amount in controversy requirement has been satisfied. The Court based this decision in part on its conclusion that there is “no antiremoval presumption” for cases removed under CAFA.

Justice Scalia filed a dissenting opinion, joined by Justices Kennedy, Kagan, and (for the most part) Thomas. The dissent did not question the majority’s interpretation of 28 U.S.C. § 1446(a) but rather expressed the view that the Court should not even have reached the issue, given that the Tenth Circuit had refused to hear the appeal of the district court’s remand decision. Justice Thomas also dissented separately.

The Court’s decision here underscores the rights Congress gave defendants under CAFA, which enables defendants to invoke federal jurisdiction over certain class actions through removal. In a sense, the decision levels the playing field, ensuring that the rules for pleading federal jurisdiction are the same for defendants as they would be for plaintiffs in other kinds of pleadings in federal court.

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