Class Action Defendants Are Not Required to Submit Proof of the Amount in Controversy in Their Notice of Removal

On December 15, 2014, the Supreme Court of the United States issued a five to four decision in *Dart Cherokee Basis Operating Co., LLC, et al. v. Owens*, holding that class action defendants seeking removal to federal court under the Class Action Fairness Act of 2005 ("CAFA") need not submit proof of the amount in controversy in a notice of removal, and need only submit proof of the amount in controversy if the plaintiff contests the defendant's assertion.[1]

I. Background and procedural history

The Plaintiff filed a class action in Kansas state court on behalf of a putative class to recover alleged underpaid royalties under oil and gas leases. The complaint did not specify an amount in controversy. The Defendant sought to remove the action to federal court under the minimal diversity standards of CAFA, which require that the amount in controversy exceed $5 million.[2] The Defendant stated in its notice of removal that the amount in controversy was more than $8.2 million, but did not provide proof for the assertion. The Plaintiff argued that the Defendant was required to include proof of the amount in controversy within 30 days of filing the notice of removal, and the Defendant's subsequent proof of the amount in controversy in response to the Plaintiff's motion to remand the case to state court was insufficient as a matter of law.

The U.S. District Court for the District of Kansas ruled that the Plaintiff was correct under Tenth Circuit precedent, and remanded the case to state court. The Defendant filed a petition to appeal to the Court of Appeals for the Tenth Circuit citing a CAFA provision that permits parties to seek appeal of remand orders for class actions.[3] The Court of Appeals denied the petition without comment. Subsequently, the Court of Appeals denied *en banc* review of its earlier decision. The Defendant filed a petition for certiorari, which was granted.

II. The Court's review of the class action removal standard

The Supreme Court held that a defendant seeking removal is subject to the same pleading standard as a plaintiff seeking federal court jurisdiction. Accordingly, both parties must include a "short and plain statement" that explains the grounds for federal court jurisdiction, which includes the amount in controversy in a diversity action[4] Because a court will accept a plaintiff's good-faith claims about the amount in controversy without proof, a defendant is entitled to the same presumption in its notice of removal.

The Court next addressed whether a class action defendant seeking removal is ever required to furnish proof of the amount in controversy. The Court explained that a defendant, whether in a class action or not,[5] is required to furnish proof of the amount in controversy if the plaintiff contests removal on that basis.[6] After proof

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1 *Dart Cherokee Basis Operating Co., LLC, Et Al. v. Owens*, No. 13-417, slip op. 574 U.S. ___ (Dec. 9, 2014) *available at* http://www.supremecourt.gov/opinions/14pdf/13-719_8mjp.pdf.

2 28 U.S.C. §1332(d)(2)(5)(B).

3 28 U.S.C. §1453(c)(1).

4 Opinion at 4; Fed. R. Civ. P. 8(a); 28 U.S.C. §1446(a).

5 The Court noted without holding that 28 U.S.C. §1446(c)(2)(B) applies to the CAFA diversity jurisdiction standards the same as 28 U.S.C. §1446(c)(2)(B) applies to the 28 U.S.C. §1332(a) diversity jurisdiction standards.

6 28 U.S.C. §1446(c)(2)(B).

is furnished, removal is proper "if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds" the amount in controversy minimum.[7]

The Court also held that, while there may or may not be a presumption against removal in cases that do not involve CAFA, there is no presumption against removal in cases that involve CAFA. In fact, CAFA's relaxed diversity standards demonstrate a preference for handling interstate class actions in federal court.[8]

III. The Court's ability to hear the matter

The Court also addressed whether it was proper for it to hear the case. This was the only issue cited by the four Justices in dissent. The Court held that it had authority to review the Court of Appeals' use of discretion to deny the petition to review. The Court held that the Tenth Circuit abused its discretion because, by inference, it had relied on the District Court's faulty legal conclusion discussed above. The Court also noted that review was important because the issue was unlikely to present itself again because any diligent attorney in the Tenth Circuit seeking removal would hereafter include proof of the amount in controversy.

Justice Scalia's dissent argued that there were other lawful reasons the Tenth Circuit may have denied the petition to appeal that did not rely upon the faulty legal conclusion reached by the District Court.[9] Thus, the Court could not reach the merits for which the Court initially granted certiorari and should have dismissed the case.

Justice Thomas's dissent argued that a Court of Appeals denial of a petition to appeal is not a case or controversy subject to Supreme Court review.[10]

IV. Conclusion

The Court's decision in *Dart* makes clear that defendants seeking removal under CAFA are not required to submit proof of the amount in controversy unless the plaintiff subsequently challenges the amount in controversy in a motion for remand. *Dart* brought the Tenth Circuit in line with the other federal circuits on this issue.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Kevin Burke at 212.701.3843 or kburke@cahill.com; Charles A. Gilman at 212.701.3403 or cgilman@cahill.com; Jon Mark at 212.701.3100 or jmark@cahill.com; or John Schuster at 212.701.3323 or jschuster@cahill.com.

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7 Opinion at 6; 28 U.S.C. 1446(c)(2)(B).
8 Opinion at 6 *citing Standard Fire Ins. Co. v. Knowles*, 568 U.S. ___, ___ (2013) (slip op., at 6).
9 *Dart*, No. 13-417, slip op. 574 U.S. ___ (Dec. 9, 2014) (Scalia, J., dissenting).
10 *Dart*, No. 13-417, slip op. 574 U.S. ___ (Dec. 9, 2014) (Thomas, J., dissenting).