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*Dart Cherokee Basin Operating Co. v. Owens*, No. 13-719, (described in the April 7, 2014, Docket Report)

To remove a civil action from state court to federal court, the defendant must “file ... a notice of removal ... containing a short and plain statement of the grounds for removal.” 28 U.S.C. § 1446(a). Under the Class Action Fairness Act of 2005 (CAFA), federal courts have jurisdiction over certain class actions if, among other things, the amount in controversy exceeds \$5 million. 28 U.S.C. § 1332(d)(2). Today, the Supreme Court held in *Dart Cherokee Basin Operating Co. v. Owens*, No. 13-719, that a defendant’s notice of removal need only contain a “plausible allegation” that the amount in controversy exceeds CAFA’s \$5 million jurisdictional minimum. The defendant must submit evidence supporting the alleged amount in controversy only “when the plaintiff contests, or the court questions, the defendant’s allegation.”

Owens, the plaintiff in *Dart Cherokee*, filed a class action in Kansas state court seeking to recover oil and gas royalties but did not specify the amount of damages sought. The defendants responded by filing a notice of removal under CAFA. The notice alleged that the royalties at issue exceeded \$8.2 million and thus satisfied CAFA’s \$5 million jurisdictional minimum. When Owens moved to remand the suit to state court, the defendants filed a declaration supporting the jurisdictional facts alleged in their notice of removal. The district court held that under Tenth Circuit precedent, the party seeking removal must attach evidence of the amount in controversy to the notice of removal itself, and therefore remanded the case. The district court thus refused to consider the evidence that the defendants filed with their opposition to the motion to remand, concluding that Tenth Circuit precedent barred the use of factual allegations or evidence outside the notice of removal to establish the amount in controversy. The defendant petitioned the Tenth Circuit for leave to appeal the remand order under CAFA (see 28 U.S.C. § 1453(c)(1)), but “[u]pon careful consideration of the parties’ submissions, as well as the applicable law,” a divided panel of the Tenth Circuit denied leave to appeal. Rehearing *en banc* was denied by an equally divided court, over a published dissent.

By a 5-4 vote, the Supreme Court vacated the judgment of the Tenth Circuit and remanded for further proceedings.

The opinion for the Court, authored by Justice Ginsburg, first addressed the merits issue by describing the relevant procedures for seeking removal. The Court explained that Section 1446(a)’s “short and plain statement” requirement—which CAFA incorporates—was designed to track the general pleading requirements stated in Rule 8(a) of the Federal Rules of Civil Procedure. Congress borrowed Rule 8(a)’s pleading requirements to “simplify” removal and “clarify that courts should ‘apply the same liberal rules [to removal allegations] that are applied to other matters of pleading.’” Under this rule, a court should accept the defendant’s plausible allegations regarding the amount in controversy unless the plaintiff contests them or the court itself questions them. If the plaintiff does contest removal, both sides should submit proof of the amount in controversy and the court should decide by a preponderance of the evidence whether the jurisdictional minimum is satisfied.

In so ruling, the Supreme Court has brought courts within the Tenth Circuit into line with the overwhelming majority rule, which requires only that a defendant file a notice of removal alleging that CAFA’s jurisdictional requirements—including the amount in controversy—have been satisfied. Because removals to federal court usually must take place within 30 days after a lawsuit is served, the Court’s decision protects defendants that wish to remove cases to federal court from having to gather evidence to support removal on an abbreviated time frame.

The Court’s opinion also contains additional language that should be helpful for business defendants in future cases. In the course of addressing CAFA procedures and requirements, the Court emphasized that “no anti-removal presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court.” That holding should dispatch arguments often made by plaintiffs that a so-called “presumption against removal” applies to CAFA.

Although *Dart Cherokee* is a 5-4 decision, the Justices did not appear to be divided about the merits. Instead, the Court divided over whether it was proper to reach the merits at all. Specifically, under 28 U.S.C. § 1254(1), the Supreme Court has jurisdiction to review by certiorari only “[c]ases *in* the courts of appeals.” Because the Tenth Circuit did not grant permission to appeal, an amicus curiae (Public Citizen) contended that either there was no case “in” the Tenth Circuit at all, or all that could be reviewed was the Tenth Circuit’s discretionary decision to deny permission to appeal the district court’s remand order.

The principal dissent—authored by Justice Scalia and joined by Justices Kennedy and Kagan, and by Justice Thomas “as to all but the final sentence”—agreed with the latter point. According to Justice Scalia, the case posed only the question whether the Tenth Circuit abused its discretion under CAFA when it denied permission to appeal the district court’s remand order. Because, in Justice Scalia’s view, the Tenth Circuit’s order did not say why permission was denied, there was no way to determine whether an abuse of discretion had occurred. Justice Thomas filed an additional dissent that accepted Public Citizen’s first argument, concluding that an application for permission to appeal a remand order did not constitute a “case” “in the court of appeals” that the Court could properly review.

In response to these dissents, the majority explained that “[d]iscretion to review a remand order is not rudderless,” and lower courts necessarily abuse their discretion when they rely on an “erroneous view of the law.” The Court noted the presence of “many signals that the Tenth Circuit relied on [a] legally erroneous premise” based on its prior precedent, and therefore concluded that the order denying permission to appeal “was infected by legal error.”

The Court’s holding that it was proper to reach the merits is significant: If the courts of appeals could insulate controversial and important questions under CAFA from Supreme Court review by simply refusing to grant permission to appeal, the Supreme Court’s ability to shape uniform nationwide rules governing federal jurisdiction over class actions could be impeded significantly. By reaching the merits, the Court has signaled that it is prepared to review such questions when appropriate.

Any questions about the case should be directed to Archis Parasharami (+1 202 263 3328) in our Washington office.