Dart Cherokee Rejects CAFA Anti-Removal Presumption

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Law360, New York (December 15, 2014, 6:00 PM ET) -- On Dec. 15, 2014, the U.S. Supreme Court addressed an important question governing the procedure for removing cases to federal court: whether a defendant must attach evidence in support of key jurisdictional facts, such as the amount in controversy.

In Dart Cherokee Basin Operating Company v. Owens, the Supreme Court agreed with the majority of federal courts that have addressed the issue that no such evidence is required. As the high court explained, the removal statute, 28 U.S.C. § 1446, requires only a "short and plain statement of the grounds for removal." "By design," the court elaborated, this language "tracks the general pleading requirement stated in Rule 8(a) of the Federal Rules of Civil Procedure," strongly suggesting that a removal notice need consist only of a pleading, and not evidence. (Majority Opinion at 4-5.) The court noted that the legislative history of the removal statute "is corroborative" because Congress expressed its intent to "simplify the 'pleading' requirements for removal" and have courts "apply the same liberal rules [to removal allegations] that are applied to other matters of pleading." (Id. at 5 (citation and internal quotation marks omitted).) Although the removing party may ultimately be called upon to prove contested jurisdictional facts with evidence, it suffices to present that evidence in opposition to a motion to remand, at which point the federal court should decide the question of jurisdiction based on a preponderance of the evidence. (Id. at 6.)

This ruling resolved a lopsided split in the lower federal courts over the proper removal procedure, but the court's closing remark on the merits of the case will likely have even greater significance going forward. According to the court, in "remanding the case to state court, the District Court relied, in part, on a purported 'presumption' against removal." (Id. at 7.) The court held that this, too, was error: "[N]o anti[-]removal presumption attends cases involving [the Class Action Fairness Act], which Congress enacted to facilitate adjudication of certain class actions in federal court." (Id. at 7.)

The court's conclusion is well-supported by CAFA's legislative history. For example, the Senate report, which the court referenced in part in making this pronouncement, expressly stated that CAFA's "'provisions should be read broadly, with a strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant.'" (Id. (quoting S. Rep. No. 109-14, at 43 (2005)).) See also 151 CONG. REC. H726 (statement of Rep. Jim Sensenbrenner, R-Wis.) (explaining that, if "a Federal court is uncertain," it "should err in favor of exercising jurisdiction over the case"); S. Rep. No.

for Federal court consideration of interstate cases of national importance under diversity jurisdiction").

Early commentary on CAFA likewise supported this view. See, e.g., Sarah S. Vance, A Primer On The Class Action Fairness Act Of 2005, 80 Tul. L. Rev. 1617, 1630 (2006) ("CAFA's broadened diversity jurisdiction over class actions commensurately expands defendants' opportunities to remove class actions."); id. at 1639-40 ("CAFA was no doubt intended to liberalize removal for cases within its scope by eliminating some of the statutory limitations on removal"); H. Hunter Twiford, III et al., CAFA's New 'Minimal Diversity' Standard for Interstate Class Actions Creates a Presumption That Jurisdiction Exists, with the Burden of Proof Assigned to the Party Opposing Jurisdiction, 25 Miss. C. L. Rev. 7, 53 (2005) (highlighting that "CAFA Section 2, 'Findings and Purposes,' ... [reflects] the strong congressional policy seeking to limit class-action abuses in the state courts by allowing more interstate class actions to be maintained in the federal courts").

Nevertheless, some lower courts had ignored this important aspect of CAFA in prior cases. See, e.g., Cavazos v. Heartland Auto. Servs., No. EDCV 14-01584-VAP (SPx), 2014 U.S. Dist. LEXIS 132755, at *3 (C.D. Cal. Sept. 19, 2014) (remanding action under CAFA; a "defendant removing a case from state to federal court under CAFA ... faces a strong presumption against removal"). Thus, the court's clarification of the point could play a critical role in removal disputes going forward in class action cases. And although the court declined to address the broader question of whether a presumption against removal exists in "mine-run diversity cases" (Majority Opinion at 7), its rejection of such a presumption for CAFA cases will likely spur litigation on that point as well, potentially setting the stage for the Supreme Court's return to that important question in a future case. Indeed, the language of the court's decision in this case — referring to the "purported 'presumption'" — and in its opinion rejecting a request for "strict construction" of removal provisions a decade ago in Breuer v. Jim's Concrete of Brevard Inc., 538 U.S. 691, 697-98 (2003), suggests that the days of the "presumption" against removal applied by many federal courts may be numbered.

Notably, the court closely divided in its decision, with the majority garnering only five votes. The division likely was not animated by any disagreement over the merits; in fact, the principal dissent expressly acknowledged that the court had granted review because "we" were "[e]ager to correct what we suspected was the District Court's (and Tenth Circuit's) erroneous interpretation of § 1446(a)." Instead, the dissent focused on questions of jurisdiction and court procedure. Because the Tenth Circuit had declined to exercise discretionary review of the district court's ruling, four justices would have dismissed the case as improvidently granted. In the dissent's view, the only issue before the court was whether the Tenth Circuit had abused its discretion in denying review — an issue the court could not decide because the Tenth Circuit did not state its reasons for denying review. The majority disagreed, noting that it had decided another CAFA question in Standard Fire Insurance Company v. Knowles, in an identical posture, and reasoning that other factors supported deciding the case on the merits, including the fact that there were "many signals that the Tenth Circuit relied on the legally erroneous premise that the District Court decision was correct" (Majority Opinion at 9) and the significant possibility that the question would evade future review as litigants conformed their practice to the district court's erroneous requirement of evidentiary submissions at the time of removal (id. at 10).

Congress obviously concluded that appellate review of jurisdictional issues is important in class action cases by carving out an exception to the usual rule that remand orders are not reviewable on appeal. But obtaining Supreme Court review when the federal appellate courts disagree over CAFA issues can be tricky, especially because the court is unlikely to step in until the issue has developed to some extent in the courts of appeals — precisely the time at which those courts of appeals may be inclined to stop granting discretionary review of the same issues because they have been sufficiently vetted by their sister circuits. Thus, the Supreme Court's ruling on the issue leaves open an important safety valve for ensuring consistency in the interpretation of CAFA's provisions.

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DISCLOSURE: The authors of this article represented the U.S. Chamber of Commerce in its filing of an amicus brief on behalf of Dart Cherokee in the ruling discussed.

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