

# Complex Mass Tort Product Liability Alert

December 15, 2014

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or your regular Skadden contact.

**John H. Beisner**

202.371.7410

[john.beisner@skadden.com](mailto:john.beisner@skadden.com)

**Jessica D. Miller**

202.371.7850

[jessica.miller@skadden.com](mailto:jessica.miller@skadden.com)

**Geoffrey M. Wyatt**

202.371.7008

[geoffrey.wyatt@skadden.com](mailto:geoffrey.wyatt@skadden.com)

**Brian Baggetta**

202.371.7209

[brian.baggetta@skadden.com](mailto:brian.baggetta@skadden.com)

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

## Supreme Court Rules No Evidence Required to Remove Cases to Federal Court, Rejects Presumption Against Federal Jurisdiction in Class Actions

Today, 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 Court agreed with the majority of federal courts that had addressed the issue that no such evidence is required. As the 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. (Order 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 antiremoval 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.) Although this statement is well supported by CAFA’s legislative history, which the Court referenced in part in making this pronouncement, lower courts had paid little heed to it in prior cases. 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” (*id.* 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.

Notably, the Court closely divided in its decision, with the majority garnering only five votes. But the dissent was focused on questions of jurisdiction and Court procedure rather than merits. 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” (*id.* 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). The implications for future review of CAFA cases from denials of review by the courts of appeals is unclear but is one that litigants should bear in mind in future cases.