

High Court Clears Air On Class Action Removal Disputes

By **Keith Goldberg**

Law360, New York (December 15, 2014, 6:17 PM ET) -- By handing a win to Dart Energy Corp. on Monday, the U.S. Supreme Court not only crystallized that class action defendants don't have to provide additional evidence to support their bids to transfer cases from state to federal court, but also cemented the high court's authority to weigh in on removal disputes.

In a case closely watched by class action attorneys, a 5-4 majority concluded that the Tenth Circuit abused its discretion in refusing to review a district court's erroneous conclusion that Dart hadn't provided enough evidence to support its bid to transfer a class action over oil and gas royalties to federal court and couldn't cure the defect by submitting evidence later on.

A removal notice need only plausibly allege, not detail proof of, the amount in controversy, the majority held.

"I think the best way to term this decision is that it's a practical decision," Kaye Scholer LLP counsel Alan Rothman said. "There was a clear error in law and all the justices may have been on the same page on that."

If the Tenth Circuit's ruling would have been allowed to stand, defendants would feel pressured to provide mountains of evidence and testimony to support their removal requests, a burden for both the parties in the case and the courts, attorneys say.

"Do you walk your witnesses over to the court when you're looking to remove a case and say, 'We're ready to testify'?" said Paul Karlsgodt, who leads BakerHostetler's national class action defense practice team and edits the website ClassActionBlawg.com.

During oral arguments on the case in October, Justice Elena Kagan all but proclaimed that a majority of justices sided with Dart on the merits. Yet on Monday, she joined Justices Antonin Scalia, Anthony Kennedy and Clarence Thomas in insisting the court was in no position tackle the issue at all.

Writing for the dissenters, Justice Scalia said the court should not have taken the case, saying that since it didn't know why the Tenth Circuit refused to review the district court ruling, there was no evidence that the appeals court abused its discretion. Justice Thomas went even further, saying the high court didn't even have jurisdiction because the Tenth Circuit denied review of the district court ruling, there was no appeals court case to be appealed.

“It was clear that was what the real fight was going to be about,” said Mayer Brown LLP litigation partner Archis Parasharami, who watched many of the justices wrestle with the jurisdictional question at oral arguments.

Appellate reviews under the Class Action Fairness Act are discretionary. Had the dissenters been able to coax one more vote, it could have insulated the Tenth Circuit’s decision not to review the appeal — and by extension, the district court’s original decision regarding the removal of the Dart case — from further appellate review, a troubling precedent for defendants, attorneys say.

“That would have had particularly adverse consequences for companies seeking Supreme Court review for cases under CAFA,” Parasharami said. “Most of the time, appeals courts deny those reviews without much in the way of commentary. I think the majority’s holding is helpful in that the courts cannot insulate their decisions from the Supreme Court by simply refusing to grant review of an appeal.”

Not only did the majority conclude that the Supreme Court has the final say on removal disputes, but it also made clear that courts must give defendants the benefit of the doubt when determining whether they’ve met the standard the high court has just set.

“In remanding the case to state court, the district court relied, in part, on a purported ‘presumption’ against removal,” Justice Ruth Bader Ginsburg wrote. “It suffices to point out that no anti-removal presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court.”

The majority’s view is a victory for class action defendants, which simply might not know all of the possible details supporting their removal notices, according to Jessica Miller, a Skadden Arps Slate Meagher & Flom LLP litigation partner.

“I think they’re sending a message to a lower court: When it comes to the CAFA removal provision, if you’re bending one way, it should be toward asserting federal jurisdiction, not denying it,” said Miller, who co-authored an amicus brief filed by the U.S. Chamber of Commerce on behalf of Dart. “It really is embracing, implicitly, that federal CAFA removal should be construed in favor of the removing party.”

All in all, the Supreme Court’s decision provides some much-needed clarity to a relatively simple issue — whether cases belong in state or federal court — that greatly affects how those cases are litigated, attorneys say.

“It’s a good example of what practitioners would like to see more from the Supreme Court: clear guidelines that provide specific guidance, but in an area that is very broad,” Karlsgodt said. “The court has done that in some recent decisions, but many more decisions are taking on a specific case with a specific fact pattern that doesn’t lend itself to strict application in other cases. This one does.”

Dart is represented by Nowell D. Berreth and Brian D. Boone of Alston & Bird LLP and Matthew J. Salzman, Molly Walsh, David E. Bengtson and Jordan E. Kieffer of Stinson Leonard Street LLP.

Owens is represented by Rex A. Sharp and David E. Sharp of Gunderson Sharp LLP, John F. Edgar of Edgar Law Firm LLC, and Grady Young of Southeast Kansas Legal Associates PA.

The U.S. Chamber of Commerce, which filed an amicus brief on behalf of Dart, is represented by John H.

Beisner, Jessica D. Miller and Geoffrey M. Wyatt of Skadden Arps Slate Meagher & Flom LLP and Kate Comerford Todd and Tyler R. Green of the U.S. Chamber Litigation Center Inc.

The case is Dart Cherokee Basin Operating Co. LLC et al. v. Brandon W. Owens, case number 13-719, in the U.S. Supreme Court.

--Editing by Jeremy Barker and Emily Kokoll.

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