



News Release

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DRI Files Amicus Brief with Supreme Court in Class Action Removal Case

CHICAGO – (June 2, 2014)—DRI – The Voice of the Defense Bar has filed an amicus brief with the U.S. Supreme Court in the case of *Dart Cherokee Basin Operating Co. v. Owens*, a case involving the procedural requirements for removing a class action from state to federal court. At issue is whether a defendant must attach evidence to the notice of removal establishing that the case satisfies the jurisdictional amount in controversy requirement. DRI’s Center for Law and Public Policy filed the brief supporting the petitioner’s position that the removal statute, 28 U.S.C. § 1446(a), does not require defendants to attach such evidence to a notice of removal.

The case arose from a dispute over the level of oil and gas production in approximately 700 wells to which a putative class of approximately 400 people claim royalty rights. The defendant filed a notice of removal, alleging that the amount in controversy exceeded \$8.2 million, well over the \$5 million threshold required under the Class Action Fairness Act. Even though the plaintiff did not dispute the jurisdictional allegations, he nonetheless filed a motion to remand the case to state court, arguing that the notice of removal was “deficient as a matter of law” because it contained no evidence showing that the case involved the minimum amount in controversy.

The district court agreed, relying on a “strong presumption against removal” and refusing to consider any evidence outside the plaintiff’s petition and the defendant’s notice of removal. The defendant sought permission to appeal the district court’s remand order, which a sharply divided Tenth Circuit denied, placing itself in conflict with at least seven other circuits. The Supreme Court subsequently agreed to hear the case.

In its brief, DRI argues that the lower court’s decision is inconsistent with both the text of Section 1446(a) and the policies embodied in that provision. DRI’s brief argues that Section 1446(a) adopts the familiar pleading standard found in Federal Rule of Civil Procedure 8(a), requiring only a “short and plain statement of the grounds” for removal. As DRI’s brief explains, “Rule 8(a) has never been interpreted to require plaintiffs to submit evidence of the amount in controversy along with a complaint. Section 1446(a) should be interpreted the same way.” DRI’s brief further contends that the lower court’s decision mistakenly relied on a “strong presumption” against removal, and that any antiquated case law that could be read to support such a presumption should be disavowed.

DRI's brief emphasizes that, if the district court's decision is allowed to stand, it would require that defendants prove jurisdictional allegations in virtually every case, regardless of whether the allegations are challenged, a result that is both wasteful and incredibly burdensome for defendants.

DRI brief authors Scott Burnett Smith and Edmund S. Sauer of Bradley, Arant, Boult, Cummings, LLP, in the Huntsville and Nashville offices respectively are available for interview or for expert comment through DRI's Communications Office.

To read DRI's brief in its entirety, click [here](#).

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