

The \$5 Million CAFA Question: Can You Provide Evidentiary Proof?

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The recent Supreme Court decision in ***Owens v. Dart Cherokee Basin Operating Co.*** In *Owens*, the Court held that class action defendants need not provide evidentiary submissions in support of their notice of removal of a case from state to federal court. Rather, they need only include in their notices a “plausible allegation” that the amount in controversy exceeds the \$5 million jurisdictional threshold set forth in the ***Class Action Fairness Act*** (“CAFA”).

In so holding, the majority relied on the wording of the removal statute itself, which merely requires a “short and plain statement” setting forth a good-faith basis supporting removal. The Court’s decision thus set forth for corporate class action defendants the minimum requirements their notices of removal must contain. The Court, however, neither held nor addressed whether a “plausible allegation” will sustain the removing defendants’ evidentiary burden of proof where the class action plaintiffs contest whether the amount in controversy exceeds \$5 million.

Since *Owens*, class action plaintiffs have challenged, with some success, defendants’ “plausible allegations” concerning CAFA’s amount in controversy requirement. These challenges require class action defendants to submit evidence demonstrating, under a preponderance of the evidence standard, that the amount in controversy threshold has been satisfied. For example:

- *McDannel v. Precision Pipeline, LLC*, 2015 U.S. Dist. LEXIS 46535, No. 5:15CV4 (N.D. W. Va., Apr. 9, 2015) Granting motion to remand where defendant “speculated” that amount in controversy would likely be satisfied if plaintiff obtained the damages sought in the complaint;
- *McPhail v. Lyft, Inc.*, 2015 U.S. Dist. LEXIS 31467, No. A-14-CA-829-LY (W.D. Tex., Mar. 13, 2015) In recommending to grant motion to remand, Magistrate Judge stated that “to suggest that the Supreme Court’s decision in *Dart* clarified the procedure to follow when there is a dispute about the amount in controversy in a removed case completely misunderstands the decision.”;
- *Dudley v. Eli Lilly & Co.*, 778 F.3d 909 (11th Cir. 2014) District court did not clearly err in finding that employer failed to show CAFA’s amount in controversy requirement had been

met, because employer failed to establish by a preponderance of the evidence amount of compensation allegedly denied to class members; and

- *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193 (9th Cir. 2015) Vacating district court's remand order because neither party submitted proof regarding amount in controversy and complaint did not include facially apparent amount.

The Court's holding in *Owens* has thus far had little, if any, impact on class action removal jurisprudence under CAFA. As a practical matter, class action defendants should be prepared to provide evidentiary proof that they can satisfy CAFA's \$5 million removal threshold. Class action defendants should also take this evidentiary burden into consideration when preparing notices of removal.

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