

Did The Supreme Court Just Make Removal Easier For Insurance Companies?

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On Dec. 15, 2014, the Supreme Court issued its opinion in the case *Dart Cherokee Basin Operating Company, LLC v. Owens* (the Dart case). 135 S.Ct. 547. The Dart case involved the removal of a class action to federal court pursuant to the Class Action Fairness Act of 2005. At issue was whether the defendant was required to submit evidence of the amount in controversy with its notice of removal. The Supreme Court granted certiorari to resolve a circuit split and addressed the following question:

“To assert the amount in controversy adequately in the removal notice, does it suffice to allege the requisite amount plausibly, or must the defendant incorporate into the notice of removal evidence supporting the allegation?”

135 S.Ct. at 551. The Supreme Court ruled that a defendant’s notice of removal “need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” 135 S.Ct. at 554. However, the Supreme Court declined to address whether a presumption against removal was proper in the Dart case. *Id.* Although the Dart case was not an insurance coverage dispute, it is common for insurance companies to remove to federal court. The Dart case now lends support that such notices of removal need not contain evidence of the amount in controversy, but rather merely an allegation pursuant to the general pleading standard of Rule 8(a). However, a policyholder plaintiff is not left without recourse even after the Dart case. The plaintiff (and the Court) can contest or question the defendant’s amount in controversy allegation. 135 S.Ct. at 553. When that happens, “both sides submit proof and the court decides, by a preponderance of the evidence, whether the amount-in-controversy requirement has been satisfied.” 135 S.Ct. at 554. Therefore, any policyholder plaintiff faced with a removal by an insurance company that disputes the required amount in controversy exists should immediately garner supporting evidence. Additionally, it is important to remember that diversity jurisdiction also requires complete diversity among the parties. Therefore, the policyholder plaintiff should also look closely at the details of the insurance company’s headquarters and other facts that could impact the question of diversity when faced with a removal.

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