

13-719 DART CHEROKEE BASIN V. OWENS

DECISION BELOW: 730 F.3d 1234

LOWER COURT CASE NUMBER: 13-603

QUESTION PRESENTED:

A defendant seeking removal of a case to federal court must file a notice of removal containing "a short and plain statement of the grounds for removal" and attach only the state court filings served on such defendant. 28 U.S.C. § 1446(a). Consistent with that statutory pleading requirement, the First, Fourth, Fifth, Seventh, Eighth, Ninth, and Eleventh Circuits require only that a notice of removal contain allegations of the jurisdictional facts supporting removal; those courts do not require the defendant to attach evidence supporting federal jurisdiction to the notice of removal. District courts in those Circuits may consider evidence supporting removal even if it comes later in response to a motion to remand.

Here, in a clean break from Section 1446(a)'s language and its sister Circuits' decisions, the Tenth Circuit let stand an order remanding a class action to state court based upon the district court's refusal to consider evidence establishing federal jurisdiction under the Class Action Fairness Act (CAFA) because that evidence was not attached to the notice of removal. (That evidence, which was not disputed, came later in response to the motion to remand.)

The question presented is:

Whether a defendant seeking removal to federal court is required to include evidence supporting federal jurisdiction in the notice of removal, or is alleging the required "short and plain statement of the grounds for removal" enough?

CERT. GRANTED 4/7/2014