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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LAMARC BRADFORD,,

Plaintiff,

vs.

FEDERAL EXPRESS CORPORATION, et al.,

Defendants.

Case No. 2:14-cv-03782-R-CW

MOTION FOR LEAVE TO FILE ACCESS TO COURT *AMICI CURIAE* BRIEF IN OPPOSITION TO MOTION TO REMAND

Date: July 7, 2014
Time: 10:00 a.m.
Judge: Hon. Manual Real
Courtroom: 8

Access to Courts Initiative ("ACI") and American Coatings Association ("ACA") respectfully moves for leave to file the attached memorandum of law as *amici curiae* in opposition to the Plaintiff's motion to remand this action back to California state court.

The proposed *amici curiae* brief does not repeat any of the substantive arguments made by the defendant in its opposition to remand and does not insert any new issues into the case. Rather, *amici curiae* submit the proposed brief to assist the court in its analysis of the legal standard by which the plaintiff's motion to remand should be analyzed. In particular, as more fully set forth in the proposed brief, governing United States Supreme Court authority and the history and plain language of Article III to the United States Constitution reject any presumption against removal and, to the contrary, affirmatively require the Court to grant removal of cases – like the present case – that fall within its removal jurisdiction.

Because there is no Federal Rule of Civil Procedure that applies to motions for leave to appear as *amicus curiae*, federal district courts often look for guidance to Rule 29 of the Federal Rules of Appellate Procedure. *See Washington Gas Light Co. v. Prince George's Cnty. Council*, Civil Action No. DKC 08-0967, 2012 WL 832756 (D. Md. Mar. 19, 2012), *aff'd*, 711 F.3d 412 (4th Cir. 2013); *Jin v. Ministry of States Sec.*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008).[1] "District courts have inherent authority to accept or deny *amici*." *Jin*, 557 F. Supp. 2d at 136; *see also Kentucky Speedway, LLC v. Nat'l Ass 'n of Stock Car Auto Racing, Inc.*, No. 05-138- WOB, 2007 WL 4260517, at *1 (E.D. Ky. Aug. 30, 2007) (granting motion for leave to file *amicus curiae* brief). "[T]he aid of *amici curiae* have been allowed at the trial level where they provide helpful analysis of the law, they have a special interest in the subject matter of the suit, or existing counsel is in need of assistance." *Washington Gas Light Co.*, 2012 WL 832756, at *3 (citing cases).

Amici curiae seek leave of the Court to address a legal issue that is of central importance to the court's analysis of the plaintiff's motion for remand:

[1] In accordance with Fed. R. App. P. Rule 29.1, *amici curiae*'s motion for leave and attached proposed *amici* brief is being filed within 7 days of the defendant's opposition to remand.

whether the Court should approach the motion with any "presumption" in favor of remand to state court. While the plaintiff relies on such a presumption in its remand motion, its argument is based upon seventy-year old dicta from *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100 (1941) that the United States Supreme Court has specifically disavowed in a more recent opinion. *See Breuer v. Jim's Concrete of Brevard, Inc.*, 538 U.S. 691, 698 (2003) ("whatever apparent force [the anti- removal presumption] might have claimed when *Shamrock* was handed down has been qualified by later statutory development"). Moreover, the history, intent, and plain language of Article III of the United States Constitution amply demonstrate that out-of-state defendants have an affirmative right to defend themselves in a neutral federal forum.

Amici curiae have a special interest in the constitutional and jurisdictional issues presented in this case, and they bring a unique perspective not provided by the parties to the legal issue before the Court.

The Access to the Courts Initiative, Inc. ("ACI") is a non-profit organization dedicated to increasing the access to federal courts and providing litigants with the right to a neutral forum, as intended by Article III of the United States Constitution. In furtherance of these goals, ACI, with the assistance of former U.S. assistant attorney general Charles J. Cooper, filed an amicus brief in the United States Supreme Court in *State of Mississippi ex rel, Jim Hood, Attorney General v. AU Optronics Corp., et al.*, 134 S. Ct. 736 (2014) arguing that the Class Action and Fairness Act of 2005, Pub. L. 1092, 119 Stat. 4 ("CAFA") be interpreted without any presumption against removal.

The American Coatings Association, Inc. ("ACA") is a voluntary, nonprofit trade association representing some 300 manufacturers of paints, coatings, adhesives, sealants and caulks, raw materials suppliers to the industry, and product distributors. ACA has an active amicus program in state and federal courts around the country on issues of relevance to its member companies. ACA is one of the

founding members of the Access to Courts Initiative.

ACI and ACA have no financial interest in the outcome of this litigation, and their proposed *amici curiae* brief does not address the specific factual issues raised by the parties' dispute. ACI and ACA instead are seeking to assist the Court in its understanding of the broader constitutional implications of its ruling, both in the context of the present remand motion and in future cases in which other out-of-state defendants seek the protection of a neutral federal forum guaranteed by the United States Constitution.

Counsel for plaintiff has indicated that plaintiff does not consent to the filing of the attached *amici* brief.

WHEREFORE, ACI and ACA respectfully request that this motion for leave to file their proposed *amici curiae* brief be granted.

DATED: June 20, 2014

Respectfully submitted,

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Case No. 2:14-cv-03782-R-CW

ACCESS TO COURT AMICI CURIAE BRIEF IN OPPOSITION TO MOTION TO REMAND

Date: July 7, 2014
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Amici curiae submit this brief to address the plaintiff's mistaken reliance on *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100 (1941) for the proposition that "any doubts as to removal must be resolved in favor of remanding the case to state court." Remand Mot. at 5. While *Shamrock Oil* repeatedly is cited for this proposition, the United States Supreme Court specifically disavowed any such presumption in its more recent opinion in *Breuer v. Jim's Concrete of Brevard,*

Inc., 538 U.S. 691, 698 (2003), where it held that "whatever apparent force [the anti- removal presumption] might have claimed when *Shamrock* was handed down has been qualified by later statutory development." Moreover, the claimed presumption against removal is contrary to the history, intent, and plain language of Article III, Section 2 of the United States Constitution, which was specifically designed to protect out-of-state defendants (like Federal Express here) from being compelled to defend themselves against in-state plaintiffs in their home state court.

I. INTERESTS OF AMICI CURIAE

The Access to the Courts Initiative, Inc. ("ACI") is a non-profit organization dedicated to increasing the access to federal courts and providing litigants with the right to a neutral forum, as intended by Article III of the United States Constitution. In furtherance of these goals, ACI, with the assistance of former U.S. assistant attorney general Charles J. Cooper, filed an amicus brief in the United States Supreme Court in *State of Mississippi ex rel, Jim Hood, Attorney General v. AU Optronics Corp., et al.*, 134 S. Ct. 736 (2014) arguing that the Class Action and Fairness Act of 2005, Pub. L. 1092, 119 Stat. 4 ("CAFA") be interpreted without any presumption against removal.

The American Coatings Association, Inc. ("ACA") is a voluntary, nonprofit trade association representing some 300 manufacturers of paints, coatings, adhesives, sealants and caulks, raw materials suppliers to the industry, and product distributors. ACA has an active amicus program in state and federal courts around the country on issues of relevance to its member companies. ACA is one of the founding members of the Access to Courts Initiative.

Amici have no financial interest in the outcome of this litigation, and their *amici curiae* brief does not address the factual issues raised in the parties' dispute. *Amici* instead are seeking to assist the Court in understanding the broader constitutional implications of its rulings, both in the context of the present remand motion and in future cases in which other out-of-state defendants seek protection of a

neutral federal forum guaranteed by the United States Constitution. *Amici* take the somewhat unusual step of submitting this brief in federal district court because the lack of an immediate right to appeal an order remanding a case to state court, *see* 28 U.S.C. § 1447(d), has limited the ability of federal appellate courts and the United States Supreme Court to provide further guidance on the continued viability of a presumption against removal.

II. ARGUMENT

A. The United States Supreme Court Has Disavowed Any Presumption Against Federal Jurisdiction.

In his memorandum in support of his motion for remand, the plaintiff argues that "a strong presumption exists against federal jurisdiction." Plts. Mem. in Supp. of Motion to Remand ("Remand Mem.") at 5 (initial capitalization removed). This presumption, while often stated, is based upon *dicta* in *Shamrock Oil* that was expressly disavowed in *Breuer* and that runs counter to both the intent and plain language of Article III, Section 2 of the United States Constitution.

In *Breuer*, the Supreme Court affirmed the removal of a suit brought under the Fair Labor Standards Act of 1938, notwithstanding a provision in the Act stating that "[a]n action to recover . . . may be maintained . . . in any Federal or State court of competent jurisdiction." 29 U.S.C.§ 216(b). In so holding, the Supreme Court rejected the plaintiff's heavy reliance on the same language in *Shamrock Oil* cited by the plaintiff here. The Supreme Court explained that at the time *Shamrock Oil* had been decided, 28 U.S.C. § 1441 "provided simply that any action within original federal jurisdiction could be removed," which, in light of the due regard afforded to the rightful independence of state governments, called for a narrow interpretation of the removal power. *Breuer*, 538 U.S. at 697. The Court noted, however, that fourteen years after *Shamrock Oil*, Section 1441 "was amended into its present form, requiring any exception to the general removability rule to be express." *Id.*

The Court explained that this new "congressional insistence on [an] express exception" to removal is "hardly satisfied" by a general presumption that cases not be removed. *Id*. Thus, the Supreme Court instructed, "whatever apparent force [the anti-removal presumption] might have claimed when *Shamrock* was handed down has been qualified by later statutory development." *Id.*; *see also* Scott R. Haiber, *Removing the Bias Against Removal*, 53 CATH. U. L. REV. 609, 630-33 (2004).

B. A Presumption Against Federal Jurisdiction Is Contrary to The United States Constitution.

By discarding any presumption against federal jurisdiction, the United States Supreme Court returned federal jurisprudence to its Constitutional roots. The establishment of a federal judiciary in Article III of the United States Constitution was intended in significant part to address the concerns about state biases that that had crippled the previous Articles of Confederation. Under the Articles, commerce between the states had been shackled by local prejudice and corresponding distrust. *See, e.g., Quill Corp. v. North Dakota*, 504 U.S. 298, 312 (1992); *Hughes v. Oklahoma*, 441 U.S. 322, 325 (1979); THE FEDERALIST No. 7 (Hamilton). The Framers well understood that if the fledgling nation was to succeed, it would have to overcome those tendencies. The new federal judiciary was correspondingly designed to provide a neutral tribunal, not beholden to local interests, in which interstate controversies could be adjudicated. By enabling investors and commercial enterprises to cross state lines with confidence that their legal disputes would be fairly adjudicated in new state markets, diversity jurisdiction went hand-in-hand with other constitutional provisions designed to foster development of a truly national economy.

Indeed, the Framers were so apprehensive of actual or perceived state court bias in favor of local interests that they considered a neutral federal tribunal necessary in some cases to the peace and harmony of the Union, and they took

care to extend federal jurisdiction to "cases in which the state tribunals cannot be supposed to be impartial." THE FEDERALIST No. 80, at 487 (Hamilton). Thus, Article III, Section 2 mandates that "[t]he judicial Power shall extend to," among other things, "[c]ontroversies between two or more States;— between a State and Citizens of another State,— between Citizens of different States, between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects." U.S. CONST. art. III, § 2.

As Justice Story explained in *Martin v. Hunter's Lessee*, the words "the judicial power *shall extend*" are "used in an imperative sense," and "import an absolute grant of judicial power." 14 U.S. (1 Wheat) 304, 328 (1816). Thus, the "duty of congress to vest the judicial power of the United States" must be understood as "duty to vest the *whole judicial power*," else "congress might successively refuse to vest the jurisdiction in any one class of cases enumerated in the constitution, and thereby defeat the jurisdiction as to all." *Id.* at 330 (emphasis in original).

The history of the framing and ratification of the diversity clause makes clear that it was designed to ensure that a party in a dispute with a foreign state or citizen of a foreign state would be entitled to litigate that dispute in a presumably neutral federal court rather than in a possibly biased state court. The Supreme Court, in one of its earliest examinations of diversity jurisdiction, confirmed this understanding:

> However, true the fact may be, that the tribunals of the states will administer justice as impartially as those of the nation, to parties of every description, it is not less true that the constitution itself either entertains apprehensions on this subject, or views with such indulgence the possible fears and apprehensions of suitors, that it has established national tribunals for the decision of controversies between aliens and

a citizen, or between citizens of different states.

Bank of U.S. v. Deveaux, 9 U.S. (5 Cranch) 61, 87 (1809); *see also*, *e.g.*, *Hunter's Lessee*, 14 U.S. (1 Wheat.) at 347 ("The constitution has presumed (whether rightly or wrongly we do not inquire) that state attachments, state prejudices, state jealousies, and state interests, might some times obstruct, or control, or be supposed to obstruct or control, the regular administration of justice.").

The most vocal advocates of diversity jurisdiction included some of the leading Framers. James Madison defended diversity jurisdiction by succinctly stating its obvious rationale:

> It may happen that a strong prejudice may arise, in some states, against the citizens of others, who may have claims against them. We know what tardy, and even defective, administration of justice has happened in some states. A citizen of another state might not chance to get justice in a state court, and at all events he might think himself injured.

3 THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION (J. Elliot ed., 1901) at 533 ("ELLIOT'S DEBATES").

John Marshall placed the point in its larger context, echoing arguments at the Constitutional Convention that a neutral federal forum for resolving interstate disputes was needed to preserve the peace and harmony of the union:

> To preserve the peace of the Union only, its jurisdiction in this case ought to be recurred to. Let us consider that, when citizens of one state carry on trade in another state, much must be due to the one from the other, as is the case between North Carolina and Virginia. Would not the refusal of justice to our citizens, from the Courts of North Carolina, produce disputes between the States?

Id. at 557; *see also* 1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 238 (M. Farrand ed., 1911) ("cases in which foreigners or citizens of other States . . . may be interested" were a species of those "questions which may involve the national peace and harmony") (Edmund Randolph).

The most influential defense of the new federal judiciary was provided by Alexander Hamilton in his classic series of essays on Article III in The Federalist Papers. In *Federalist No. 80*, Hamilton emphasized the critical importance of a neutral forum for resolving disputes "in which the State tribunals cannot be supposed to be impartial" or "unbiased." THE FEDERALIST No. 80, at 478. As he explained:

> No man ought certainly to be a judge in his own cause, or in any cause in respect to which he has the least interest or bias. This principle has no inconsiderable weight in designating the federal courts as the proper tribunals for the determination of controversies between different States and their citizens.

Id. Accordingly,

> the national judiciary ought to preside in all cases in which one state or its citizens are opposed to another state or its citizens. [Only] that tribunal which, having no local attachments, will be likely to be impartial between the different States and their citizens, and which, owing its official existence to the Union, will never be likely to feel any bias inauspicious to the principles on which it is founded.

Id.

C. <u>This Court Should Not Apply A Presumption Against Federal Jurisdiction in this Case.</u>

This Court should take the opportunity not only to reject the plaintiff's attempt to defeat federal jurisdiction, but also to hold – consistent with *Breuer*,

538 U.S. at 697-98 and the plain language and intent of Article III of the United States Constitution – that there is no presumption requiring a thumb to be placed on the scale against removal. To the contrary, the United States Constitution provides out-of-state defendants like Federal Express an affirmative right to defend themselves in a neutral federal forum. As the United States Supreme Court has explained,

> the Federal courts should not sanction devices intended to prevent a removal to a Federal court where one has that right, and should be equally vigilant to protect the right to proceed in the Federal court as to permit the state courts, in proper cases, to retain their own jurisdiction.

Wecker v. Nat'l Enameling & Stamping Co., 204 U.S. 176, 186 (1907). In the words of Chief Justice Marshall, the federal courts "have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution." *Cohens v. Virginia*, 19 U.S. 264, 404 (1821).

III. CONCLUSION

For the foregoing reasons, *amici curiae* submit that this Court should reject the plaintiff's assertion that there is a presumption against removal and deny its motion for remand.

DATED: June 20, 2014

Respectfully submitted,

HOLLINGSWORTH LLP

By: s/ *Jenea Sears*

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[PROPOSED] ORDER GRANTING MOTION FOR LEAVE TO FILE ACCESS TO COURT *AMICI CURIAE* BRIEF IN OPPOSITION TO MOTION TO REMAND

Date: July 7, 2014
Time: 10:00 a.m.
Judge: Hon. Manual Real
Courtroom: 8

The Court, having read and considered "MOTION FOR LEAVE TO FILE ACCESS TO COURT *AMICI CURIAE* BRIEF IN OPPOSITION TO MOTION TO REMAND" (the "Motion") filed by Access to Courts Initiative and American

Coatings Association, Inc. ("ACI/ACA"), and finding good cause therefore, hereby orders that:

1. The Motion is granted and ACI/ACA has leave to file the Access to Court *Amici Curiae* Brief in Opposition to Motion to Remand ("ACI/ACA *Amicus* Brief").

2. ACI/ACA *Amicus* Brief is accepted as filed and served.

3. *Amici curiae* need not refile their brief.

IT IS SO ORDERED.

Date: _____ __, 2014

_____
HONORABLE MANUAL L. REAL
UNITED STATES DISTRICT COURT JUDGE