



Hamilton County LAW LIBRARY NEWS

Professional legal information, services, and education

May 2016

Sixth Circuit Adopts Bright Line Test for CAFA Removals

By Greg Mersol of Baker Hostetler LLP. Reprinted with permission.

Congress enacted the Class Action Fairness Act, better known as “CAFA,” to address some of the well-documented abuses of class action litigation. Among CAFA’s important provisions is one permitting defendants to remove class actions to federal court when there are over 100 potential class members and the amount in controversy exceeds \$5 million. 28 U.S.C. section 1332(d). A case must be removed under CAFA within 30 days after the defendant receives a document from which it can ascertain that the amount in controversy requirement has been met. 28 U.S.C. section 1446(b)(3).

From the time of CAFA’s inception, plaintiffs’ counsel have often looked for ways to prevent removal by, for example, failing to identify the amount in controversy or trying to stipulate that the amount of controversy is actually less than the \$5 million removal threshold. Some myopic courts similarly sought to

impose a high standard for removal or to require the submission of evidentiary materials to establish that the dispute did, indeed, involve more than \$5 million. Fortunately, the Supreme Court put an end to several of these tactics in *Standard Fire Insurance Co. v. Knowles*, 133 S. Ct. 1345 (2013) and *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547 (2014). We blogged about those decisions [here](#). The upshot is that to remove under CAFA, the defendant does not need to attach evidence (it need only allege the basic facts in the removal notice) and its submission in the notice of removal need only demonstrate the amount in controversy by a preponderance of the evidence.

That then leaves the question of when a defendant must remove, such as when the amount in controversy is not clear at the time the complaint is filed, or after subsequent events,

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Hamilton County Law Library

Hamilton County
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1000 Main Street
Room 601
Cincinnati, OH 45202
T:513.946.5300
F:513.946.5264

Open Monday-Friday 8 - 4

<http://lawlibrary.hamilton-co.org>

Tech Tip: Overview of Material Available in Hannah Capitol Connection

By: Julie Koehne, Assistant Law Librarian, Systems

Hannah Capitol Connection is a great resource that we have available here in the Law Library for research on legislative materials.

Mary Jenkins | Hamilton County Law Library | Logout?

Hannah
CAPITOL CONNECTION
"The Unmatched Leader of Statehouse News, Information & Research Since 1988"

FIND A BILL Bill Number: 131st 2015-2016 GO

Bills Introduced: This Week | 1 Week Ago | 2 Weeks Ago | 3 Weeks Ago | This Session

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Search
Bill Text | Ohio Revised Code | Documents | Comprehensive Search | 50 State Search

	Bill Text	Act Text	Analyses & Reports
131th G.A. (2015-2016)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
130th G.A. (2013-2014)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
129th G.A. (2011-2012)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
128th G.A. (2009-2010)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
127th G.A. (2007-2008)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
126th G.A. (2005-2006)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
125th G.A. (2003-2004)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
124th G.A. (2001-2002)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
123rd G.A. (1999-2000)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
122nd G.A. (1997-1998)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
121st G.A. (1995-1996)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
120th G.A. (1993-1994)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
119th G.A. (1991-1992)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
118th G.A. (1989-1990)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Callouts:
 - Bill Text back to 1990
 - ORC back to 1998
 - Bill Analysis back to 1990
 - Bill Testimony
 - Task Force Reports back to 1992
 - Press Releases
 - Hearing Reports
 - Digest of Enactments back to 1998

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 COLLECTION
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 21 West Broad Street, Suite 1000 (10th Floor) Columbus, OH 43215
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And MORE!

Hannah Report Stories

<input type="checkbox"/> Current Hannah Articles 2003 - Current	<input type="checkbox"/> Hannah Article Archive 1969 - 2002
Legal	
<input type="checkbox"/> Ohio Supreme Court Decisions 1988 - Current	<input type="checkbox"/> U.S. Supreme Court Decisions 1990 - Current
<input type="checkbox"/> Executive Orders 1983 - Current	<input type="checkbox"/> Ohio Supreme Court, Board of Commissioners on Grievances and Discipline 1987 - Current
Opinions	
<input type="checkbox"/> Attorney General Opinions 1986 - Current	<input type="checkbox"/> Joint Legislative Ethics Committee (JLEC) - Opinions 1995 - Current
<input type="checkbox"/> Ohio Ethics Commission Opinions 1974 - Current	<input type="checkbox"/> Elections Commission Opinions 1987 - Current
<input type="checkbox"/> Secretary of State Directives 2005 - Current	<input type="checkbox"/> Secretary of State Advisories 2006 - Current
<input type="checkbox"/> Secretary of State Memoranda 2007 - Current	
Budget	
<input type="checkbox"/> Auditor's Bulletins 1993 - Current	<input type="checkbox"/> On the Money 1998 - Current
<input type="checkbox"/> LSC Budget Footnotes 2006 - Current	<input type="checkbox"/> OBM Monthly Financial Report 2006 - Current
<input type="checkbox"/> State Budgeting Matters 2007 - Current	
Legislative	
<input type="checkbox"/> JCARR 2006 - Current	<input type="checkbox"/> Digest of Enactments 1998 - Current
Miscellaneous	
<input type="checkbox"/> Library 1998 - Current	<input type="checkbox"/> Ohio Inspector General Reports 2005 - Current
<input type="checkbox"/> Week In Review 2007 - Current	<input type="checkbox"/> State of the State Addresses 2000 - Current
<input type="checkbox"/> Press Releases 2008 - Current	<input type="checkbox"/> Task Force Reports 1992 - Current

Documents by Type

Legal

- » Ohio Supreme Court Decisions
- » U.S. Supreme Court Decisions
- » Executive Orders

Opinions

- » Attorney General Opinions
- » Joint Legislative Ethics Committee (JLEC) - Opinions
- » Ohio Ethics Commission Opinions
- » Elections Commission Opinions
- » Secretary of State Directives
- » Secretary of State Advisories
- » Secretary of State Memoranda
- » Ohio Civil Rights Commission Opinions

Budget

- » Auditor's Bulletins
- » On The Money
- » LSC Budget Footnotes
- » OBM Monthly Financial Reports
- » State Budgeting Matters
- » Quarterly Economic Trends for Ohio Oil and Gas Industries

Legislative

- » Ohio Supreme Court, Board of Commissioners on Grievances and Discipline
- » JCARR
- » Daily Journal Summaries
- » Digest of Enactments
- » Biography
- » Ohio Criminal Justice Reorganization Committee

Miscellaneous

- » Library
- » Directories
- » Week In Review
- » State of the State Addresses
- » Press Releases
- » Task Force Reports
- » Ohio Inspector General Reports
- » Ohio Constitutional Modernization Commission
- » Joint Medicaid Oversight Committee
- » Legislative Task Forces and Study Committees

Ask any of our reference librarians for these materials!

We can even set up an alert for you if you would like to track a particular bill's status.

Upcoming CLE

Free to subscribers; \$50 for non-subscribers

Registration is required.

To register, call 513.946.5300, email reference@cms.hamilton-co.org, or register via the website

<http://lawlibrary.hamiltoncountyohio.gov/classes/cle/>

[Ohio Senate Bill 181: Statutory Changes in Fiduciary Duties of the Majority Owner](#)

Thursday, May 26

Noon-1pm

Presenter: John Cobey

Approved for 1.0 hour of general CLE in Ohio and Kentucky.

[Finding Company Information Online](#)

Wednesday, June 29

Noon-1pm

Presenter: Laura Dixon-Caldwell

Approved for 1.0 hour of general CLE in Ohio and Kentucky.

Subscriber Lounge

The computer room and subscriber lounge are spaces limited to library and county staff and our subscribers. Members of the public, including clients, are allowed in the lounge only as guests of and in the presence of library staff, county employees, and library subscribers. Meeting a client? Please ask the person to wait in the main room until you are available.



Hein Online Training

Need to quickly find a law review article or the Congressional Record? Law Library subscribers have remote access to HeinOnline.* Join us for a live HeinOnline Webinar here at the Law Library.

Tuesday, June 7

10am-11am

To register, call 513.946.5300, email reference@cms.hamilton-co.org, or register via the website

<http://lawlibrary.hamiltoncountyohio.gov/event-registration/?ee=77>

Note: this is not a CLE program.

*Remote access to HeinOnline is available to subscribers who are solos or firm attorneys at firms with 50 or fewer attorneys.

Videoconferencing Available

The Law Library's videoconferencing service saves local government officials, courts, and subscribers significant time and money by hosting proceedings and meetings here. Hearings, depositions, and client meetings are all possible via videoconference. If the other location (a correctional facility, office, courthouse, etc.) has conferencing capability, we can work with them to test the connection and set up our room for court proceedings or a one-on-one or group meeting. Start by calling us for more information or to reserve a time. Please provide us with a technical contact at the remote site. Read more about this service at <http://lawlibrary.hamiltoncountyohio.gov/services/video-conferencing/> or give us a call at 513.946.5300.

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such as when an amendment or increase of damages over time causes the case to reach the amount in controversy requirement.

In *Graiser v. Visionworks of America, Inc.*, Case No. 16-3167 (6th Cir. April 6, 2016), the court was presented with just that issue. *Graiser* was not an employment case but, rather, was a consumer case over questions about the defendant's "Buy One, Get One Free" eyeglasses offer. The defendant originally unsuccessfully removed the case under diversity of citizenship (not CAFA). After remand to state court, the plaintiffs amended their complaint and initially tendered a settlement demand of roughly \$4 million, below the CAFA requirement. Over time, however, the amount in controversy increased because the defendant had not changed the terms of the challenged "Buy One, Get One Free" promotion.

After the case had been pending over a year, the plaintiffs tendered a new settlement demand based on claimed damages of slightly over \$5 million. The defendant removed again, this time under CAFA, within 30 days of receiving the revised demand. The district court remanded the removal as untimely. Looking through the lens of information the defendant might itself have had, the court largely reasoned that the defendant should have consulted its own records sooner to ascertain whether the amount in controversy met the jurisdictional requirement. The Sixth Circuit, however, reversed and found that the removal was timely. Along the way, the court made two significant holdings:

1. The time for removal begins when the

defendant receives documents *from the plaintiff* reflecting that the amount in controversy requirement has been met, not its own records. Thus, the question is not what is in the defendant's records, and the court should look instead to what the plaintiffs themselves claim in the lawsuit.

2. The timeliness of removal under CAFA is determined independently, and is not affected by the timeline for removal under other bases, such as diversity.

Graiser is important because it rejects one of the most significant attacks frequently made by plaintiffs seeking to avoid CAFA removal. As the court's decision reflected, CAFA was intended to facilitate removal, not to create a spectacle over when the jurisdictional threshold might theoretically have been crossed.

Interestingly, these issues do not run strictly across the traditional lines among courts. In the *Owens* case, the majority was written by Justice Ginsberg, while the late Justice Scalia actually dissented, joined, curiously, by Justices Kennedy, Kagan, and (except for the last sentence, Thomas.) The *Graiser* decision was written by Judge Karen Nelson Moore, a former civil procedure law professor who is normally viewed as a plaintiff-friendly judge.

The bottom line: The time for CAFA removal runs from when the plaintiffs provide the defendant with allegations or evidence meeting the amount in controversy, not when the defendant might compute damages from its own records.

For more information, contact [Greg Mersol](#).

Law Day 2016

Law Day is held on May 1st every year to celebrate the role of law in our society and to cultivate a deeper understanding of the legal profession. In 2016, the nation marks the 50th anniversary of perhaps the nation's best-known U.S. Supreme Court case, *Miranda v. Arizona*. The Miranda Warning has become ingrained in law enforcement and has permeated popular consciousness through countless recitations in films and television shows. Yet *Miranda* is only part of the story when it comes to the procedures for ensuring justice. The 2016 Law Day theme — *Miranda: More than Words* — will explore the procedural protections afforded to all of us by the U.S. Constitution, how these rights are safeguarded by the courts, and why the preservation of these principles is essential to our liberty. Listen to ABA President Paulette Brown's message about Law Day at <http://bcove.me/1pp7tzto>. We'll have *Miranda* magnets to give to fifty lucky library users.



Crossword Puzzle

For a little Law Day fun, try our [crossword puzzle](#). It will test your knowledge of Ohio law, the courts, and legal research. Subscribers, turn in your completed puzzle to Mary or Vanessa by May 9, 2016 at 4:00 p.m. and we will do a drawing for a \$20 Kitty's Coffee gift card on May 10th.

E-Books via Lexis Digital Library

We offer LexisNexis® Digital Library, a virtual library created just for Hamilton County Law Library. The platform provides individual legal titles we subscribe to in eBook format. You can check out and return titles via the Lexis Digital Library or access a mobile-optimized version. The interface is easy to use with options to download eBooks to your computer, smartphone, tablet or other mobile device. To make checking out eBooks even simpler, use the Overdrive® Read™ function to download eBooks directly into your web-browser (no additional software needed.) Access the digital library and check out eBooks anywhere, anytime. Once checked out, internet access is not required to read the eBook, only to access embedded links for more information if you choose. Questions about Lexis Digital Library? See the answers to [FAQs](#) or [ask a librarian](#).

Law Library Board Meeting Date Change

The regular quarterly meeting of the Hamilton County Law Library Resources Board will be held on Thursday, July 7, 2016 at 12:00 noon in the Hon. Robert S. Kraft Board Room, not on July 14 as previously announced. Meetings are open to the public.



Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to six weeks at a time

Access to extensive legal information databases from the Law Library, including Lexis Advance, Shepards', Westlaw, Intelli-Connect, Lexis Digital Library e-books, HeinOnline, and Loislaw treatises

Wireless network throughout the Law Library

Polycom videoconferencing

Five meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

CLE seminars throughout the year, on legal research and substantive topics

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Bi-weekly news alerts by practice area

Discounted rates for photocopying

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/LOISLaw treatises, HeinOnline (for under 50 attorney firms), EBSCOhost, and Intelli-Connect Law, Business, Tax, and Accounting

An add-on plan for Lexis access is available for subscribers in solo practice

You and the Legal System: Sexual Harassment in the Workplace

Attorney Melinda Knisley is our next speaker in the *You and the Legal System* series for the public. Ms. Knisley will discuss Sexual Harassment on May 20 at noon in the Law Library.

The program is free to the public. To register, call 513.946.5300 or register via our website at <http://lawlibrary.hamiltoncountyohio.gov/classes/you-and-the-legal-system/>

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may want to pass along the program announcement to clients, staff and community organizations. If you would like more information, please contact [Laura Dixon-Caldwell](#).

You and the Legal System is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service. Save the date for the next event on our *You and the Legal System* series. Attorney Blake Somers will discuss family law on June 17.



Family Law Resources

Law Library subscribers have access to a variety of resources on Family Law. If you have questions about these resources, contact the reference staff at

reference@cms.hamilton-co.org or
513.946.5300

Advanced issues in family and divorce law [in Ohio

KFO100.A75 A393 2014

Anderson's ... Ohio family law

KFO94 .A95

The complete guide to mediation : how to effectively represent your clients and expand your family law practice

KF505.5 .M675 2015

Divorce & money : how to make the best financial decisions during divorce

KF524 .W66 2013

Family law : relocation, social media evidence, same sex unions, and other current issues [in Ohio]

KFO100.A75 F36 2015

Family law trial evidence handbook : rules and precedures for effective advocacy

KF505 .P47 2013

How to examine mental health experts : a family lawyer's handbook of issues and strategies

KF8965 .Z474 2013

Introduction to domestic relations practice

KFO100 .I6 2014

Lesbian, gay, bisexual and transgender family law

KF505 .J678

Online Resources-Remote Access*

Fastcase Family Law Library

American Journal of Family Law

Child Support Guidelines: Interpretation & Application, 2nd Edition

Drafting Prenuptial Agreements

Family Law Update

Psychological Experts in Divorce Actions, 6th Edition

Qualified Domestic Relations Order Handbook, 3rd Edition

Valuation Strategies in Divorce, 5th Edition

Value of Pensions in Divorce, 5th Edition

Valuing Specific Assets in Divorce

EBSCO

Building a Parenting Agreement That Works

Divorce & Money

Divorce After 50

Divorce Without Court

Fiancé & Marriage Visas

Judge's Guide to Divorce

Legal Guide for Lesbian & Gay Couples

Nolo's Essential Guide to Divorce

Prenuptial Agreements

Law Library Research Guides

Child Support-http://libguides.hamilton-co.org/child_support

Custody-http://libguides.hamilton-co.org/child_custody

Divorce-<http://libguides.hamilton-co.org/divorce>

*Remote access is available to subscribers who are solos or firm attorneys whose entire firm has a subscription to the Law Library.

Upcoming Events:

- May 20: You and the Legal System: Sexual Harassment in the Workplace
- May 26: CLE: Statutory Changes in Fiduciary Duties of the Majority Owner
- June 7: HeinOnline Training Webinar
- June 17: You and the Legal System: Family Law Basics
- June 29: CLE: Finding Company Information Online

Law Library Holidays

The Law Library will be closed on Monday, May 30 in recognition of Memorial Day.



May 2016 Law Library Newsletter

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