

3M Respirator Suits Belong In Federal Court, 6th Circ. Says

By Carolyn Muyskens

Law360 (April 19, 2023, 7:29 PM EDT) -- Coal miners who filed state court suits with more than 700 plaintiffs are subject to federal jurisdiction under the Class Action Fairness Act because the complaints implicitly proposed mass actions, a Sixth Circuit panel held Wednesday.

The three-judge panel said the suits met the criteria for removal to federal court under CAFA, which allows removal of any lawsuit where 100 or more people "propose" to try their claims together, the panel examining for the first time the meaning of CAFA's requirement of a "proposed" joint trial on "common questions of law or fact."

U.S. Circuit Chief Judge Jeffrey Sutton, writing for the panel, said that when the plaintiffs "each filed complaints with more than 100 co-plaintiffs, they offered to try their co-plaintiffs' claims jointly."

The panel followed the guidance of other circuits that have addressed the issue, finding that a single complaint with more than 100 plaintiffs constitutes an implicit proposal for a joint trial. Those cases included the Seventh Circuit's *Bullard v. Burlington Northern Santa Fe Railway Co.* (2008), which found that "one complaint implicitly proposes one trial," and the Third Circuit's *Ramirez v. Vintage Pharms* (2017), which held that one complaint creates a "presumption" that a joint trial has been proposed unless explicitly disavowed.

The miners' decision to file the claims jointly also satisfies the need for proposed "common questions of law or fact" because the plaintiffs have "assert[ed] parallel claims on behalf of more than 100 plaintiffs, all proceeding on the theory that the claims are similar enough to merit adjudication in tandem," Judge Sutton said.

The miners' argument that each plaintiffs' claims are distinct and cannot meet the standard for common questions of law or fact does not help them avoid CAFA removal because "an unwarranted proposal remains a proposal," the panel said.

"A Kentucky court might eventually decline a proposal for a joint trial," but that does not change the fact that the plaintiffs' offered one, the panel reasoned.

Preferring to set a "simple" standard of looking at the complaint's request for "a" trial at face value, Judge Sutton discarded the argument that plaintiffs' counsel had opposed a joint trial, saying the miners' "'nonbinding' implication, suggestion, or even promise that they seek only individual trials does not defeat federal jurisdiction."

"Jurisdictional rules should be 'simple.' Requiring district courts to divine counsels' unexpressed intentions and compare different cases' trial-management plans would be anything but," Judge Sutton said.

The miners had initially filed their suits in Kentucky state court, alleging that 3M Co. and other manufacturers made defective respirators that failed to protect the miners from lung disease.

After 3M removed the two cases to Kentucky federal court, a judge remanded the cases to state court, and 3M appealed.

The miners argued that their suits met CAFA's local controversy exception to federal jurisdiction because they also sued local Kentucky retailers who sold the respirators, but the Sixth Circuit rejected that argument, Judge Sutton noting that the "core" of the suit targets the manufacturers of the respirators, 3M Co. and other companies.

"They have offered no reason for thinking that the merchants' liability is anything but derivative of 3M's liability," Judge Sutton wrote.

A spokesperson for 3M cheered the ruling Wednesday, telling Law360 in a statement that the opinion "appropriately follows other courts' approaches on Class Action Fairness Act issues by agreeing that these matters and other similar mass actions are properly addressed in federal court."

A lawyer for the coal miners could not immediately be reached for comment.

U.S. Circuit Judges Jeffrey S. Sutton, Alan E. Norris and David W. McKeague sat on the panel for the Sixth Circuit.

The coal miners are represented by Michael B. Martin of Martin Walton Law Firm and Johnny Givens of Givens Law Firm PLLC.

3M Co. is represented by Evan M. Tager, Michael A. Scodro and Christopher Ferro of Mayer Brown LLP, Byron N. Miller of Thompson Miller & Simpson PLC, Bryant J. Spann of Thomas Combs & Spann, and Margaret Oertling Cupples, James Stephen Fritz Jr., Scott Burnett Smith and Timothy Rodriguez of Bradley Arant Boult Cummings LLP.

The case is Brian Adams et al. v. 3M Company et al., case number 23-5232, in the U.S. Circuit Court of Appeals for the Sixth Circuit.

--Editing by Peter Rozovsky.