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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

6th Circ. Mulls New CAFA Standard In 3M Respirator Suits

By **Carolyn Muyskens**

Law360 (April 18, 2023, 4:22 PM EDT) -- The Sixth Circuit wrestled Tuesday for the first time with how to interpret one of the criteria for federal courts to exercise jurisdiction over mass tort lawsuits, questioning what counts as a "proposal for a joint trial" in a pair of multi-plaintiff lawsuits alleging that respirators made by 3M and other companies were defective.

3M Co., facing two lawsuits that each feature hundreds of plaintiffs, told the three-judge appellate panel Tuesday the suits were wrongly remanded to Kentucky state court even though they met Class Action Fairness Act requirements for federal jurisdiction, which include a requirement that the case is "proposed to be tried jointly."

The company urged the panel to adopt a rule, used in other federal circuits, that a single complaint with more 100 plaintiffs creates a presumption that the claims are proposed to be tried jointly.

U.S. Circuit Chief Judge Jeffrey Sutton, though, said he was "struggling a little bit with what to do" with the fact that while the plaintiffs' single complaint may imply they intend to pursue a joint trial, the plaintiffs never explicitly said this was the case.

"Why should we run the inferences your way?" Judge Sutton asked a lawyer for 3M.

"I think it's fair to characterize it as an implied proposal," Michael A. Scodro of Mayer Brown LLP said. "The court is then free to go beyond that and consider other elements of the complaint and in theory other filings in that case that precede removal."

In the cases 3M faces from coal miners who say they were sickened at work because of the company's defective respirators, the district court judge presumed the cases were to be tried separately because there were no explicit statements indicating the plaintiffs requested a joint trial.

Scodro told the panel that the district judge had it backwards. The Sixth Circuit should instead adopt the reasoning of the Third Circuit in 2017's Ramirez v. Vintage Pharms: that a single complaint with more than 100 individuals creates a presumption of proposal for a joint trial that is overcome only if the plaintiffs explicitly state the claims will be tried separately, he said.

Scodro also pointed the judges to language in the complaint calling for "a trial" and "a judgment" as evidence for the implicit proposal of a joint trial.

Judge Sutton asked whether the complaint would still be considered an implicit request for a joint trial if the coal miners had simply used plural forms in the complaint, requesting "trials" and "judgments" instead.

"I think that would fall well short of the explicit and unambiguous language required to rebut the presumption" that the case is a mass action under the standard described in Ramirez, Scodro said.

The coal miners' counsel also faced questions from Judge Sutton, who asked the coal miners to counter the argument that the single complaint creates a presumption that the lawsuit is a mass tort subject to federal jurisdiction under CAFA.

"I'm with you that you don't say, 'We're going to do this in one case,' and you don't go on to say there are common questions of law and fact, but it does talk about 'a trial,' it does talk about 'a judgment.' It is one complaint. Aren't those fair inferences?" Judge Sutton asked Michael B. Martin of Martin Walton Law Firm.

Martin said courts must look at everything that has taken place in the case as a whole, "not just singularly at the petition," to determine whether there has been a proposal for joint trial. The court should define a proposal as an "intentional act" on the plaintiffs' part, not something merely assumed or implied by the structure of the complaint.

In these cases, Martin said, the coal miners have never requested a single trial and have opposed joint trials when the issue has come up.

"The word `propose' is an active verb that requires some action by the plaintiff to affirmatively request a single trial," Martin told the panel.

The coal miners also argued that the hundreds of claims in the case, which include other respirator manufactures beyond 3M and two Kentucky retailers who sold the respirators, cannot be tried together because they do not contemplate common questions, as the district court judge ruled when sending the cases back to state court.

But the judges asked Martin why, if the claims were so disparate, the cases were filed in a single complaint.

Martin said Kentucky law is very lax on requirements for joinder, which he described as likely a cost-saving measure for the courts.

Judge Sutton pushed back on the idea that the lack of common questions in the suit precludes CAFA jurisdiction, because CAFA only requires the suit to "propose" to tackle common questions, regardless of whether the claims are later found to be improperly joined.

"You can have a proposal that turns out to be rejected. Ask the spurned lover. She said no," Judge Sutton quipped.

"I never got rejected because I never had the guts to ask," Martin shot back.

3M has also urged the judges to take up the issue of fraudulent joinder when they decide the case, saying the appellate courts rarely have the opportunity to examine the issue.

The company said the naming of two local retailers as defendants in the coal miners' suits is merely a maneuver to avoid diversity jurisdiction by triggering the local controversy exception to CAFA.

3M accused plaintiffs' lawyers of exploiting this local controversy exception to avoid CAFA and keep cases in state court, saying they had seen plaintiffs' lawyers wait until the removal deadline has passed and then dismiss the local defendants.

The U.S. Chamber of Commerce filed an amicus brief backing 3M's position, calling the coal miners' suits "paradigmatic examples of mass actions that should be removable to federal court under the Class Action Fairness Act."

The Chamber urged the Sixth Circuit to reverse the district court's decision, arguing that it "contravenes" Congress's intent in passing CAFA to expand federal jurisdiction over class actions and mass actions.

"If allowed to stand, the district court's decision would significantly undercut Congress's extension of federal jurisdiction to include mass actions. It would also invite precisely the kinds of abusive plaintiff practices that CAFA was designed to curb by encouraging plaintiffs' lawyers to simply remain silent about their trial intentions in order to forestall removal of an action that indisputably belongs in federal court," the Chamber wrote.

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, 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.
