Business Insurance

CAFA decision plugs legal loophole

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CHICAGO—Tort reform advocates say a first-of-its-kind appeals court ruling that so-called "mass actions" can be moved from a state court to a federal court has plugged a large loophole in the federal Class Action Fairness Act.

The ruling in Virda Bell Bullard et al. vs. Burlington Northern Santa Fe Railway Co. et al. also is a victory for defendants, which often find state courts to be more plaintiff-friendly than federal courts, observers say.

In the ruling by a three-judge panel of the Chicago-based 7th U.S. Circuit Court of Appeals, Chief Judge Frank Easterbrook wrote that mass actions are included in the CAFA definition of class actions and rejected the plaintiffs' assertions that their suit is not a mass action.

Judge Easterbrook noted that under CAFA, a mass action can be moved to federal court if the plaintiffs propose a trial involving claims of at least 100 litigants, if at least one plaintiff seeks at least $75,000, if the stakes as a whole are more than $5 million and if minimal diversity of citizenship exists.

The plaintiffs in the case—144 people seeking damages from Burlington Northern and other defendants that allegedly allowed dangerous chemicals to escape from a wood-processing plant—sought to have the case tried in Cook County, Ill., Circuit Court.

The defendants, citing CAFA, had the case moved to U.S. District Court for the Northern District of Illinois, also based in Chicago. The plaintiffs appealed, arguing their suit was not a mass action.

The plaintiffs "insist that a complaint never proposes a trial," Judge Easterbrook wrote. "According to the plaintiffs, defendants may remove a `mass action' only on the eve of a trial, once a final pretrial order or equivalent document identifies the number of parties to a trial." However, "this complaint, which describes circumstances common to all plaintiffs, proposes one proceeding and thus one trial," he wrote.

Judge Easterbrook noted the appeals court took the case because the legal issue had never been addressed in any federal circuit court. He wrote that the lower court's "conclusion is the only sensible reading" of the CAFA statute. "Courts do not read statutes to make entire subsections vanish into the night," he wrote.

The ruling simply reiterated what CAFA says, said an expert on the class action reform law.

"It's not particularly earth-shattering because it basically said CAFA said what it meant and meant what it said," said Jessica Miller, a partner in the Washington office of O'Melveny &

Myers L.L.P.

But the ruling nonetheless is important because there has been little case law on the issue, said Ms. Miller, who added that it marks a victory for due process.

"Mass actions can be abusive because you're putting 100 or more people before a jury and there is no way a jury can fairly pass judgment on the claims of so many people in one trial," which raises questions of due process, she said.

Tort reform advocates welcomed the decision as closing a potentially troublesome loophole in CAFA.

The fact that the ruling came from the 7th U.S. Circuit Court of Appeals gives it considerable weight, said Glenn Lammi, chief counsel-legal studies division at the Washington Legal Foundation in Washington.

"It's significant because it's Judge Easterbrook and because it's the 7th Circuit," Mr. Lammi said. "The 7th Circuit encompasses Chicago, Cook County and Madison County, where a lot of these kinds of cases are filed and transferred from state court to federal court under CAFA."

"It was a logical application of CAFA and it plugs a loophole plaintiffs' lawyers thought they could drive a truck through—it was in the terminology of what a mass action is and when the language of CAFA would apply," Mr. Lammi said.

"I think it is a significant decision. I think it is welcome decision," said Robin Conrad, executive vp of the Washington-based National Chamber Litigation Center Inc. "Judge Easterbrook had identified this attempt by the plaintiffs' bar to exploit a loophole that was never intended by Congress."

Victor Schwartz, general counsel of the Washington-based American Tort Reform Assn., made much the same point.

"The significance is less its technicalities than to say to plaintiffs' lawyers that we are not going to respond to your potentially innovative ways to circumvent CAFA," Mr. Schwartz said.

Virda Bell Bullard et al vs. Burlington Northern Santa Fe Railway Co. et al. 7th U.S. Circuit Court of Appeals; No. 08-8011; Aug. 1, 2008.