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11th Circ.'s Cappuccitti Ruling Could Undermine CAFA

By Julie Zeveloff

(Sept. 30, 2010) The U.S. Court of Appeals for the Eleventh Circuit's recent ruling in Cappuccitti v. DirectTV Inc., which held that Class Action Fairness Act cases may only be filed first in federal court when at least one plaintiff's claims exceed $75,000, could create major upheaval in the court system in the unlikely event that it is allowed to stand, attorneys say.

The July 19 ruling created immediate buzz among lawyers working on class action litigation, who generally agreed that the appeals court erred in interpreting the jurisdictional requirements of CAFA.

“This ruling created a shock wave because it so touches the core of what CAFA was about,” said Michael Mueller, co-head of Hunton & Williams LLP's commercial litigation practice. “Usually, an aberrational decision like this wouldn't get all that much attention, but this one is because it kind of creates a big crack in the ice.”

It's also created an unusual situation where both sides have requested a rehearing en banc, posing largely the same arguments. Briefs from both sides take issue with the court's interpretation of class versus mass actions and argue that the circuit judges misunderstood Congress'
intent in passing CAFA.

“When you see plaintiffs class action counsel and defense counsel agreeing on anything to this degree, you have a pretty good idea that something's wrong,” said Mark Melodia, who heads Reed Smith LLP's global data security, privacy and management practice.

Factually, the case is unexceptional. Renato Cappuccitti and David Ward, Georgia residents, filed the putative class action in March 2009 seeking to recover early cancellation fees charged by DirecTV, which amounted to between $175 and $480 per class member.

DirecTV moved to compel arbitration, but the U.S. District Court for the Northern District of Georgia denied that motion, finding the company's arbitration clause to be unconscionable. The broadcast provider appealed to the Eleventh Circuit soon afterward.

But the Eleventh Circuit never ruled on the arbitration issues briefed by the parties. Instead, Judges Gerald Bard Tjoflat, Charles R. Wilson and David M. Ebel, a Tenth Circuit judge, found that subject matter jurisdiction was absent under CAFA and remanded the case with instructions to dismiss.

In doing so, the appeals court took the unprecedented stance that for federal courts to have original jurisdiction over CAFA class actions, at least one plaintiff must satisfy the individual $75,000 amount-in-controversy of 28 U.S.C. Section 1332(a).

Attorneys who spoke to Law360 said they thought the court had conflated "class actions" with "mass actions," which actually have separate jurisdictional requirements under CAFA.

While CAFA triggers the $75,000 threshold for mass actions, which include more than 100 plaintiffs seeking monetary relief under common claims, it does not do so for class actions filed under Federal Rule of Civil Procedure 23, Melodia said.

Since Cappuccitti's case was clearly pled as a class action, the individual threshold should not necessarily apply, he added.

"The entire point of a class action under Rule 23 is to have an aggregation of claims that would otherwise be too small to litigate,"
said Brant Martin of Wick Phillips Gould & Martin LLP. "To require a $75,000 minimum from one plaintiff would kind of undercut the entire purpose of the class action mechanism."

Other attorneys took issue with the Eleventh Circuit's conclusion that if the $75,000 threshold did not apply in CAFA class actions, it would essentially transform federal courts hearing those cases into "small claims courts, where plaintiffs could bring $5 claims by alleging gargantuan class sizes to meet the $5 million aggregate amount requirement."

"The darnedest thing is, I think that's exactly what Congress intended," said Fred Isquith, managing partner of Wolf Haldenstein Adler Freeman & Herz LLP.

"The purpose of the statute was to take class actions out of the state courts and bring them into the federal system to apply the more uniform procedural mechanism of Rule 23, except in instances where the matter was strictly local," he said. "And this court seems to turn that around and throw back into the state courts all those consumer cases and disputes over contracts where individuals have damages of less than $75,000."

Most attorneys expect the Eleventh Circuit to overturn the decision.
If it is allowed to stand, it could wreak havoc not only in Alabama, Florida and Georgia, but across the U.S.

It's already making waves in some federal courtrooms: A district judge in California overseeing the two-year old multidistrict litigation (of which Cappuccitti is a part) recently asked the parties for briefs on whether the ruling affected the court's jurisdiction, and a Florida judge in September stayed a motion to remand a class action over State Farm Mutual Automobile Insurance Co. reimbursements pending the outcome in Cappuccitti.

The decision could seriously undercut Congress' intent in passing CAFA, the centerpiece of President George W. Bush's tort reform effort, said Dr. Ted Bolema, a principal at the Anderson Economic Group LLC and adjunct business law professor at Central Michigan University.

"Proponents of tort reform were concerned about forum shopping," Dr. Bolema said. "This decision opens the door for cases to again be brought at the state level and raises the same forum shopping concerns that were the motivation for the original legislation."

It could also seriously shake up court dockets, as DirecTV pointed out in its petition for rehearing, writing that if the decision became law, the only CAFA class actions that would remain in the Eleventh Circuit would be the "genuinely rare cases" where one named plaintiff has more than $75,000 at stake and the parties are minimally diverse.

"All others would belong in state court, causing massive upheaval," DirecTV wrote. "Potentially hundreds of CAFA class actions pending in this circuit, including multidistrict litigation assigned to the Eleventh Circuit ... would have to be dismissed for lack of subject matter jurisdiction or remanded to state court."

Melodia said that while the decision may have been in response to frustration with the backlog of class actions on the docket, there were other ways to deal with a "meritless case" than to redefine the court's jurisdiction.

For example, the court could find that the plaintiffs lacked standing or that the complaint failed to allege a plausible scenario for relief under the pleading standards laid out in the U.S. Supreme Court's Iqbal and Twombly decisions.

"There are already minimum requirements for entry into a federal courthouse and tools for the courts to address the jurisprudential concerns the court may have had," Melodia said. "They didn't need to rewrite the statute."