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Litigator of the Week: Faith Gay of Quinn Emanuel

By Susan Beck
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It may sound like the most technical of procedural issues—whether a federal judge can vacate the remand of a case to state court—but to the mass tort defense bar it's a big deal.

On Nov. 25 Faith Gay of Quinn Emanuel Urquhart & Sullivan won a crucial ruling on this issue for client Colgate-Palmolive Co., which is battling suits contending that the Cashmere Bouquet talcum powder it once sold contained asbestos and caused mesothelioma. An *en banc* panel of the U.S. Court of Appeals for the Fourth Circuit held that a federal judge can vacate a remand order if there's sufficient evidence that the plaintiffs lawyers used fraud to move the case back to state court.

The ruling concerned two personal injury cases brought by women in Maryland state court who claim their mesothelioma was caused by their use of Cashmere Bouquet. In recent years, the asbestos bar has been increasingly targeting companies that mined and sold talc, which can contain naturally occurring asbestos. (Some suits even contend that asbestos-free talc can be dangerous.) Plaintiff Joyce Barlow sued 23 defendants; plaintiff Clara Mosko named 36 defendants. Colgate-Palmolive removed the case to federal court on the basis of diversity jurisdiction. The plaintiffs lawyers then persuaded the federal district judge to move the cases back to state court because each plaintiffs' Maryland-based employer was sued, which defeated diversity jurisdiction.



(Photo by Dana Hursey)

Both plaintiffs are represented by the Law Office of Peter G. Angelos in Baltimore, which has been active in asbestos litigation.

Gay maintained that the plaintiffs' claims against the Maryland defendants weren't valid and were included just to keep the cases in state court. In fact, when the cases returned to state court, both plaintiffs asserted in court pleadings that they were only exposed to asbestos through Cashmere Bouquet, she pointed out. She wanted to get the cases back to federal court using Rule 60(b)(3) of the Federal Rules of Civil Procedure, which permits a court to relieve

a party from an order if opposing counsel engaged in fraud or misconduct. She also wanted Rule 11 sanctions against the plaintiffs lawyers.

The problem she faced was that federal law prohibits federal judges from reviewing orders to remand a case to state court to avoid excessive delay. At least three appellate decisions from other circuits appeared to prevent any reconsideration of a remand order. The district judge denied Colgate's challenge to the remand, and also denied a motion for sanctions. A Fourth Circuit panel affirmed earlier this year.

During the en banc oral arguments, which Gay described as lively, the Quinn Emanuel partner conceded that courts couldn't review remand orders. Instead, she argued that they could vacate them if there was a finding of fraud. The en banc majority agreed, concluding that there was a difference between reviewing and vacating that was more than semantics. Colgate's motion to vacate was based on a "collateral consideration" of attorney misconduct, it concluded, rather than the remands' merits. (Six of the eight judges joined the majority; one dissented; and another dissented in part.) The panel remanded the case to the district court to determine if the plaintiffs lawyers engaged in fraud to get the case back to state court.

"This is a significant new tool to combat fraud," Gay said about the Fourth Circuit's ruling. One reason it's so important to her client is that Maryland state courts, as well as other state courts, allow the consolidation of asbestos suits. That means multiple plaintiffs can present their cases to a jury in the same trial, which can make the evidence against the defendants seem more weighty.

The plaintiffs were represented on appeal by Jeffrey Utermohle of the Angelos Law Firm. We contacted him but didn't hear back.

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