

NEWS & INSIGHTS

BRIAN KAPPEL ARGUES APPEAL BEFORE 11TH CIRCUIT ON POTENTIAL PRECEDENT-SETTING CAFA EXCEPTION INTERPRETATION

March 10, 2020

Lightfoot, Franklin & White LLC partner **Brian P. Kappel** recently argued an appeal before the 11th U.S. Circuit Court of Appeals in a matter that could settle a judicial split regarding the application of the Class Action Fairness Act (CAFA) to mass actions involving 100 or more plaintiffs.

The case, *Kelvin Spencer, et al. v. Specialty Foundry Products, Inc., et al.*, was filed in Alabama state court by the former employees of an iron foundry that ceased operations in 2017. Because the foundry no longer exists as a business, the plaintiffs are suing the makers and suppliers of products used in the foundry that they allege caused them harm.

The defendants petitioned for the case to be removed to federal court under CAFA, which was opposed by the plaintiffs. The district court found the case belonged in state court, a decision the defendants appealed to the 11th Circuit.

Kappel, who was **named a partner** in the firm in January, argued on March 3 for the defendants. He noted that the exception invoked by the plaintiffs — and relied upon by the district court in its ruling — as to why the case should be remanded to state court does not apply and that the matter belongs in federal court under CAFA

“The issue presented involves the so-called local occurrence or event or occurrence exception to CAFA and, specifically, whether that exception requires a single event or occurrence or can be interpreted more broadly than that,” said Kappel. “Although the 11th Circuit has not previously dealt with this issue, the appellate 3rd, 5th and 9th Circuits have ruled on it and taken three slightly different approaches. So, a ruling from the 11th could, in theory, settle that three-way split.”

Kappel noted the 9th Circuit issued a narrow interpretation while the 3rd’s was broader and the 5th took a middle path. The 11th Circuit should rule on the matter by April 10.

In addition to Kappel, the Lightfoot team includes **John M. Johnson**, **Elizabeth H. Huntley** and **Zachary P. Martin**.

Kappel is a versatile litigator who defends companies in a wide range of disputes, including complex class actions. He regularly handles matters involving antitrust, employment and product liability claims. In addition, Kappel has particular experience in investigating, defending and quickly resolving discriminatory practices claims.