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Litigator of the Week: Sullivan & Cromwell's Jordan Puts the Brakes on Massive Class Action

Sullivan & Cromwell's Julia Jordan convinced the Sixth Circuit to side with her client, Fiat Chrysler Automobiles in dismissing a putative class action with prejudice.

By Jenna Greene
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Our Litigator of the Week is Sullivan & Cromwell's Julia Jordan, who co-heads the firm's labor and employment group, for her win on behalf of Fiat Chrysler Automobiles.

In a case with no direct precedent, Jordan persuaded the U.S. Court of Appeals for the Sixth Circuit to uphold the dismissal with prejudice of a putative class action that could have cost the automaker hundreds of millions of dollars.

The dispute has its origins in what the appellate court called "the infamous bribery scandal" involving several former Fiat Chrysler executives and officials of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America. The scandal has already resulted in multiple federal convictions and indictments, and criminal investigations are ongoing.

The question before the court in Swanigan et al v. FCA US, LLC et al.: Could union members bring a hybrid suit against Fiat Chrysler for breach of contract and against the UAW for breach of its duty of fair representation? The answer? No.

Jordan discussed the case with Lit Daily.

Lit Daily: Who is your client and what was at stake?

Julia Jordan: Our client is FCA US LLC, a subsidiary of Fiat Chrysler Automobiles, which used to be known as Chrysler. They're a long-time client of S&C.

Plaintiffs brought a putative class action on behalf of all members of the UAW claiming they were impacted by an alleged collusion between FCA and the UAW (which also was a defendant). Plaintiffs sought significant monetary damages, including the repayment of all union dues paid during the entire period of the alleged collusion, together with any damages that they suffered as a result of "company friendly" positions purportedly taken by the UAW as a result of that collusion.

Tell us about the origins of the dispute.

The case arises from an alleged scheme by three former FCA employees to provide millions of dollars' worth of money and gifts to officials of the UAW. An ongoing federal criminal probe has led to indictments and plea agreements of individuals from the company and the union. Plaintiffs asserted that this alleged scheme was done to get more company-friendly positions in the collective bargaining agreement.

Sullivan & Cromwell partner Julia Jordan.

How did the plaintiffs try to shoehorn these criminal cases into a private right of action?

Section 302 of the Labor Management Relations Act (LMRA) is a criminal statute that prohibits certain payments to officials of any labor organization. It does not provide for a private cause of action.

As a result, plaintiffs sought to bring a private cause of action under Section 301 of the Act, which allows for so-called "hybrid" actions against both employers and unions. To assert a Section 301 claim, plaintiffs must establish both that the employer violated a labor contract, and the union breached its duty of fair representation.

To try to shoehorn their Section 302 claim into a civil action, plaintiffs asserted that FCA violated the collective bargaining agreements by allegedly providing money and gifts to union officials to get company-friendly positions.

When and how did you and your team get involved in the dispute? What happened at the district court level?

FCA tapped S&C at the start of the lawsuit. I'd like to mention that Jacob Cohen, who is a special counsel at the firm, worked on [the case] with me since the start, and he has done a tremendous job.

At the district court, we asserted, and Judge Drain of the Eastern District of Michigan agreed, that the complaint was really a disguised claim under Section 302 of the LMRA.

We also successfully argued that the plaintiffs' Section 302 claim failed because they could not identify a single provision of the collective bargaining agreement that FCA violated.

At the district court, plaintiffs' Section 301 claim was based not only on an alleged breach of a collective bargaining agreement, but also the claim that the UAW Retiree Medical Benefits Trust sold securities to FCA at a below-market price in January 2014. We asserted that an agreement to sell securities is plainly not a labor contract covered by Section 301. The district court agreed, and plaintiffs dropped this theory on appeal.

Who was opposing counsel? And what were their primary arguments?

At the district court, plaintiffs were represented by James Baker of Sterling Attorneys at Law, and on appeal, the plaintiffs were represented by Jeffrey Harris of Consovoy McCarthy.

At the district court level, plaintiffs asserted that the alleged provision of money and gifts by FCA employees to UAW officials was done to obtain company-friendly positions, and violated common law contract principles.

On appeal, plaintiffs' counsel switched some of their theories—asserting that FCA violated the contract by breaching their implied duty of good faith and fair dealing. The Sixth Circuit found that plaintiffs forfeited that argument because they failed to raise it below.

What were your primary themes on appeal?

The primary theme on appeal is that Section 301 of the LMRA is a narrow statute that is limited to the enforcement of express terms of contracts. Claims of bad faith bargaining, in contrast, must be heard by the National Labor Relations Board. Here, plaintiffs could not cite a single provision of their contract that was allegedly violated.

Take us into the courtroom for oral arguments. Who was on the bench? What were the primary lines of questioning? Any surprises?

Chief Judge R. Guy Cole Jr. and Judges Richard Griffin and John Bush were on the panel, and each questioned the lawyers. The judges pressed plaintiffs' counsel about whether they had forfeited many of their arguments on appeal, given their failure to expressly raise them below.

With respect to FCA, Chief Judge Cole asked whether a Tenth Circuit decision supported plaintiffs' breach of contract theory, while Judge Bush asked about the express terms of the collective bargaining agreement.

What strikes you as the most significant aspects of the decision? Does the ruling bode well for a similar case pending against the company in the Sixth Circuit?

This decision makes it clear that the alleged provision of money or other things of value by an employer to a union official cannot support a "hybrid" claim under Section 301 of the LMRA absent an express violation of the collective bargaining agreement. Furthermore, plaintiffs can't create a private cause of action under Section 302 by simply re-labeling it as a Section 301 violation.

We have another case pending before the Sixth Circuit —DeShetler v. FCA US LLC—which we believe raises the same issues rejected by the Sixth Circuit in Swanigan. There too, plaintiffs seek to bring a "hybrid" claim under Section 301 of the LMRA based on the theory that former FCA employees allegedly provided things of value to UAW officials to obtain company-friendly concessions from the UAW. We expect a decision in the DeShelter action next month.

We also just started handling a new related matter where we believe the Swanigan decision should be precedential. It's a case brought last week by the United Auto Workers Local 961 and its president and vice-president, seeking a declaration that FCA and the International UAW violated Section 301 of the LMRA, and an injunction to prevent the closure of the Marysville Axle Plant in Michigan.