



U.S. District Court Rejects 3M's Subsidiary Liability Argument After Years of Claiming Sole Responsibility

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A recent decision by the United States District Court for the Northern District of Florida strongly condemning efforts by 3M to avoid liability by shifting blame to its subsidiary after all of its other defenses failed could have implications for other parent companies looking to pursue a similar strategy. In *In Re: 3M Combat Arms Earplug Products Liability Litigation*, No. 3:19md2885 (N.D. Fla. Dec. 22, 2022), the Court used its inherent authority to sanction 3M for its “brazen” attempts to avoid judgment by arguing that its subsidiary Aero was solely liable for all claims relative to the company’s Combat Arms Earplugs (“CAEv2”).

The Case

In 2019, 3M successfully lobbied the Judicial Panel on Multidistrict Litigation to consolidate all CAEv2 claims in a Multidistrict Litigation (“MDL”). 3M then vigorously litigated in the MDL over the next three and a half years, filing hundreds of motions and challenges to every alleged theory of liability. However, in all their arguments and filings, 3M never mentioned that Aero, and not 3M, bore any degree of liability. 3M admitted that any Aero defendants were indirect, wholly owned subsidiaries of 3M and agreed for all defendants to be collectively referred to as “3M” for the purposes of liability.

After 16 trials resulting in 19 verdicts, with only six verdicts for the defense, 3M decided to have Aero file for Chapter 11 bankruptcy protection. Prior to the bankruptcy filing, 3M and Aero executed a funding and indemnity agreement allocating all of 3M’s liability for CAEv2 claims in the MDL to Aero. In exchange, 3M committed to fund all of Aero’s liabilities and costs in bankruptcy. 3M then attempted to argue that Aero was now the real-party defendant to the MDL. The bankruptcy court rejected 3M’s argument and allowed claims against 3M to continue in the MDL, unaffected by the bankruptcy proceeding.

After the bankruptcy court failed to accept Aero as the real party defendant, 3M argued for the first time in the MDL that Aero was a completely separate entity from 3M who bore sole responsibility for all CAEv2 liability. The Wave 1 plaintiffs within the MDL then collectively moved for an order precluding 3M from shifting any liability to Aero.

The Court's Decision

The Court held that 3M was deliberate in establishing itself as the sole defendant bearing all responsibility for any alleged CAEv2 liability in the MDL throughout the three and a half years of litigation prior to losing 13 out of 19 verdicts in the initial trials. 3M then concocted the bankruptcy strategy for the sole purpose of evading any further liability and delaying the effective resolution of the nearly 250,000 CAEv2 cases remaining. In finding that 3M's litigation abuses were the epitome of bad faith, the Court stated that 3M's conduct was "beyond the pale of acceptable litigation conduct and reflect[ed] a flagrant contempt for this Court and the MDL process." Following the Court's sanctions, 3M is now precluded from attempting to avoid any portion of alleged liability for the CAEv2 claims by shifting blame to Aero.

Other parent companies need to make sure to raise any potential liability arguments relative to a subsidiary at the outset of a litigation and not wait to pursue those arguments only after all other defenses have failed. If this opinion is any indication of how other courts will respond to a later arising defense of subsidiary liability, the argument will not be kindly met.

If you have questions about this decision, please contact any attorney with Frost Brown Todd's [Manufacturing](#) Industry Team.

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