COMING HOME? PART TWO: FEDERAL CIRCUIT DENIES MANDAMUS PETITION SEEKING CLARITY ON WAIVER ISSUES POST-TC HEARTLAND

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IP Litigation Alert

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This legal alert is a follow-up to "Coming Home?: Federal Circuit Asked to Immediately Weigh in on Proper Venue Post-*TC Heartland*," available here.

On the morning of June 9, 2017, the defendants in *Cobalt Boats, LLC v. Sea Ray Boats, Inc.*, filed their Mandamus Petition seeking immediate review of the district court's decision to deny their request to transfer venue.[1] The defendants also renewed their emergency motion to stay the proceedings pending Federal Circuit review. The Federal Circuit denied both requests late in the afternoon the same day. The Federal Circuit did not weigh in on any of the substantive issues regarding waiver of venue challenges, but rather determined that mandamus relief was not the appropriate recourse in this instance.[2]

As with the previous denial of the defendants' emergency motion to stay, Judge Newman dissented from the opinion. Judge Newman again reiterated that "[t]here is little doubt that the Court's decision in *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, No. 16-341, 2017 WL 2216934 (U.S. May 22, 2017), was a change in the law of venue . . ."[3] Judge Newman also opined that the case presented exceptional circumstances warranting mandamus review because "if the trial commences next Monday as scheduled, the landscape will have changed dramatically—without a stay, the event will be over, and an opportunity for this court to determine whether the district court's decision was in compliance with the venue requirements revived by TC Heartland may have harsh consequences."[4]

The district court in the underlying litigation is set to begin trial today.

Notes:

[1] No. 15-cv-21 (E.D. Va.).

[2] *In re* Sea Ray Boats, Inc., No. 17-124, Dkt. No. 15 at 2 (Fed. Cir. June 9, 2017).

[3] *Id.* at 5 (Newman, J., dissenting).

[4] *Id.*

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