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A Red Light For Federal Class Certification In Calif.

Law360, New York (February 02, 2012, 2:25 PM ET) -- The U.S. Court of Appeals for the Ninth Circuit has reined in the ability of federal courts to certify consumer product class actions under California's broad consumer protection statutes.

Specifically, the Ninth Circuit held that choice-of-law issues prevented certification of a nationwide automobile purchaser class, and that even a California-only class was precluded by individual issues of reliance. In doing so, the Ninth Circuit confirmed that the "rigorous analysis" standard recently affirmed by the U.S. Supreme Court in *Wal-Mart v. Dukes* applies with full force in consumer product class actions.

In *Mazza, et al. v. American Honda Motor Co. Inc.*, plaintiffs sued Honda alleging that it deceptively advertised the capabilities of the collision mitigation braking system in the Acura RL, including alleged omissions regarding the system's limitations.

The U.S. District Court for the Central District of California certified a nationwide class of purchasers under California law, including the Unfair Competition Law, Consumer Legal Remedies Act and False Advertising Law. The district court found that common questions regarding Honda's duty to the plaintiffs, its knowledge of material facts and the significance of its alleged omissions predominated over individual issues.

The court further held that Honda's contacts with California — the state of its U.S. headquarters — permitted the application of California law to a nationwide class, including class members from 44 different states.

In reaching its decision, the district court avoided a potential conflict of laws by concluding that Honda failed to show material differences in state law or that other states had a sufficient interest in the litigation. Similarly, the court avoided an otherwise predominant individual issue — reliance — by finding that California law entitled the class to an inference that each class member saw and relied upon the allegedly deceptive advertising.

The Ninth Circuit reversed, finding that the trial court had committed error in its choice-of-law analysis and abused its discretion as to the issue of presumed reliance. In finding that California law could not apply to a nationwide class, the Ninth Circuit acknowledged the numerous material differences between California's consumer protection statutes and those of other states, including with respect to scienter, reliance and available remedies.

Moreover, while Honda is a California corporation, the court found that federalism does not permit California's policy preferences for aggressive consumer protection and the regulation of companies within its borders to trump the policy preferences of more business-friendly jurisdictions where absent class members reside.

The Ninth Circuit also confirmed that the state in which a purchaser viewed and relied upon the advertising — and not the state in which the advertising was created — constituted the "place of the wrong" for purposes of a choice-of-law analysis.

The court ultimately concluded that because the law of multiple jurisdictions necessarily applied, individual issues of state law overwhelmed any common issues and precluded certification of a nationwide class.

In addition to reversing the district court's choice of law ruling, the Ninth Circuit also held that individual issues predominated to preclude certification of even a California-only class. The appellate court began by acknowledging the important premise that California law does not permit recovery by consumers who never were exposed to, and therefore did not rely on, allegedly false advertising.

The district court had avoided this issue by ruling that the class was entitled to a presumption of reliance, particularly because the case involved allegedly material omissions. The Ninth Circuit clarified that the presumption of reliance — articulated by the California Supreme Court in *In re Tobacco II Cases*, 46 Cal. 4th 298 (Cal. 2009) — was a limited principle of California law, arising only in the presence of an "extensive and long-term [fraudulent] advertising campaign" and not where purchasers were exposed to disparate information or where the advertising was limited in scope.

"In the absence of the kind of massive advertising campaign at issue in [Tobacco]," the court said, "the relevant class must be defined in such a way as to include only members who were exposed to advertising that is alleged to be materially misleading."

To hold otherwise would permit recovery by class members who never viewed or relied upon the advertising at issue, a result that is inconsistent with California law. The court concluded that Honda's product brochures and TV commercials fell short of that standard.

The Mazza decision is a significant development and should find a prominent place in consumer product defendants' arguments against class certification in the Ninth Circuit. It casts serious doubt on the propriety of certifying a nationwide class under California's consumer protection statutes — even when the defendant is a California corporation — and it significantly restricts the presumption of reliance in the absence of a massive and extended advertising campaign.

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