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Litigation Alert

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Key Points

- The U.S. Court of Appeals for the 9th Circuit vacated a $200 million settlement agreement in multidistrict litigation against Hyundai and Kia relating to their alleged misrepresentations about the fuel efficiency of their vehicles.
- The 9th Circuit held that courts must conduct a choice-of-law analysis as required under *Mazza* in the context of nationwide class settlement agreements.
- Proponents of classwide settlements will now have the burden of showing that variations in state law do not defeat the predominance requirement of F.R.C.P. 23(b)(3) before a settlement class is certified.

Ninth Circuit Vacates Nationwide Class Action Settlement Due to Material Differences in State Laws

Background

Beginning in January 2012, various putative nationwide class action claims were brought against Hyundai and Kia arising out of alleged misstatements regarding the fuel efficiency of their vehicles. Specifically, plaintiffs alleged that Hyundai and Kia overstated fuel efficiency estimates in advertisements and car window stickers for certain vehicles. In total, 56 actions were filed and ultimately consolidated in a multidistrict litigation in the Central District of California.

After approximately eight months of discovery, several groups of plaintiffs moved for certification of a settlement class and preliminary approval of a nationwide class settlement. According to these plaintiffs, discovery failed to reveal any evidence that Hyundai and Kia engaged in any deceptive conduct, knowing concealment or other bad acts. However, three groups of plaintiffs objected to the settlement class on various grounds. Of particular relevance to the 9th Circuit were the *Gentry* plaintiffs, who originally filed claims in Virginia. The *Gentry* plaintiffs alleged that Hyundai's false advertising was willful, and, therefore, they sought the greater of treble damages or $1,000 for each class member under the Virginia Consumer Protection Act. They argued that California choice-of-law rules did not allow certification of the settlement class because different state laws, like the Virginia Consumer Protection Act, provided materially different remedies for certain claims than the consumer protection laws of other states.

Over the *Gentry* plaintiffs' objections, the district court granted certification of a settlement class and preliminarily approved the proposed settlement agreement. While it acknowledged that it would have

needed to engage in an extensive choice-of-law analysis if the case were going to trial, the district court held that a choice-of-law analysis was not warranted in the settlement context because these issues could be addressed as part of the final fairness hearing under Rule 23(e). In June 2015, after holding a fairness hearing, the district court gave its final approval of the class settlement. Objectors promptly brought five consolidated appeals to the 9th Circuit, challenging the settlement on the ground that it was unfair because, *inter alia*, it violated the rights of consumers from other states.

The 9th Circuit Opinion

On January 23, 2018, a divided, three-judge 9th Circuit panel vacated the district court's final settlement approval and certification for settlement purposes of a nationwide class of consumers. The 9th Circuit explained that, under *Mazza*, before it could approve a class action settlement, the district court was required to apply California's choice-of-law rules to determine whether California law could apply to the claims of all plaintiffs or whether the court had to apply the law of each state. If so, the court then must determine whether variations in the laws of the different states defeated predominance. The 9th Circuit ruled that the district court erred by failing to engage in this *Mazza* analysis before approving a classwide settlement.

The court clarified that this analysis is required at the settlement stage because the Rule 23(b)(3) predominance requirement **preexists** any settlement agreement. In failing to properly scrutinize the proposed settlement classes, the 9thCircuit reasoned that the district court handed the defendants an advantage in settlement negotiations by weakening class counsels' bargaining position. That is, Hyundai and Kia may have known that, under *Mazza*, they faced little risk of nationwide class action litigation due to substantive variations in state laws. Accordingly, class counsel may have been unable to use the threat of litigation to leverage a better settlement. In the 9th Circuit's view, "[a] fairness hearing is no substitute for rigorous adherence to those provisions of the Rule designed to protect absentees[.]" (citation omitted).

In dissent, District Judge Jacqueline Nguyen (sitting by designation) explained that the majority improperly shifted the burden of proving whether foreign law governs class claims from the foreign law proponent to the district court or class counsel. She argued that "[t]his newly invented standard significantly burdens our overloaded district courts, creates a circuit split, and runs afoul of the doctrine established long ago in *Erie R.R. v. Tompkins*."

Takeaway

The 9th Circuit's ruling will likely result in recalibration of strategy on both the plaintiff's side and the defense side in nationwide or multistate class action settlements involving state law claims. Prior to *Hyundai*, defendants had little disincentive in such cases to argue at the class-certification stage (or earlier, such as on a motion to dismiss or to strike) that a nationwide or multistate class could not be certified due to material differences in state laws. Now, however, defendants must consider whether such arguments can undermine the eventual ability to achieve global resolution of such claims.

Moreover, the *Hyundai* case will likely inject additional complexity into settlement negotiations, since the parties may need to consider the variations in state laws. Similarly, the 9th Circuit's decision will increase the burden on parties and district courts in analyzing requests for approval of settlements.

However, the *Hyundai* decision is also a boon to defendants in that it reinforces the vitality of the *Mazza* doctrine as a tool for defendants to defeat nationwide class certification in cases involving state law claims.

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