



AUTOMOTIVE ALERT: FEDERAL COURT DENIES NATIONWIDE CLASS BASED ON DIVERGENCE IN STATE CONSUMER PROTECTION LAWS

The United States District Court for the Western District of Kentucky recently denied a plaintiff's motion for class certification insofar as it sought certification of a nationwide class. See *Corder v. Ford Motor Co.*, 2011 WL 30363 (W.D. Ky. Jan. 5, 2011). The court found that "[b]ecause a class action here would require the application of the laws of numerous jurisdictions, there is little advantage to be had in concentrating the litigation in this particular forum. As we have explained, any efficiency encouraged by the class-wide resolution of a few common questions of fact would be well outweighed by the problems inherent in managing dozens of subclasses of purchasers, applying a wide and varying array of state laws, and conducting the individualized inquiries that would be necessary pursuant to some states' consumer protection statutes." *Id.* at *9.

The plaintiff claimed that Ford did not inform him that his 2004 model year truck did not contain a so-called "2004" engine but rather a "2003.25" engine

that lacked improvements in the later model. See *id.* at *1. When he purchased the vehicle, the plaintiff was an employee at the company that manufactured the engines that the trucks contained. See *id.* According to the court, for a period of time, Ford produced 2004 model year trucks that contained engines identical to those in the 2003 model year trucks and later began a series of ongoing changes that culminated in "2004" engines that featured a number of improvements and complied with 2004 emissions standards. See *id.* Although Ford manufactured and assembled its 2004 model year F-150 Super Duty trucks at plants in Kentucky and Mexico, the engines at issue in the case were produced either in Indiana or Alabama. See *id.* The plaintiff filed suit against Ford, claiming a violation of the Kentucky Consumer Protection Act ("KCPA"), "alleging that Ford defrauded him and other consumers by failing to disclose to them at the time of purchase that their 2004 model year trucks did not contain '2004' engines." *Id.*

COURT'S ANALYSIS OF CLASSWIDE APPLICATION OF KENTUCKY LAW

Before examining the Rule 23 factors for class action issues, the district court addressed the plaintiff's argument that the claims of all putative class members (which plaintiff referenced as a "nationwide" class) could be prosecuted under the KCPA. See *id.* at *2. The court explained that the United States Supreme Court has "held that where a plaintiff seeks to apply a single state's law in a multi-state class action, that state must have a 'significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary or unfair.'" *Id.* (quoting *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 818 (1985) (quotation and citation omitted).)

The district court found that "Kentucky would have a 'significant contact' with a 'state interest' in some—but not all—claims by members of the putative class." *Id.* at *3. As to individuals who did not purchase their trucks in Kentucky, "[t]he only contact Kentucky has with these plaintiffs' claims is that some of the engines in question were installed in some of the 2004 trucks" at a Kentucky plant. *Id.* The court rejected the argument that this contact is sufficient to warrant application of Kentucky law for several reasons. First, "the mere placement of a component manufactured elsewhere inside a new motor vehicle does not give rise to a 'significant contact' with Kentucky." *Id.* Second, the court was "not convinced that any 'material omission' occurred simply because Ford placed the engines at issue into the 2004 trucks." *Id.* The consumer protection claim "hinges on the allegation that Ford failed to disclose material facts about the engines to purchasers, who, as a result, did not receive the products they bargained for." *Id.* Finally, the court found that some of the trucks at issue may not have been assembled in Kentucky at all. See *id.* at *4.

The court also went on to examine whether Kentucky law materially conflicts with other jurisdictions because "[t]here can be no injury in applying [Kentucky] law [to all plaintiffs' claims] if it is not in conflict with that of any other jurisdiction connected to this suit." *Id.* (quoting *Shutts*, 472 U.S. at 816) (brackets in original). Although the plaintiff claimed that the KCPA does not materially differ from other states' consumer

protection statutes, the court noted that other courts "have noted substantial differences in state consumer protections statutes." *Id.* The court explained that "[o]ne such difference is that some states require a consumer to rely on the defendant's allegedly deceptive misrepresentation or omission in order to prevail in a consumer protection action," while other states do not. See *id.* The court explained:

This difference in particular could have significant implications for Ford's liability in this case. Some putative class members' purchases of 2004 model year trucks may have been in reliance on the idea that the trucks contained '2004' engines, while other plaintiffs' purchases could have been based on other factors entirely. Thus, Ford could potentially be liable for its alleged omissions only with respect to those plaintiffs who relied on them in some states, but would be liable for *all* plaintiffs' purchases in others.

Id. (emphasis in original).

In addition, the court explained that "state laws also vary with respect to whether the plaintiff must prove scienter on the part of the defendant to recover—another element of proof that could have significant implications for Ford's liability" and also that "states vary with respect to who may seek recovery under the act" (e.g., persons who purchase goods or services primarily for personal, family, or household purposes versus those who purchase goods for business purposes). See *id.* at *5.

The court went on to explain that "[e]ven though Kentucky law conflicts in material ways with the laws of other jurisdictions, Kentucky law may still be applied to all class members if application of the relevant choice of law principles allows it." *Id.* The court found, however, that "both tort and contract choice of law principles weigh against the classwide application of Kentucky law" in the case. *Id.*

COURT'S RULE 23 ANALYSIS

The court next analyzed the requirements of Rule 23 of the Federal Rules of Civil Procedure:

Some issues—such as factual questions pertaining to whether Ford installed “2003.25” engines in 2004 model year trucks, and whether Ford informed consumers of this fact—could be resolved on a class-wide basis. However, these common issues would quickly be swamped by individualized questions of law and fact that would vary depending on the contours of each state’s consumer protections statute. Certification of a nationwide class would saddle this court from the outset with the need to apply varying consumer protection laws of many states—a manageability challenge in and of itself—and with eventually instructing a jury on the many relevant state laws.

Id. at *8. The court also explained that “[a]lthough it might be possible to resolve the claims of the consumers in some jurisdictions (such as those that do not require reliance) on a statewide basis, the laws of other jurisdictions would demand more searching inquiries.” *Id.* For example, in states where a consumer’s reliance is required, the court would have “to manage an individualized inquiry into the state of mind of each consumer in that jurisdiction.” *Id.*

On February 8, 2011, the plaintiff filed an unopposed motion for leave to amend the complaint to narrow the proposed class to a class of Kentucky residents. See Doc. No. 212.

The recent *Corder* decision outlines some of the important hurdles that plaintiffs seeking class certification must clear in attempts to certify “nationwide” claims based on state consumer protection laws. Developing a record of where products were manufactured and sold (including the differences in locations) may be important in defeating class certification, depending on the facts and circumstances at issue.

LAWYER CONTACTS

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