C L A S S A C T I O N R E P O R T E R

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HYUNDAI MOTOR: Jones Day Lawyers Examine Class Decertification

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Implications of the Ninth Circuit's Latest Ruling on Multistate Consumer Protection Class Actions

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The Ninth Circuit recently issued a ruling in a nationwide class action that may have significant implications for certifying class actions. In In re Hyundai and Kia Fuel Economy Litigation, No. 15-56014 (9th Cir. Jan. 23, 2018), the Ninth Circuit set aside a $210 million nationwide class settlement because the district court abused its discretion in certifying a settlement class without first rigorously analyzing the requirements for certification. Id. at 60. The Ninth Circuit ruled that the district court did not sufficiently analyze whether the predominance element for class certification was satisfied in light of material differences in the applicable state laws and could not substitute the fairness hearing for this analysis. Id. at 60. Counsel litigating class actions must consider this ruling in shaping case strategy.

The In re Hyundai plaintiffs alleged that Hyundai and Kia overstated the fuel efficiency of certain vehicles, which prompted a 2011 EPA investigation into Hyundai's and Kia's fuel efficiency test procedures. Id. at 34. The district court issued a tentative decision holding that class certification was improper, finding that Mazza v. Am. Honda Motor Co., 666 F.3d 581
(9th Cir. 2012), foreclosed certification "where California law is applied to out-of state consumers. . . ." Id. at 38. Applying the California governmental interest test for resolving choice of law issues, the district court found there were material differences in the applicable state consumer protection laws throughout the country (particularly as to scienter requirements and remedies), the other states had legitimate interests in applying their own laws, and those interests would be more impaired if the court applied California law to the out-of-state consumers. Id.

A few months after this tentative ruling, and after the parties reached a settlement agreeing to certify a nationwide class, plaintiff asked the court to certify a nationwide settlement class including all current and former owners and lessees of certain Hyundai and Kia vehicles on or before November 2, 2012. Id. at 40. Several putative class members objected to the settlement, arguing, among other things, that Virginia consumer protection law, not California consumer law, applied. Id. at 45. In a later tentative ruling, however, the district court determined that an extensive choice of law analysis was unwarranted in the settlement context because it could address variations in state law at the fairness hearing. Id. at 46. The district court ultimately approved the settlement and failed to resolve the state choice-of-law issues that it had acknowledged in its tentative order denying class certification. Id. at 47.

The Ninth Circuit, in a 2-1 decision, reversed the district court. The court determined that the district court erred by not analyzing choice-of-law issues or ensuring that Rule 23's other prerequisites were satisfied when certifying the settlement class. Id. at 50. The Ninth Circuit reasoned that under Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 620 (1997), "district courts must give 'undiluted, even heightened, attention in the settlement context' to scrutinize proposed settlement classes." Id. at 51. The Ninth Circuit explained that the district court's tentative decision put the parties on notice that the district court would deny certification. Class counsel was thus deprived of the ability to "use the threat of litigation to press for a better offer" and the court was deprived of the "benefit of adversarial investigation." Id. at 51. The Ninth Circuit concluded that the district court could not resolve these certification issues at a fairness hearing.

Judge Nguyen issued a scathing dissent. She found that Rule 23's predominance inquiry was met and the majority improperly "place[d] the burden on the district court or class counsel to extensively canvass every state's laws and determine that none other than California's apply." Id. at 64. She explained that the majority opinion conflicted with well-established law that "a nationwide class action cannot be decertified simply because there are 'differences between state consumer protection laws.'" Id. at 62. When it comes to predominance, "more important questions apt to drive the resolution of the litigation and are given more weight[.]" Id. Judge Nguyen also explained that the

objectors failed to argue, much less meet their burden to show, that law from any state other than California applied. The law is clear, Judge Nguyen found, that the proponent of class certification does not have the burden to show that California law applies. Id. at 70. Judge Nguyen concluded that the majority did not properly apply California's choice of law rules and created inconsistencies "the Erie doctrine is designed to combat." Id.

Potential Lessons

The Ninth Circuit's decision in In re Hyundai may make the settlement of certain nationwide class actions more complex and less predictable. The Supreme Court held in Amchem that a district court must conduct a rigorous choice of law analysis when certifying a settlement class. Nevertheless, in practice district courts often take a more lenient approach to class certification in the settlement context. Counsel typically could assume the district court would likely certify the settlement class and approve the settlement with little inquiry. The In re Hyundai decision, however, highlights that counsel proceeds at his or her own peril under this assumption. Counsel should be prepared to show how each of the requirements for class certification is satisfied, even at the settlement stage. Recognizing that this showing will be required will affect overall case strategy, including what discovery is taken, what arguments are made to the court concerning class certification, and when those arguments are made.

The In re Hyundai decision also highlights how important variations in state law can be to class certification, even outside the settlement context. Cases in the Ninth Circuit and elsewhere have long held that material differences in state law can be fatal to class certification. See, e.g., Mazza, 666 F.3d at 596; Castano v. Am. Tobacco Co., 84 F.3d 734, 741 (5th Cir. 1996); Pilgrim v. Universal Health Card, LLC, 660 F.3d 943, 947 (6th Cir. 2011). In re Hyundai serves as a stark reminder that counsel litigating nationwide putative class actions must account for any differences in state laws and, depending on what side they are on, explain why those differences do or do not preclude class certification. Any increased focus on these variations in state law may also affect how classes are defined and whether subclasses are used.

In Judge Nguyen's dissenting view, the In re Hyundai decision "deals a major blow to multistate class actions" by making them

harder to certify and harder to settle. Id. at 61. Whether Judge Nguyen is right remains to be seen. But in the meantime, the In re Hyundai decision serves as a reminder to counsel litigating nationwide class actions of the importance of differences in state law and that nothing should be taken for granted at the settlement stage.

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