Westlaw Today
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Eighth Circuit first to apply "Manifested Defect" rule to Class Action Fairness Act

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OCTOBER 6, 2021

This month, the Eighth Circuit Court of Appeals issued what appears to be the first appellate opinion applying the "manifested defect" rule to the Class Action Fairness Act's[1] ("CAFA") $5 million amount-in-controversy requirement.

Enacted in 2005, CAFA establishes jurisdiction in federal court over class action state law claims if, among other things, the potential class damages in the aggregate exceed $5 million.

The manifested defect rule generally states that consumers who do not experience a defective condition cannot bring product defect claims. While the rule is not new, its application to class actions in federal court is.

The Eighth Circuit's new decision thus directly implicates class action product defect cases in *federal* court. In addition, it could affect how federal courts review class action complaints based on state law generally, increasing the importance of statistical evidence.

The background facts

On September 15, 2021, the Eighth Circuit issued its decision in *Penrod v. K&N Engineering Inc.*,[2] affirming a federal district court's dismissal of a proposed class action alleging the defendant was responsible for defective oil filters.

Three named plaintiffs asserted state law claims to recover damages caused by leaky oil filters. In each of the named plaintiffs' situations, the oil filters were installed in motorcycles and allegedly failed, causing oil to leak onto the back wheels. But only one of the three plaintiffs needed to replace his engine, at a cost of approximately $10,000.The other two plaintiffs alleged that they experienced some leaking and merely replaced the filters at cost.

The plaintiffs sought to bring a class action on behalf of 2.5 million consumers who also purchased the oil filters. But the plaintiffs calculated that only 0.03% of oil filters had failed. The Eighth Circuit affirmed the district court's determination that the consumers who did not experience a failure had no cognizable damages and could not be part of the class. Thus, there were only approximately 750 class members throughout the United States.

Notable holdings

While affirmance of the district court's damages holding may not be particularly notable — indeed, the Eighth Circuit has made similar determinations in recent cases — the effect on the case was dispositive because the plaintiffs had sued in *federal* court, arguing that court had subject-matter jurisdiction under CAFA.

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Most disputes regarding the threshold damages requirement involve attempts by plaintiffs to demonstrate their claims do *not* exceed $5 million, so as to keep the class action in a state court that may be more hospitable or favorable to plaintiffs who are residents of the same state.

But in *Penrod*, the plaintiffs sought to aggregate their various claims under multiple state laws that otherwise might be too small to justify individual litigation in separate state courts throughout the United States. Their thinking was likely that one federal venue for all of the state law claims could lead to a higher settlement or damages award in a more efficient manner.

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The Eighth Circuit rejected the plaintiffs' attempts to bring one large class action in federal court. It reasoned that, because only one of the three named plaintiffs faced substantial loss, it was implausible that the 750 class members suffered a loss of $6,667 or more, to meet the $5 million requirement.

The average of the three named plaintiffs' losses were about $3,333, for example. Therefore, the 750 member class could not make out a potential claim for damages totaling $5 million, and the Eighth Circuit affirmed dismissal of the class action complaint.

Key insights

This apparent first-of-its-kind decision applying the manifested defect rule to CAFA not only directly affects prospective future product liability class actions, but also may heighten the amount of due diligence required by named plaintiffs in other class action cases to plausibly allege damages aggregated across a class of affected consumers totaling $5 million or more. Indeed, the Eighth Circuit appeared to endorse the use of statistical data to allege damages — a growing trend in other contexts throughout the country.

One key insight from *Penrod* is that Plaintiffs may benefit from conducting reliable sampling or surveys to extrapolate damages. Plaintiffs can then cite that information in their complaints to survive early motions to dismiss, unlike the *Penrod* plaintiffs.

Similarly, Defendants should consider using reliable sampling or surveys to undermine plaintiffs' allegations of $5 million or more in damages, perhaps as part of an early summary judgment motion. This may be an effective strategy to stave off large class actions in federal court early.

Notes

[1] https://bit.ly/2YvLnwy

[2] No. 20-1355, 2021 WL 4177761 (8th Cir. Sept. 15, 2021).

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This article was published on Westlaw Today on October 6, 2021.