

[Products Liability Law Daily Wrap Up, SUPREME COURT—HOUSEHOLD PRODUCTS—U.S.: High Court will hear Microsoft's petition on Xbox 360 'scratched disc' class action, \(Jan. 19, 2016\)](#)

Products Liability Law Daily Wrap Up

[Click to open document in a browser](#)

By Susan Lasser, J.D.

A request by a multinational manufacturer of software, consumer electronics, and personal computers and services that the U.S. Supreme Court review a ruling by the U.S. Court of Appeals for the Ninth Circuit reversing the dismissal of product defect allegations by a putative class of consumers of the manufacturer's video game console has been granted by the High Court. The consumers alleged a design defect in Microsoft Corporation's Xbox 360 console that gouges game discs. Specifically, they alleged that the Xbox optical disc drive is unable to withstand even the smallest of vibrations, and that during normal game playing conditions discs spin out of control and crash into internal console components, resulting in scratched discs that are rendered permanently unplayable ([Microsoft Corp. v. Baker](#), Docket No. 15-457, cert. granted January 15, 2016).

While a federal district court in Washington had dismissed the class action lawsuit with prejudice, striking the class allegations, in deference to an earlier order denying class certification to a similar putative class, the Ninth Circuit [reversed](#) the decision, finding that the lower court misapplied the law as established in another Ninth Circuit opinion. According to the appellate court, the trial court erred in finding that individual issues of causation predominated over common questions (see *Products Liability Law Daily*, [March 19, 2015](#) and [July 21, 2015](#), analyses).

Manufacturer's contention and question. Microsoft argues that the overwhelming majority of Xboxes do not manifest the alleged defect—only 0.4 percent of Xbox owners have reported disc scratching—and that the cause of any disc scratching is consumer misuse, not a product defect. As such, the consumers could bring lawsuits individually, but not a class action, according to the manufacturer. The manufacturer presented the following question to the High Court: whether a federal court of appeals has jurisdiction to review an order denying class certification after the named plaintiffs voluntarily dismiss their claims with prejudice.

Petition granted. The Supreme Court granted the console maker's petition, limiting argument to the following question: whether a federal court of appeals has jurisdiction under both Article III and 28 U. S. C. §1291 to review an order denying class certification after the named plaintiffs voluntarily dismiss their individual claims with prejudice.

Attorneys: Stephen M. Rummage (Davis Wright Tremaine, LLP) for Microsoft Corp. Darren T. Kaplan (Stueve Siegel Hanson, LLP) for Seth Baker.

Companies: Microsoft Corp.

Cases: CourtDecisions SupremeCourtNews JurisdictionNews ClassActLitigationNews HouseholdProductsNews