

## **Products Liability Law Daily Wrap Up, CLASS ACTIONS AND MULTI-DISTRICT LITIGATION—HOUSEHOLD PRODUCTS—S.D. Ga.: Class certified in action against another manufacturer of front-loading washing machines, (Oct. 14, 2013)**

By Pamela C. Maloney, J.D.

Class certification was granted in an action brought by two individuals, one a California resident and the other a Texas resident, predicated on an alleged design defect in front-loading clothes washing machines that were designed with convoluted bellows (*Terrill v. Electrolux Home Products, Inc.*, October 11, 2013, Wood, L.).

**Background.** Both individuals alleged that as a result of the alleged defect in the design of washing machines manufactured by Electrolux (doing business as Frigidaire), the machines accumulated mold and mildew and emitted an odor. According to the complaint, the effects of the defect were so severe that clothing was stained and ruined and that the odor from the machines permeated their homes. The individuals brought a class action against the manufacturer asserting claims for breach of express warranty, breach of implied warranty of merchantability, and various state law claims for deceptive trade practices and unfair competition. The individuals petitioned for the certification of two classes: (1) all persons in the State of California who, in the past four years, purchased a washing machine equipped with a convoluted bellows, and (2) all persons in the State of Texas who, in the past four years, purchased a washing machine equipped with a convoluted bellows. After conducting a “rigorous analysis” to determine whether the named representatives had met the prerequisites for certification, the federal district court in Georgia granted the request for certification on all claims and appointed the two individuals as class representatives of their state’s class.

**Ascertainability.** The manufacturer’s argument that it was not administratively feasible to identify class membership because there was a one-year period during which it had sold washers both with and without a convoluted bellows was rejected by the court. The manufacturer was a highly sophisticated and modernized company that maintained records of both model and serial numbers for each of the machines it built. The manufacturer also maintained a database of customer information and could determine the bellows type for each of the machines based on the dates of manufacture.

**Breadth.** The court also determined because the class definitions included only purchasers of washing machines with the allegedly defective bellows design, it would not “sweep” in people who had not been injured by the alleged design defect. The fact that some putative class members might no longer own the machine was irrelevant because the complaint alleged that the purchasers were injured from the time of purchase.

**Numerosity.** The evidence showed at least 25 putative class members in the proposed Texas class and at least 28 putative class members in the proposed California class. The court noted that these numbers had likely grossly underestimated the potential size of the class in light of the number of product registration cards the manufacturer had received from buyers in those two states; consequently, the likely number of class members easily exceeded the minimum threshold recognized by the 11th Circuit. More importantly, the geographic distribution of the members throughout each state made joinder of the proposed class impractical. Thus, the numerosity requirement was satisfied.

**Typicality and adequacy.** Despite the manufacturer’s protest that the claims of each putative class member were subject to unique defenses, the court opined that the presence of unique defenses did not necessarily defeat typicality. The claims of the two individuals and the purported class members concerned the same alleged conduct on the part of the manufacturer, alleged the same harm, and arose from the same legal theories. Thus, the named representatives’ claims were typical of those of the proposed class. The court further determined that the named representatives had strong interests in proving the alleged design defect and establishing the manufacturer’s allegedly unlawful conduct, thus sharing the interests of the class. The court also found no conflicts of interest between the named representatives and the putative class members and was satisfied with the ability of the attorneys to prosecute the proposed litigation adequately.

**Predominance.** In order to determine whether question of law or fact common to class members predominated

over questions affecting individual class members, the court was required to conduct a separate analysis of each of the claims. In so doing, the court concluded that the issues raised under California law with respect to the terms and coverage of the manufacturer's express warranty, the presence of a universal design defect, and causation were predominant over individual issues regarding notice provided by each class member and the manufacturer's efforts to cure the defect after notice was provided. The court went on to find that a common issue existed with respect to whether the existence of a latent defect which existed during the warranty period, but was discovered after the warranty period expired, negated the manufacturer's implied warranty, and that this issue took predominance over the issue of the extent to which individuals continued to use the machines after discovery of the defect.

Turning to the question of whether common issues predominated over individuals under Texas law, the court likewise determined that the common issues focused on whether each class member got the benefit of the bargain and whether the machines were defective at the time they left the manufacturer's possession, and therefore, the predominance requirement was met.

The court went on to determine that the elements of an unfair business practices claim under California's Unfair Competition Law (UCL) were susceptible to statewide proof, and that the elements of reliance and influence required for a fraud action under the UCL related to the California representative only, and, therefore, did not require classwide proof. The other elements of a UCL fraudulent business practices claim could be satisfied through classwide proof and, in this case, involved common issues as to what the manufacturer said or did not say to consumers; whether the manufacturer's alleged omissions regarding the design were material; and whether the manufacturer's alleged omissions were likely to deceive the customer.

Likewise, each element of proof under the Texas Deceptive Trade Practices Act was susceptible to classwide proof. Even though each proposed class member made individualized assessments when deciding to purchase the appliance, each class member presumably relied on the fact that the manufacturer's washing machines were suitable for cleaning and freshening clothing. Thus, the manufacturer's alleged misrepresentations and the class members' reliance on those misrepresentations were demonstrable through classwide proof.

**Superiority.** The court concluded that a single, coordinating proceeding was superior to the hundreds of discrete and disjointed lawsuits addressing the same facts and legal issues. In addition, the claims of each class member in the case was so small that it would be cost-prohibitive for each member to litigate.

The case number is: CV 108-030.

Attorneys: Attorneys: Charles A. McCallum, III (McCallum, Hoaglund, Cook & Irby, LLP) for Michael Terrill. Benjamin H. Brewton (Tucker, Everitt, Long, Brewton & Lanier, PC) for Electrolux Home Products, Inc.

Companies: Electrolux Home Products, Inc.; Frigidaire

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