

CLASS ACTION BLOG

Faulty Choice of Law Analysis Leads to Class Certification Reversal

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The Eighth Circuit recently reversed and remanded a district court's class certification. The class plaintiff sued on grounds that defendant's vacuums were deceptively advertised, violating the Missouri Merchandising Practices Act (MMPA) as well as breach of express and implied warranties, unjust enrichment, and "violation of other states' consumer protection laws, and redhibition (on behalf of a Louisiana sub-class)." The district court found that Missouri Law applied after applying Missouri's choice of law rules and then certified a class under Rule 23(b)(3). Defendant Emerson Electric sought and was granted a Rule 23(f) appeal.

Defendant Emerson Electric raised two issues on appeal. First, it claimed that non-Missouri residents could not violate the MMPA since their claims were not related to "trade or commerce ... in or from the state of Missouri." In addition, it argued the district court improperly failed to conduct a choice of law analysis regarding the breach of warranty and unjust enrichment claims.

Following its 2015 ruling in *Perras v. H & R Block*, 789 F.3d 914 (8th Cir. 2015) and the Missouri opinions on which it relied, the court found that the claims of "class members from outside of Missouri [could] not involve commerce 'in or from the state of Missouri' and the MMPA [could] not cover those transactions." Instead, "the laws of the states in which the transactions occurred applied." The Eighth Circuit found that the class members "encountered the allegedly misleading advertising, purchased a vacuum, and ultimately were disappointed with its performance, all in their home states." The only relevant activity which took place in Missouri "was the design of the advertisement. That is not enough. The consumer protection law of each class member's home state governs each consumer protection claim and class certification is inappropriate as to those claims." Primarily for that reason, the court reversed and remanded.

But the court also reversed because the district court “failed to conduct any choice of law analysis” regarding the other claims, such as the different breach of warranty and unjust enrichment claims. Because Missouri considers different factors when applying its “most significant relationship” test depending upon the nature of the claim and, considers different factors for the MMPA, breach of warranty, and unjust enrichment claims, the district court “must conduct an individualized choice-of-law analysis that is susceptible to meaningful appellate review to ensure that the application of a given state’s ‘law is neither arbitrary nor fundamentally unfair.’” In so ruling, the court cited *In re St. Jude Medical, Inc.*, 425 F.3d 1116, 1120 (8th Cir. 2005) which in turn had relied on *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 313 (1981).

The *Hale* case reinforces how important choice of law rulings can be in multi-state class action cases. Many states have consumer protection statutes which apply only within the borders of the enacting state. Class action litigators can look to the *Hale* case for guidance in properly handling Rule 23(b)(3) multi-claim, multi-state consumer class action cases.

Case Citation: *Hale v. Emerson Electric Company*, 942 F.3d 401 (8th Cir. 2019)