

How Do Individualized Issues Impact a Class Action Settlement?

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The Ninth Circuit went a long way towards answering that question in an *en banc* decision last week. The key takeaway is that a district court certifying a class for settlement purposes does not have to conduct the same “rigorous analysis” of manageability considerations required when certifying a class for litigation. The decision has major implications, not only for class action settlements but also for cases where class certification is contested.

The [*In re Hyundai and Kia Fuel Economy Litigation*](#) decision was the latest turn in a lengthy settlement approval process. The two car makers had settled in early 2013 with a nationwide class of car buyers who claimed they were misled by inflated representations about the miles per gallon they could expect from their vehicles. The opinion describes in great detail the district court’s exhaustive analysis of the settlement before approving it nearly three years later.

Last year, a divided Ninth Circuit panel reversed, holding that the district court, at the urging of objectors to the settlement, should have analyzed differences among state consumer protection laws before certifying a nationwide settlement class based on California law.

The full Ninth Circuit disagreed. Among the principles it articulated are:

- A district court certifying a litigation class “must be concerned with manageability at trial,” but “manageability is not a concern in certifying a settlement class where, by definition, there will be no trial.”
- As a result, “[a] class that is certifiable for settlement may not be certifiable for litigation if the settlement obviates the need to litigate individualized issues that would make a trial unmanageable.”
- Rather than strict “predominance” (whether questions common to class members’ claims are a significant aspect of the case that can be resolved at the same time), a district court asked to approve a class settlement should focus on “unity” (whether class members suffered the same harm in the same way).

Applying those principles, the court endorsed the district court's certification of a nationwide class of car buyers. The supposed "variations" in state law were not an obstacle to certification, as the earlier panel had concluded. The settlement objectors, the court noted, had not demonstrated how California's choice-of-law test (applicable because California was the forum state) required application of another state's law. Absent that showing, and absent any constitutional problems created by applying California law to all class members' claims, the district court properly certified the class *for settlement*.

Other courts, including the Supreme Court in *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997), have recognized that certifying a class for settlement is different and potentially less onerous than certifying it for litigation. The real innovation from the Ninth Circuit's decision is treating individualized issues that could defeat predominance as factors that might create "intractable management problems" at trial. *Amchem* authorizes courts to ignore those "when settlement-only certification is requested."

The decision clears the way for district courts, at least in the Ninth Circuit, to take a practical approach to class settlements. If the parties litigate class certification, individualized issues may very well prevent the district court from certifying a class because of the "rigorous analysis" required at that stage. But if the parties opt for settlement, the same issues may be no obstacle at all—precisely because they won't be litigated.

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- **Steven D. Hurd**
Partner