Proskauer

En Banc Ninth Circuit Reinstates and Clarifies Standard for Nationwide Class Action Settlement

Proskauer on Advertising Law on **July 18, 2019**

Last month, the Ninth Circuit sitting *en banc* affirmed, by an 8–3 vote, a nationwide class settlement of a multidistrict litigation against automakers Kia and Hyundai over alleged misrepresentations regarding certain vehicles' fuel efficiency. *In re Hyundai and Kia Fuel Economy Litigation*, 15-56014 (9th Cir. 2019). The *en banc* decision overturned the controversial decision last year by a split Ninth Circuit panel invalidating the settlement based on potential variations in state consumer protection laws. The panel decision cast serious doubt on the viability of nationwide settlements of class action suits filed within the Ninth Circuit.

This lawsuit was first filed in 2012 in the Central District of California, and subsequently was consolidated with a number of similar complaints into a single multidistrict litigation. In 2013, the parties reached a class-wide settlement agreement, and the district court certified for settlement purposes a nationwide class of all current owners and lessees who bought or leased the vehicles in question before the defendants announced downward adjustments of fuel efficiency estimates. The district court then granted final approval of the class settlement, which included an award of attorneys' fees to class counsel. A number of objectors appealed the settlement class certification decision to the Ninth Circuit and, in 2018, a divided three-judge panel vacated the certification of a nationwide class and remanded to the district court.

The three-judge panel's 2018 opinion held that in certifying a nationwide settlement class, the district court was required to analyze all applicable state laws to determine whether variations in the 50 state laws defeated predominance. In short, the panel required that the parties establish the predominance element in the same way as a plaintiff would need to do to certify a nationwide litigation class in a contested class certification motion. Because the district court did not conduct such an inquiry for the settlement class here, the panel concluded that the certification decision was in error. The Ninth Circuit's 2018 opinion caused widespread consternation among counsel for both class action plaintiffs and defendants, because it raised the prospect that any certification of a nationwide settlement class in a case pending within the Ninth Circuit would have to be preceded by a burdensome and expensive analysis of variations in state law, threatening the viability of nationwide class action settlements in the Ninth Circuit.

In reversing the panel decision, the *en banc* court noted that no objectors had met their burden of establishing that the law of any state other than California applied. Moreover, and more importantly, the *en banc* court held that a district court need not conduct the same rigorous analysis of trial manageability when certifying a settlement class, noting that "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." As a result, differences in available rights and remedies under the various laws of the 50 states no longer warrant denial of certification for settlement purposes in federal courts in California (where more class actions are brought than in any other state) or in the other states of the Ninth Circuit.

The *In re Hyundai and Kia en banc* decision provides an important clarification of the standards for certification of settlement classes as compared to litigation classes, and revives the viability of nationwide class settlements in the Ninth Circuit. The *en banc* court's decision also brings the Ninth Circuit in line with the Third and Seventh Circuits, which both have held that variations in the laws of different states do not defeat predominance in the context of a settlement class. Watch this space for further developments.

View Original

Related Professionals

- **Jennifer Yang**
  Partner