Choice of Law Defeats Another Proposed Nationwide Consumer Fraud Class

November 25, 2011 by Sean Wajert

A federal court recently ruled that a suit over alleged defects in an MP3 player's display screen could not proceed as a nationwide class action. See Maloney et al. v. Microsoft Corp., No. 3:09-cv-02047 (D.N.J.).

This dispute arose out of the sale of portable MP3 players, the 30 gb model Zune. Plaintiffs alleged that the 30gb-model Zune was defective because of alleged cracks on the liquid crystal display (LCD) screen. (News flash: if you drop an electronic device, it may crack.)

Plaintiffs moved for class certification, pursuant to Fed. R. Civ. P. 23(b)(3), of a national class of purchasers. The court concluded that each state's common law and consumer protection laws would apply, and therefore a nation-wide class could not properly be certified.

Attempts to structure and certify nation-wide classes involving plaintiffs in all fifty states often turn on whether the law of a single state or multiple states should be applied. If all 50 states' laws apply to a class-action claim, the moving party must provide an extensive analysis of state law variances showing that class certification does not present insuperable obstacles. Plaintiffs bear this burden at the class certification stage, and rarely (we'd say never) can meet it. Many courts have recognized that state implied warranty laws differ in significant and material ways. For example, states differ on: (1) application of the parole evidence rule; (2) burdens of proof; (3) statute of limitations; (4) whether plaintiffs must demonstrate reliance; (5) whether plaintiffs must provide notice of breach; (6) whether there must be privity of contract; (7) whether plaintiffs can recover for unmanifested defects; (8) whether merchantability may be presumed; and (9) whether warranty protections extend to used goods.

New Jersey courts have adopted the most significant relationship test of the Restatement (Second) of Conflicts of Law. Before applying the Restatement test, plaintiffs here contended that a choice-of-law clause contained in the limited warranty accompanying the product should apply to all of the claims. However, the court determined that the choice-of-law provision did not apply to *any* of plaintiffs' claims. First, the implied warranty claims asserted by the plaintiffs were not governed by the choice-of-law provision in the express warranty. As a plain reading of the text of the express warranty made clear, the choice-of-law provision applies only to the limited warranty, i.e., the express warranty.

To evade this plain reading of the express warranty, plaintiffs then attempted to shoehorn their implied warranty claims into the choice-of-law clause by conflating their implied warranty and Magnoson-Moss (MMWA) claims. Plaintiffs' argument was untenable because ultimately plaintiffs' MMWA claims rely on their implied-warranty claims, not violations of federal law. State warranty law lies at the base of all warranty claims under Magnuson-Moss. Plaintiffs wrongfully confused substantive MMWA violations and the right to recover under the MMWA.

Although federal substantive law—and not state law—prevents a seller from disclaiming implied warranties, plaintiffs' ultimate right to recover on their MMWA claims still depended on state law. When a defendant improperly disclaims an implied warranty, the MMWA provides a statutory remedy: such disclaimer would be void and plaintiffs would be able to proceed against defendant on breach of implied warranties claims, under state law. Similarly, the choice-of-law provision contained in the limited warranty did not apply to plaintiffs' consumer-fraud claims.

Having determined that the choice-of-law provision in the limited warranty did not apply to any of the plaintiffs' claims, the court then applied the choice-of-law rules of the State of New Jersey. Considering all of the Restatement factors, the court concluded that the state with the most significant relationship to the implied warranty claims was each class member's home state.

First, the place of contracting occurred wherever each class member purchased their 30gb Zune, which was presumably in their home state. Second, there was no negotiation of the implied warranties. Third, the place of performance also occurred wherever each class member purchased their 30gb Zune. Fourth, the location of the subject matter of the implied warranties is wherever the Zune was physically located, also presumably in each class member's home state. Finally, the domicile of the plaintiffs varies between each class member. Weighing these considerations, the state with the most significant relationship to the implied warranty claims—and consequently, the MMWA claims— was each class members' home state.

Plaintiffs' consumer-fraud claims would also be governed by the laws of each class member's home state. In this case, the place, or places, where the plaintiff acted in reliance upon the defendant's supposed representations; the place where the plaintiff received the alleged representations; the place where a tangible thing which is the subject of the transaction between the parties was situated at the time; and the place where the plaintiff is to render performance under a contract which he has been induced to enter by the alleged false representations of the defendant—all weighed in favor of applying the consumer fraud laws of each class member's home state.

In light of the court's determination that the laws of all 50 states apply to the claims, and because plaintiffs suggested no workable means by which to conduct a manageable trial—let alone the extensive analysis required of them—class certification was denied on a nation-wide basis. (The court reserved decision as to whether or not a New Jersey-wide class might be certified, subject to further briefing by the parties; clearly additional individual issues will predominate in that context as well, we predict at *MassTortDefense*.)