Class Action Monitor

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# *En Banc* Ninth Circuit Grants Nationwide Class Action Settlements a Lifeline

*By David R. Singh, Audrey Stano, and Neeckaun Irani*

In a decision that has garnered national attention, *In re Hyundai & Kia Fuel Econ. Litig.*, the Ninth Circuit grappled with whether material variations in state law preclude certification of a nationwide settlement of state law consumer protection claims. On June 6, 2019, the Court reversed its previous ruling, holding that variations in state law do not defeat predominance in settling a class action.

## Factual Background

The litigation commenced as a putative class action in the Central District of California challenging Hyundai's marketing of certain vehicles as achieving 40 MPG fuel economy in violation of consumer protection laws. Before any class certification decision, Hyundai and Kia voluntarily revised their fuel efficiency ratings for certain vehicles and implemented a reimbursement program designed to compensate consumers for increased fuel costs. Plaintiffs across the country then filed over 50 additional class actions that were transferred into a multidistrict litigation and consolidated with the initial case in the Central District of California. Shortly thereafter, the parties reached a nationwide settlement that would resolve all of the pending litigation.

## Lower Court's Ruling and Procedural Background

In connection with the motion for preliminary approval of the proposed settlement, the district court held several hearings to consider concerns about the fairness, adequacy, and reasonableness of the settlement, the sufficiency of the proposed class notice, and whether a settlement class should be certified. With respect to certification, the district court found no "serious differences between the laws of the various states" that would preclude a finding that common issues would predominate. The district court emphasized that the accuracy of the fuel efficiency representations and the defendants' knowledge thereof were common issues that would drive the analysis with respect to any cause of action such that variations in state law would not predominate. On, August 21, 2014, the district court granted preliminary approval to the proposed class settlement.[1] On June 11, 2015, it granted final approval.[2]

Various objectors, including James Feinman, brought appeals challenging the district court's final approval order. On January 23, 2018, the Ninth Circuit vacated the district court's court's ruling on class certification in a 2-1

decision.[3] The majority held that the district court failed to conduct a "rigorous" predominance analysis under Fed. R. Civ. P. 23(b)(3) to determine whether variations in state consumer protection laws precluded certification. In so holding, the majority emphasized that "this case highlights the reasons underlying *Amchem*'s warning that district courts must give 'undiluted, even heightened, attention in the settlement context' . . . to scrutinize proposed settlement classes." The dissenting judge, however, noted that the objectors never raised the choice of law issue, and the majority's holding would significantly burden already overburdened district court judges and create a circuit split by inventing a new standard that shifted the burden of proof such that class counsel, as opposed to objectors, must show whether foreign law governs class claims.

The day after this decision, on January 24, 2018, upon vote of majority of non-recused active judges, the Ninth Circuit agreed to rehear the case *en banc* and held oral arguments on September 24, 2018.

## The *En Banc* Reversal

On June 6, 2019, the Ninth Circuit affirmed the district court's order certifying the nationwide settlement class, finding that variations in state law do not defeat predominance and that the district court was not required to conduct a choice of law analysis. The Court emphasized the difference between the certification of litigation classes and settlement classes. Specifically, litigation classes must uniquely be concerned about issues with manageability at trial; conversely, settlement classes must give heightened attention to the definition of the class or subclass to protect the interests of absentees who lack the opportunity to adjust the class according to information revealed throughout the course of litigation. After resolving minimal objections to the class definition, the Court recognized that predominance is "readily met" in cases alleging consumer fraud where a "cohesive group of individuals suffered the same harm in the same way because of the automakers' alleged conduct."

## Conclusion

The plaintiff class action bar and defense bar alike each widely panned the Ninth Circuit's initial decision. An objective for defendants in most settlement negotiations is achieving global peace. The Ninth Circuit's original decision would have undermined this objective and forced defendants to resolve cases piecemeal. Class action plaintiff attorneys, who typically are paid a percentage of the benefits conferred upon the settlement class, generally prefer nationwide classes so they can generate larger fee awards (and do not have to divide and conquer with plaintiff firms in other jurisdictions).

The Ninth Circuit's *en banc* decision reinstated clarity as to class action settlement approval requirements after the brief departure created by the Ninth Circuit's prior decision. The *en banc* decision serves as a "win" for class action plaintiffs, defendants, and judges alike, who (once again) are no longer required to survey differences between state consumer protection laws to certify a nationwide settlement class.

Weil's preeminent class action practice will continue to monitor this case and other trends and developments.

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[1] *In re: Hyundai & Kia Fuel Econ. Litig.*, No. MDL 13-2424-GW(FFMX), 2014 WL 12594158, at *5 (C.D. Cal. June 26, 2014), *vacated and remanded*, 881 F.3d 679 (9th Cir. 2018), *on reh'g en banc*, No. 15-56014, 2019 WL 2376831 (9th Cir. June 6, 2019), *and aff'd*, No. 15-56014, 2019 WL 2376831 (9th Cir. June 6, 2019).

[2] *In re Hyundai & Kia Fuel Econ. Litig.*, No. 15-56014, 2019 WL 2376831, at *4 (9th Cir. June 6, 2019) ("On June 11, 2015, after more than three years of litigation, including eight months of confirmatory discovery, the court issued a 19-page order granting final approval of the class settlement.").

[3] *Id*.

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**Editor:**

| | | | |
|---|---|---|---|
| David Singh (SV) | View Bio | david.singh@weil.com | +1 650 802 3010 |

**Contributing Authors:**

| | | | |
|---|---|---|---|
| Audrey Stano (SV) | View Bio | audrey.stano@weil.com | +1 650 802 3275 |
| Neeckaun Irani (SV) | View Bio | neeckaun.irani@weil.com | +1 650 802 3019 |

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