

## Corporate & Financial Weekly Digest

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### Class Certification of Fraud Claim Denied

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A federal district court recently held that a group of aggrieved consumers will not be able to pursue their fraud claims as a class against the company that purportedly deceived them because the company's growing awareness that the customers would not receive their merchandise raised questions of fact requiring individualized adjudication.

Bassett Furniture Industries manufactures furniture that it sells through factory-owned and independent dealers. One independent dealer encountered financial difficulties, and Bassett directed the dealer to conduct a prolonged "liquidation sale," using most of the proceeds to reduce its debt to Bassett rather than to pay to obtain additional furniture from Bassett to deliver to its customers. When the dealer went out of business, a group of 188 customers who did not receive the furniture they ordered sued Bassett for fraud, arguing that the liquidation sale was a Ponzi scheme that Bassett knew would eventually collapse.

The U.S. District Court for the Eastern District of Wisconsin denied class certification for the fraud claims. The court observed—and the plaintiffs conceded—that Bassett's awareness that the liquidation sale would fail changed over time, as Bassett had more confidence that the dealer could bankroll current sales with future purchases at the inception of the sale than it did at the end. Accordingly, the strength of each plaintiff's fraud claim depended on the date that the plaintiff placed the order, raising individualized questions of fact and precluding collective adjudication. Similarly, the court refused to certify a class with respect to breach of contract against Bassett because those claims required an individualized inquiry into the reasonableness of each plaintiff's reliance on the dealer's apparent authority to act on behalf of Bassett. (*Schmidt v. Bassett Furniture Industries*, 2011 WL 67255 (E.D. Wisc. Jan. 10, 2011)).

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