

Ninth Circuit Holds Plaintiff in Consumer Class Action Must Allege Plausible Nexus Between Alleged Product Defect and Safety Hazard to Survive Motion to Dismiss

Product Liability Advisory

March 2012 by [Frederic Grannis](#)

Consumer fraud class actions seeking damages for allegedly defective products that, for one reason or another, have not satisfied the purchasers' expectations have become as commonplace as traffic gridlock in Los Angeles. Often, these actions are founded, not on the product's warranty, but instead on the manufacturer's alleged concealment of a "defect" that manifested itself only after expiration of the product's warranty. A recent decision by the U.S. Court of Appeals for the Ninth Circuit in *Wilson v. Hewlett-Packard Company*, No. 10-16249 (9th Cir. Feb. 16, 2012), could make pursuing such actions, at least in federal courts, more difficult.

The plaintiffs in *Wilson* purchased Hewlett-Packard (HP) laptops, which stopped working not long after expiration of their two-year limited warranties. A claimed design defect in the power jack prevented the computers from receiving electric power and, in the case of one plaintiff, caused his laptop to catch fire. The warranties having expired, HP rejected demands that it foot the bill to repair or replace the computers.

Not satisfied, the plaintiffs filed an action alleging claims against HP for violating California's Unfair Competition Law (UCL), California Business & Professions Code §17200 *et seq.*, and Consumers Legal Remedies Act (CLRA), California Civil Code § 1750 *et seq.* The plaintiffs alleged their laptops were "inherently defective" and unsafe, and that HP knew of the defect yet failed to disclose its existence to customers.

In affirming the dismissal of the plaintiffs' claims under Federal Rule of Civil Procedure 12(b)(6), the Ninth Circuit held manufacturers generally have no duty under California law to "disclose a defect 'that might, or might not' shorten the useful life of a [product] that 'functions precisely as warranted throughout the term of its express warranty.'" *Wilson* at 1828, quoting *Daugherty v. American Honda Motor Co.*, 144 Cal. App. 4th 824, 838-39 (2006). A duty to disclose arises only if the defect poses a safety hazard or when disclosure is necessary to correct misperceptions caused by prior affirmative representations. *Id.*

Perhaps even more significant was the court's close scrutiny of the complaint's allegations. The court held dismissal was justified by virtue of the plaintiffs' failure to "allege a sufficient nexus between the alleged design defect and the alleged safety hazard." *Id.* at 1832. Although the complaint provided "some detail" in describing the defect in the laptop's power jack, the court deemed the allegations deficient because the plaintiffs did "not allege how the weakening or loss of the connection between the power jack and the motherboard causes the Laptops to ignite." Indeed, the court questioned the logic of the plaintiffs' assertions, stating "it is difficult to conceive (and the complaint does not explain) how the Laptops could ignite if they are 'unable to receive an electrical charge.'" *Id.* at 1834.

The court also rejected allegations that HP knew of the defect before selling the laptops. The plaintiffs alleged HP had "'access to the aggregate information and data regarding the ricks of overheating' and there had been another lawsuit involving the same defect on a different model of laptop computers." *Id.* at 1836. The court rejected these assertions as "conclusory" and "speculative." Though the plaintiff identified customer complaints posted on HP's website as proof of its knowledge of the defect, these too were rejected because they were undated and therefore "provide no indication whether the manufacturer was aware of the defect *at the time of sale.*" *Id.* at 1839.

The scrutiny used by the Ninth Circuit underscores the importance of removing putative consumer fraud class actions to federal court. The "facial plausibility" standard of *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009), allows a defendant to attack the validity of a complaint's allegations with its initial response, and as demonstrated in *Wilson*, federal courts have the authority to dismiss cases that, upon closer examination, fail to describe a plausible basis for recovery. The lesson *Wilson* teaches for defendants is that, whenever possible, remove to federal court.

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