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Client Alert

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Denial of Writ of Certiorari in *Pella Corp. v. Saltzman*, United States Supreme Court, Case No., 10-355

Overview

On January 18, 2011, the United States Supreme Court denied the writ of certiorari for an appeal of orders granting certification in a class action involving the sale of windows sold by Pella Window and Doors, Inc., a subsidiary of Pella Corporation (collectively "Pella"). *See Pella v. Saltzman*, __ S. Ct. __, 2011 WL 134286, 79 USLW 3149 (U.S. Jan. 18, 2011) (No. 10-355). The order let stand the Seventh Circuit's opinion approving the district court's certification of broad issue classes of claimants pursuing warranty coverage related to the sale of consumer goods. *See Pella Corp. v. Saltzman*, 606 F.3d 391 (7th Cir. 2010). Underscoring the significance of the issues involved in this appeal, the writ petition was supported by *amicus curaie* briefs filed by many representatives of the product liability defense bar, including the Defense Research Institute and the Product Liability Advisory Council, Inc, as well as the National Association of Home Builders, Window and Door Manufacturers, the National Association of Manufacturers and the United States Chamber of Commerce. The *Pella* case liberalizes the standard for certifying a class in consumer warranty cases and will be used by plaintiffs' counsel to argue effectively for class certification in many different types of consumer warranty class claims.

Background

The *Pella* litigation involves the nationwide sale of more than six-million aluminum-clad wood "ProLine" casement windows. The Plaintiffs allege that these ProLine casement windows contain a design defect that permits water to seep behind the aluminum cadding and cause the wood to rot at an accelerated rate. Until recently, Pella stood by a standard ten-year limited warranty; however, in response to customer complaints that these windows needed replacement, Pella created the "Pella ProLine Customer Service Enhancement Program" to compensate customers above and beyond their standard warranty coverage.

Plaintiffs used the Pella ProLine Customer Service Enhancement Program against Pella, however, by arguing that, with this program, Pella attempted to modify its warranty coverage without actually informing customers of the program's existence or of the defect. Relying principally upon the Unfair and Deceptive Trade Practices Acts ("UDTPAs") which have been enacted in all 50 states, Plaintiffs alleged consumer fraud by Pella for failing to publicly declare the role that the purported design defect plays in allowing rot.

Impact of *Pella* Decision

As a result of the denial of this writ, Plaintiffs may proceed with litigation pursuant to the Seventh Circuit decision which affirmed the granting of the class certification orders. This decision affirmed the certifications of two classes of consumers. Each of these certifications could impact litigation relating to class actions of warranty coverage related to the sale of consumer goods.

A. *The Nationwide Class of Consumers Who Simply Purchased ProLine Windows*

The first class is a nationwide class consisting of all class members who own structures containing Pella ProLine aluminum-clad casement windows from 1991 to the present, whose windows have not yet manifested the alleged defect or whose windows may have some wood rot, but have not yet been replaced. Plaintiffs received this nationwide certification pursuant to Fed. R. Civ. P. 23(b)(2) which allows injunctive or declarative relief when the defendant "has acted or refused to act on grounds that apply generally to the class." If successful, these class members would be entitled to a declaration that the ProLine windows suffer from a design defect, that the ten year limitation on the warranty is voided and that the class members may proceed to a Special Master for resolution of claims.

Pella argued in its petition for writ of certiorari that a nationwide class is inappropriate for resolving the UDTPAs of the various states because of the variances in state law relating to these statutes. Pella also argued that the district court that had certified the class had conducted little, if any, analysis relating to the consistency of the law in the states relating to the issues of consumer fraud to be litigated. According to Pella, the law relating to consumer fraud was sufficiently distinct that the Plaintiffs in some states would not even be able to maintain a cause of action. Thus, "[t]he Seventh Circuit has thus blessed a Frankenstein nationwide declaratory-class of non-injured plaintiffs to pursue claims that may or may not even exist under laws of any particular State." The affirming of this nationwide class suggests that the courts in the future may be less likely to view dissimilarities in the laws of states as a basis for refusing to certify nationwide classes.

B. *The Statewide Classes of Consumers Who Purchased ProLine Windows and Needed to Replace Them*

The second class consists of six statewide liability classes in California, Florida, Illinois, Michigan, New Jersey and New York, including customers whose windows had manifested the defect and were already replaced. This second class was allowed to proceed seeking monetary damages under Fed. R. Civ. P. 23(b)(3) on the theory that there were questions of "law and fact common to the members of the class [that] predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy."

The certification of statewide classes is significant because it found not only commonality, but "predominance" in the issues relating to each of the individual customers. The

fact that all of the customers' problems were attributable to a single "design defect" and that all were purportedly limited to the same ten-year warranty coverage was considered more important than differences among the plaintiffs related to causation and damages, as well as differences in the state law related to the elements of consumer fraud under the UDTPAs. This decision suggests a more permissive standard for predominance under Fed. R. Civ. P. 23(b)(3) than that evidenced in other consumer fraud cases decided by courts in other jurisdictions.

In sum, manufacturers should closely monitor the *Pella* case which could set unfavorable precedent with respect to the standard for maintaining consumer class claims.

If you have any questions concerning the issues raised in this alert, please contact any of the following Womble Carlyle attorneys: John Parker Sweeney (jsweeney@wcsr.com 410-545-5821), T. Sky Woodward (swoodward@wcsr.com 410-545-5823) or Robert A. Gaumont (rgaumont@wcsr.com 410-545-5862).