

# Business Defeats Certification of Nationwide Class Action in Eighth Circuit Appeal



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In a nationwide class action lawsuit alleging deceptive trade practices for advertising of a product, a lower court had certified a class and uniformly applied only the forum state's law to all class members' claims. Part of the problem was that those claims had been consolidated in this Multidistrict Litigation, but the individual cases were from all over the country with a limited connection to the forum state. The Eighth Circuit Court of Appeals recently issued an opinion reversing the class certification, and thus saving the product's seller from a nationwide class action nightmare.

## Lessons Learned:

**Appealing to defeat class certification.** This was an interlocutory appeal, meaning an appeal taken in the middle of the ongoing lawsuit in the lower court. Thus it was before a costly trial. District courts have no shortage of cases competing for their time and attention, whereas at the appellate level a judge with fewer cases and more law clerks has the ability to spend more time on thorny legal issues. A class certification process handled with an eye toward a later appeal will allow a business the opportunity to lay the framework for a later challenge. In this case, the challenge was well laid and effectively argued to overturn the district court's decision.

**Follow the law of each state closely where applicable.** The Eighth Circuit concluded: "The consumer protection law of each class member's home state governs each consumer protection claim and class certification is inappropriate as to those claims." The district court erred by trying to apply the forum state's law to all class members' claims. In some instances the district court would not have been wrong. But here, the forum state's law required that in order to apply, the claim must have related to trade or commence "in or from the state." The facts of the case showed that the only relation to the forum state was that the allegedly deceptive advertisement had been designed in the state. The Eighth Circuit explained that this was insufficient to satisfy the "in or from the state" requirement because the class members encountered the advertisement, purchased the product, and were disappointed with it all in their home states.

**Why the applicable law matters.** Why would a defendant want to have potentially 50+ different state laws apply in a single class action? Wouldn't it be easier to just apply the law of the forum state? Easier, maybe. But laws differ significantly from state to state. Take for example Arkansas, where class action litigation has been liberalized to the point of being heavily weighted in favor of the plaintiff. Savvy plaintiffs' class action lawyers factor this in when deciding where to file, so it is quite possible that a forum's law is already more plaintiff friendly. By insisting that the law of each individual state be assessed and applied, a defendant can often angle for more favorable outcomes. "Conflicts of law analysis" as this

is called by lawyers, is intricate and time-consuming, but often it can make a real difference in a class action case. Sometimes, the easiest option can end up being far more costly for a client in the long run.

Case reference: *Jeff Hale v. Emerson Elec. Co.*, No. 18-1585 (8th Cir. Nov. 1, 2019).