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Class Action Defense

Standing after *Neale*: Third Circuit Clarifies Jurisdictional Standing and Predominance Analysis in Consumer Class Actions

Action Item: The Court of Appeals for the Third Circuit addresses federal jurisdiction, Article III standing, and scrutiny of class certification motions in the putative consumer fraud class action lawsuit against Volvo.

On July 22, 2015, in *Joanne Neale, et al. v. Volvo Cars of North America, LLC, et al.*, the Court of Appeals for the Third Circuit vacated and remanded the United States District Court for the District of New Jersey’s decision to certify six statewide classes in a consumer fraud class action lawsuit accusing Volvo Car Corp. of selling vehicles with defective sunroofs. This decision highlights three critical issues percolating in class action litigation. First, recognition of the granular level of detail with which the court will analyze federal jurisdiction. Second, that unnamed, putative class members are not required to demonstrate Article III standing provided that the named representative has standing, whether in the context of a litigation class or settlement class. And third, the scrupulous level of detail the Court of Appeals will examine a district court’s class certification decision. Specifically, in *Neale*, the court found that the classes and claims identified in plaintiff’s motion for certification—and upon which the trial court granted

certification—did not match those that were proposed in plaintiffs’ complaint. As a result, the Third Circuit vacated and remanded the district court’s decision certifying the six state-wide classes.

At the outset, *Neale* is an important reminder to practitioners and clients alike that the federal courts will conduct a thorough analysis to ensure that the case is properly before it. Indeed, here, the Third Circuit conducted a *sua sponte* analysis of the court’s jurisdiction pursuant to the Class Action Fairness Act (“CAFA”) even though the parties did not dispute federal court jurisdiction. Though not dispositive on the important issues in the case, *Neale* highlights the importance of carefully analyzing the most effective—and proper—forum for a potential litigation.

Neale also clarifies that putative class members need not establish Article III standing at the class certification stage, regardless of the posture, holding that: “the ‘cases and controversies’ requirement is satisfied so long as a class representative has standing, whether in the context of a settlement or litigation class.” The court further reasoned that “a class action is a representative action brought by

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a named plaintiff or plaintiffs. Named plaintiffs are the individuals who seek to invoke the court’s jurisdiction and they are held accountable for satisfying jurisdiction.” In so ruling, the court acknowledged that this issue is currently subject of a circuit split, noting that the Second, Eighth, Ninth, and D.C. circuits purportedly require absent class members to have Article III standing. Interestingly, the Supreme Court has granted the petition for *certiorari in Tyson Foods, Inc. v. Bouaphakeo*, No. 14-1146, 2015 WL 1278593, at *1 (U.S. June 8, 2015) and may end this circuit split in the October 2015 term.

Additionally, despite finding that the putative class had standing, the Third Circuit vacated the district court’s decision certifying six state classes and remanded the case to the district court for further proceedings. Specifically, the

Third Circuit rejected the district court’s rationale because the district court made no distinction between the six statewide classes or the relevant claims brought by those putative classes. The Third Circuit held that the district court erred “by failing to analyze predominance in the context of Plaintiffs’ actual claims.”

The *Neale* decision highlights several critical issues that should be assessed at all times throughout a class action—from subject-matter jurisdiction and Article III standing to crafting analyses at the class certification stage.

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