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SEVENTH CIRCUIT CONFIRMS APPROPRIATENESS OF CLASS ACTION TREATMENT OF CONSUMER FRAUD CASES

In *Pella Corporation v. Saltzman,* No. 09-8025, 2010 WL 1994653 (7th Cir. May 20, 2010), plaintiffs alleged that the Pella aluminum-clad wood "ProLine" casement window contained a design defect that permitted the entry of water which accelerated the rotting of the wood. Pella has sold over six million of the windows over the last 18 years. Plaintiff's further alleged that Pella attempted to modify its warranty through a service program designed to compensate customers and committed consumer fraud by concealing the inherent product defect. *Id.* at *1. The district court certified two classes of consumers: (1) a nationwide class under FRCP 23(b)(2) consisting of those class members whose ProLine windows manufactured from 1991 to the present have not yet manifested the alleged defect or whose windows have some wood rot but have not yet been replaced; and (2) a six statewide liability class under FRCP 23(b)(3) consisting of class members whose windows have had a manifest defect and have already been replaced, on the theory that Pella violated state consumer fraud laws in these states by failing to disclose the defect. *Id.* at *1-2.

Pella sought interlocutory review of the class certifications under FRCP 23(f), contending that consumer fraud cases are not amenable to class treatment as a general matter, due to various problems associated with causation, reliance, and the calculation of damages. *Id.* The Court of Appeals granted the petition and affirmed the district court's certification of the two consumer classes. The appellate court specifically addressed Pella's contention that prior decisions in the circuit supported the argument that consumer fraud cases are not appropriate for class treatment as a general matter and rejected the application of such a hard and fast rule. Instead, the court reasserted the proposition that class certification is "a sensible and legally permissible alternative to remitting all the buyers to individual suits each of which would cost orders of magnitude more to litigate than the claims would be worth to the plaintiffs." *Id.* at *2 (citing *Thorogood v. Sears, Roebuck and* Co., 547 F.3d 742, 748 (7th Cir. 2008) (reversing grant of certification where no common issues of law existed). The Seventh Circuit found that the district court in Pella had properly determined that "the common predominant issue of whether the windows suffer from a single, inherent design defect leading to wood rot is the essence of the dispute and is better resolved by class treatment." *Id.*

The court further noted that although class treatment of consumer fraud cases can present difficulties that must be addressed by the district court before deciding to grant class certification, that fact alone does not preclude the certification of a class or prevent class treatment of a group of consumers that are able to satisfy the procedural requirements of FRCP 23. *Id.* at *3. In rejecting the argument advanced by Pella, the Seventh Circuit confirmed that prior decisions of the court in *Thorogood, Oshana v. Coca-Cola Co.*, 472 F.3d 506, 514 (7th Cir. 2006) (class certification inappropriate where class representative's claims not typical of putative class) and *In re Bridgestone/Firestone, Inc.,* 288 F.3d 1012, 1018-19 (7th Cir. 2002) (class action unmanageable in tire-defect case given numerous different designs of allegedly defective tires) do not establish the proposition that class treatment of consumer fraud cases is inappropriate as a matter of general law in the circuit. *Id.* at *2. The fact that these actions may involve a more challenging review by the district court at the certification stage does not prevent the prosecution of these claims under the framework of FRCP 23. Rather, the appellate court made clear that in each particular action in which class certification is sought, the district court will be required to undertake a thorough review of the procedural requirements of FRCP 23 and determine whether issues of commonality and predominance, among others, are satisfied and there is a sufficient economy to class treatment. Under the right circumstances, certification of a consumer fraud class will be appropriate. *Id.* at *5. A full copy of the Seventh Circuit opinion can be viewed here.

Attorney McBride is a shareholder in the Litigation Practice of the Firm and provides counsel to clients in matters related to the prosecution and defense of class actions in state and federal court.