

Reconsideration Denied in Rejected "All Natural" Class Action

September 7, 2011 by [Sean Wajert](#)

Here is an update on an interesting case we [posted on](#) before. A federal court last week denied a motion for reconsideration of its ruling that denied class certification to a consumer alleging that Arizona Beverages deceptively marketed its drinks as "all natural." See [Coyle v. Hornell Brewing Co. et al.](#), No.1:08-cv-02797 (D.N.J. 8/30/11).

Plaintiff alleged that she was misled by labels on bottles of Arizona brand beverages touting "All Natural" ingredients, and thereby induced into buying bottles of Arizona beverages that contained High Fructose Corn Syrup ("HFCS"), which she claimed is not "natural". Plaintiff sought to certify, under Fed. R. Civ. P. 23(b)(2), a class of consumers who purchased similarly labeled Arizona beverages that contained HFCS, seeking only declaratory and injunctive relief.

During the course of discovery in this case, plaintiff produced a retainer agreement she signed in anticipation of this lawsuit. But, the agreement was signed on August 9, 2007, more than seven months before plaintiff alleged that she was first misled by defendants' "all natural" labeling in her product purchase on March 30, 2008. Indeed, plaintiff repeated the 3/08 purchase date in her deposition. She later changed her story.

The court originally observed that it need not find plaintiff to have intentionally lied to hold that she did not meet the adequacy element of Rule 23(a)(4). The issue was not simply whether plaintiff in fact lied, but whether her inconsistent testimony made her vulnerable to a unique factual or legal defense not faced by other class members, thereby rendering her interests potentially too antagonistic to the interests of the other class members. And that is exactly the case; the court found that plaintiff's factual inconsistencies raised sufficiently grave credibility problems as to prevent her from serving as an adequate class representative.

Plaintiff filed a reconsideration motion. The court did reconsider its finding as to the adequacy of plaintiff's counsel as a result of plaintiff's repeated pleadings and certified discovery responses including the March 30, 2008 allegation. This "serious error" did not necessarily disqualify counsel.

But the court re-affirmed its decision as to the adequacy of plaintiff as class representative. Plaintiff argued that any defenses that she would face as a result of the credibility problems identified by the court could not become the focus of the entire litigation. But the controlling rule does not hold that the only defenses that will disqualify a proposed named plaintiff on adequacy grounds are those which could become the focus of the entire litigation. Indeed, to deny certification, a court need not conclude that credibility problems would ultimately defeat the class representative's claim; rather, the court may deny class treatment if that unique defense is even arguably present.

In any event, the court disagreed with plaintiff's contention that the unique credibility-related defenses could not become the focus of the litigation in this matter. The court noted that

plaintiff would have real trouble surviving summary judgment on the issue of "ascertainable loss" with a record showing no dispute of fact that plaintiff's only qualifying purchase of defendants' product took place after plaintiff herself had concluded that the product was not "all natural." Plaintiff's entire action would be vulnerable to a motion for summary judgment on the issue of ascertainable loss, which would prevent plaintiff (and the class she would seek to represent) from pursuing even injunctive relief.

Determining whether this plaintiff made her purchase of defendants' product on the date she repeatedly claimed, after she had retained a lawyer to file the suit, would become a major focus and quite probably a show-stopper for this class. Reconsideration denied.