

Reproduced with permission from Class Action Litigation Report, 15 CLASS 1265, 11/14/14. Copyright © 2014 by The Bureau of National Affairs, Inc. (800-372-1033) <http://www.bna.com>

Product Liability

Ohio Moldy Washer Verdict Goes to Whirlpool; Class Will Pursue Claims in Other States

Whirlpool is off the hook after an Ohio jury returned a verdict in the company's favor Oct. 30 in a rare class-action trial, part of consolidated litigation by consumers alleging mold developed in some front-loading washing machines (*In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig. (Glazer v. Whirlpool Corp.)*, N.D. Ohio, No. 08-65001, verdict 10/30/14).

Plaintiffs' counsel Jonathan D. Selbin told Bloomberg BNA in an Oct. 30 e-mail that the Ohio plaintiffs will appeal, and his firm will continue to fight in other states as well.

"This was a single trial under Ohio law for Ohio only and based on trial rulings applicable to Ohio only. There is no preclusive effect in any other state," Selbin, of Lief Cabraser Heimann & Bernstein LLP in New York said.

"If anything, our hand is strengthened in some sense because we have shown precisely what Whirlpool said we could not: that a jury could hear evidence, and be instructed on, the defect issue in a comprehensible and common manner and reach a common result," he said. "We intend to soldier on and try as many states as it takes."

Whirlpool said it's pleased with the verdict in litigation it calls "abusive."

The plaintiffs' attorneys sought to enrich themselves on the backs of washing machine owners, 96 percent of whom haven't had any complaints, Eric Sharon, Chief Litigation Counsel at Whirlpool Corp. said in an Oct. 30 statement e-mailed to Bloomberg BNA.

He said the verdict "sends a strong message that this kind of abusive class litigation, targeting American manufacturing and comprised almost entirely of uninjured people, has no place in the landscape of American jurisprudence."

"While other companies might have opted to settle this case out of court, Whirlpool firmly believed in the rule of law and that the facts were in our corner," Sharon said.

Two Trips to Supreme Court. The trial involved a certified class of Ohio purchasers of certain Whirlpool Duet front-loading washing machines with an alleged design defect that causes the machines to grow mold and emit unpleasant odors. The certified class was limited to liability questions.

The suit, along with a similar case out of the U.S. Court of Appeals for the Seventh Circuit, traveled to the U.S. Supreme Court twice on the washing machine manufacturers' requests for review.

The Supreme Court granted review, vacated the appeals court's class certification grants and remanded for further review in light of *Comcast Corp. v. Behrend*, 133 S.Ct. 1426, 2013 BL 80435 (2013) (14 CLASS 411, 4/12/13).

On remand, the U.S. Court of Appeals for the Sixth Circuit affirmed class certification, saying that to the extent *Comcast* reaffirmed the "settled rule that liability issues relating to injury must be susceptible of proof on a classwide basis to meet the predominance standard," that standard was met, *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig. (Glazer v. Whirlpool Corp.)*, 722 F.3d 383 (6th Cir. 2013) (14 CLASS 822, 7/26/13).

On a second trip to the Supreme Court, Whirlpool questioned whether a class may be certified when most members have never experienced the alleged defect, and both injury and damages would have to be litigated on a member-by-member basis. The top court declined to act on those petitions (15 CLASS 204, 2/28/14).

The case that followed a similar trajectory in the U.S. Court of Appeals for the Seventh Circuit is *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796 (7th Cir. 2013) (14 CLASS 1055, 9/13/13).

Lief Cabraser Heimann & Bernstein in New York and others represented the plaintiffs. Wheeler Trigg O'Donnell in Denver and others represented Whirlpool.

By PERRY COOPER