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## Whirlpool Customers Lose Cert. Bid Over Oven Overheating

By **Diana Novak Jones**

Law360, Chicago (May 9, 2017, 4:54 PM EDT) -- An Illinois federal judge denied certification to several classes of Whirlpool Corp. customers who claim the company's ovens malfunction while on the self-cleaning setting, saying Tuesday they haven't proven all of the ovens share the same defect.

U.S. District Judge Amy St. Eve said the putative classes had failed to establish a single cause for the failure of the Whirlpool Vision II Platform wall ovens, despite their claim that all 2 million of the ovens Whirlpool has sold in the U.S. share the flaw.

Between their complaint and several subsequent filings, the customers have "continually moved the goalpost with respect to identifying a common defect," Judge St. Eve said, at times blaming it on an airflow problem, only to say later it's caused by a collection of problems.

By definition, a class action must target a single problem, the judge said.

"Without this crucial evidence, plaintiffs lack the glue to hold their proposed classes together," she said.

The customers' reliance on their expert, engineer Albert de Richemond, doesn't help them make their case, the judge said, because de Richemond himself said he can't identify what caused the ovens' problems. In addition to denying the class certification motion on Tuesday, Judge St. Eve granted Whirlpool's motion to exclude de Richemond's testimony.

An attorney for Whirlpool, Andrew Unthank of Wheeler Trigg O'Donnell LLP, said the judge did a thorough and rigorous analysis of the class' claims, which he called "over-broad and false." This class action is not the first filed over Whirlpool's ovens, though none have been successful, he added.

The customers filed the putative class action in March 2015, claiming the ovens overheat when the self-cleaning setting is on, damaging their control panel and requiring costly repairs or replacement.

They sought to certify six different classes, with divisions between the classes based on whether the oven purchased was an IKEA version of the Vision II and what state the customer lives in, among other criteria. The largest class would cover anyone who purchased a Whirlpool oven with a self-cleaning mechanism in one of 15 listed states and the District of Columbia, according to court filings.

The suit claims violations of the Magnuson-Moss Warranty Act and breach of express warranty, with separate state law claims for Illinois and South Carolina.

Initially, the putative class defined the defect in the ovens as simply its failure after the self-cleaning cycle, Judge St. Eve said, and in later filings narrowed the definition to a specific airflow

problem.

But by the time the class produced de Richemond at a Daubert hearing on his admissibility, they'd backed off the airflow problem, the judge said. De Richemond, who examined the two lead plaintiffs' ovens as well as several others that had been returned to the company, testified that he did not know what caused the problem during the cleaning cycle.

Later, de Richemond said he did have an opinion about the cause of the problem, only to say it was likely the result of several factors, Judge St. Eve said.

The judge criticized de Richemond's methodology for developing his report, noting he only tested Whirlpool ovens and did no testing to try to determine the cause of the cleaning cycle failure. Finding his testimony unhelpful, she agreed with Whirlpool that he should be excluded from the plaintiffs' case.

Without de Richemond's testimony, the class has little to rely on, Judge St. Eve said, adding that the differences in the ovens' design and the lack of a common cause make their claims something best resolved on an individual level.

Representatives for the putative class did not respond to requests for comment Tuesday.

Whirlpool is represented by Andrew Unthank, Erin Frohardt and Laura McNabb of Wheeler Trigg O'Donnell LLP and Bradley Falkof of Barnes & Thornburg LLP.

The putative class is represented by Katrina Carroll of Lite DePalma Greenberg, Michael J. Flannery, Charles LaDuca and Katherine Van Dyck of Cuneo Gilbert & LaDuca LLP, Corey Sullivan of Sullivan Law LLC, Francis J. Flynn Jr. of the Law Office of Francis J. Flynn Jr. and Jasper D. Ward IV and Alex C. Davis of Jones Ward PLC.

The case is Beth Kljajic and Kathleen Cates et al v. Whirlpool Corp., case number 1:15-cv-05980 in the U.S. District Court for the Northern District of Illinois.

--Editing by Emily Kokoll.

*Update: This story has been updated to include comment from Whirlpool Corp.'s counsel.*