HONDA DRIVES NINTH CIRCUIT TO REJECT CERTIFICATION OF NATIONWIDE CONSUMER CLASS

January 13, 2012

To Our Clients and Friends:

Yesterday, in *Mazza v. American Honda Motor Co., Inc.*, the U.S. Court of Appeals for the Ninth Circuit reversed a district court's decision that Honda's status as a California-headquartered company allowed the court to apply California's consumer protection law to the claims of a nationwide class. The claims must instead be governed by the law of the state in which each consumer purchased the car.

After finding that common questions of *law* thus do not predominate with respect to a nationwide class, the Ninth Circuit went further, blocking even a single-state class on the basis that only some California consumers saw the particular advertisements alleged to be misleading. Reiterating earlier decisions that claims under California's consumer protection law requires reliance on misleading statements, which non-recipients of the not-widely-distributed ads could not show, the court found that common questions of *fact* do not predominate either.

Although both halves of this decision are important and will have the effect of making California federal courts less hospitable to consumer class actions, the decision not to apply California law to nationwide claims may have broader immediate impact. District judges in California had gone both ways on this issue; the Ninth Circuit now has resolved the split in the manner favorable to defendants.

The Ninth Circuit panel reached its decision by applying California's three-part "governmental interest" choice-of-law test: whether the laws at issue differ materially across the states, each state's interest in applying the conflicting provisions, and the nature and strength of those competing interests. It is well settled that the consumer protection statutes of the 50 states differ materially; the Circuit panel catalogued just a few of those differences. Its analysis, therefore, came down to whether states with less-protective statutes have a greater interest in enforcing them:

> In our federal system, states may permissibly differ on the extent to which they will tolerate a degree of lessened protection for consumers to create a more favorable business climate for the companies that the state seeks to attract to do business in the state. In concluding that no foreign state has "an interest in denying its citizens recovery under California's potentially more comprehensive consumer protection laws," the district court erred by discounting or not recognizing each state's valid interest in shielding out-of-state businesses from what the state may consider to be excessive litigation. . . . [E]ach state has an interest in setting the appropriate level of liability for companies conducting business within its territory. . . .
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> Maximizing consumer and business welfare, and achieving the correct balance for society, does not inexorably favor greater consumer protection; instead, setting a baseline of corporate liability for consumer harm requires balancing the competing interests. . . . Getting the optimal balance between protecting consumers and attracting foreign businesses, with resulting increase in commerce and jobs, is not so much a policy decision committed to our federal appellate court, or to particular district courts within our circuit, as it is a decision properly to be made by the legislatures and courts of each state.

Looking at the issue in this manner, the panel concluded that "each class member's consumer protection claim should be governed by the consumer protection laws of the jurisdiction in which the transaction took place."

One judge dissented from the panel's ruling. Accordingly, the possibility exists that the case will be reheard *en banc*. We will monitor this case and provide further updates as warranted.

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Please do not hesitate to contact us if you have any questions.

Jeffrey S. Jacobson
+1 212 909 6479
jsjacobson@debevoise.com

Maura K. Monaghan
+1 212 909 7459
mkmonaghan@debevoise.com