

Pump Your Brakes: Sixth Circuit Warns District Courts to Make “Rigorous” Rule 23 Analysis

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The Sixth Circuit yesterday in a [per curiam opinion](#) (paneled by Judges Boggs, Thapar, and Reader) accepted interlocutory appeal of and vacated a class certification order from the Eastern District of Michigan. The case is *In re: Ford Motor Company*, Case No. 22-0109 (6th Cir.). The Court’s opinion served to remind district courts that they must conduct a “rigorous analysis” to determine whether “not one or two, but all four Rule 23(a) prerequisites are met.” Op. at 2. It is worth noting that on interlocutory appeal, the circuit court typically either denies review or accepts the case for briefing on the merits. In this case, however, the Sixth Circuit accepted review and summarily vacated to allow the district court to correct its error, without further briefing.

The putative class action was brought by Ford F-150 drivers, alleging that Ford installed defective step-bore brake master cylinders into the trucks, causing the brake performance to suffer. The district court certified five statewide issue classes under Rule 23(c)(4), for resolution of three issues: “(1) whether the trucks’ brake systems were defective; (2) whether Ford possessed pre-sale knowledge of the defect; and (3) whether concealed information about the defect would be material to a reasonable buyer.” Id. at 3.

The Court held that the district court’s commonality analysis—one of the four Rule 23 factors (numerosity, commonality, typicality, and adequacy)—was “insufficiently rigorous” and overlooked certain of Ford’s arguments. To satisfy commonality, the Court explained, there must be a “common question” that would resolve a central issue “in one stroke.” Id. at 4. Ford, however, challenged commonality as to the three issues certified for class resolution, claiming that certain factual issues prevented “one stroke” resolution. Ford claimed that the brake manufacturer had made many changes to the brakes during the class period, that Ford lacked knowledge of the defect, and that the design changes may have impacted materiality of the defect. Id. at 5–6. The district court erred, according to the Sixth Circuit, because it did not “detail its reasons for rejecting Ford’s arguments,” failed to “grapple with” and left “unaddressed” certain facts, and resolved commonality with a “surface-level approach.” Id.

Finally, the court cautioned that the Rule 23 analysis cannot be based on mere allegations—“the district court must evaluate whether each of the Rule 23(a) factors is actually satisfied, not merely that the factors are properly alleged.” Id. at 6. Doing so is a “crucial part of avoiding procedural unfairness to which class actions are uniquely susceptible.” Id. at 7. In other words, when it comes

to class certification, district courts should pump their brakes and yield to the stringent Rule 23 standard.

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National Law Review, Volumess XIII, Number 324

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