

Eighth Circuit Rejects Class Certification in Environmental Contamination Case



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The U.S. Court of Appeals for the Eighth Circuit has reversed class certification in a case involving claims of alleged environmental contamination. *Ebert v. General Mills, Inc.*^[1] illustrates that class action requirements, like predominance of common issues and cohesiveness of claims, can be difficult to establish in the environmental context because issues of liability, causation, and damages are individualized. *Ebert* may pose a significant obstacle for class certification in future environmental cases.

In *Ebert*, landowners sued General Mills, alleging that the company caused trichloroethylene (TCE) to be released from its former industrial facility and that TCE vapors migrated into surrounding residential areas, threatening the landowners' health and the value of their properties. The residents asserted five claims against General Mills:

1. Violation of the Comprehensive Environmental Response Compensation and Liability Act;
2. Violation of the Resource Conservation and Recovery Act;

3. Private nuisance;
4. Common law negligence; and
5. Willful and wanton misconduct.

Plaintiffs later excluded personal injury claims and sought only property damages and declaratory and injunctive relief requiring General Mills to remediate the properties.

The district court certified a class for declaratory and injunctive relief under Federal Rule of Civil Procedure (FRCP) 23(b)(2) and for property damages under FRCP 23(b)(3). The district court bifurcated the action into two phases: first, determining liability under FRCP 23(b)(2), and then, if General Mills is found liable, determining damages under FRCP 23(b)(3). The district court stated that “questions on individualized exposure” would not be addressed as part of the class claims.

The Eighth Circuit reversed and remanded, holding that individualized issues predominated and that the class claims were not cohesive. First, the Eighth Circuit determined that the individualized issues in the case predominated over those issues common to the class under FRCP 23(b)(3). It noted that, to resolve claims of liability, the district court would have to analyze whether General Mills’ actions caused the alleged vapor contamination and subsequent damage on *each* individual property. According to the court, “there likely will be a property-by-property assessment of additional upgradient (or other) sources of contamination, whether unique conditions and features of the property create the potential for vapor intrusion, whether (and to what extent) the groundwater beneath a property is contaminated, whether mitigation has occurred at the property, or whether each individual plaintiff acquired the property prior to or after the alleged diminution in value.” Adjudication of these issues would require different evidence depending on the class member.

The Eighth Circuit specifically took issue with the district court’s attempt to limit the effect of individualized issues through bifurcation: “[I]t is the deliberate limiting of issues by this district court in this case that is problematic. . . . Here, by bifurcating the case and narrowing the question for which certification was sought, the district court limited the issues and essentially manufactured a case that would satisfy the Rule 23(b)(3) predominance inquiry.”

Second, the Eighth Circuit held that the claims lacked the cohesiveness needed to proceed as a class under FRCP 23(b)(2) because the issues were “highly individualized.” The court concluded that “[r]emediation efforts on each of the affected properties, should they be awarded, will be unique.” For example, General Mills had installed customized vapor mitigation systems at some, but not all, properties, and the results of TCE soil vapor sampling varied by property. Facts will often vary among plaintiffs in class environmental claims because releases of contaminants, by nature, are nonlinear.

[1] No. 15-1735, 2016 WL 2943193 (8th Cir. May 20, 2016).

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