

## **Most GE Microwave Defect Claims Survive Bid To Nix**

By **Abigail Rubenstein**

Law360, New York (September 30, 2010) -- A judge has nixed a strict product liability claim from a proposed consumer class action accusing General Electric Co. of knowingly selling microwaves that present a fire hazard by starting on their own, but she allowed five other causes of action to move forward.

Ruling on GE's motion to dismiss the suit, Judge Victoria A. Roberts of the U.S. District Court for the Eastern District of Michigan on Wednesday said the plaintiffs could continue to pursue claims for breach of express warranty, breach of implied warranty of merchantability, violation of The Magnuson-Moss Warranty Act, violation of state consumer protection acts and unjust enrichment. Because the case has not yet reached the class certification stage, Judge Roberts analyzed the claims with respect to the three named plaintiffs, Timothy Hennigan of Michigan, Aaron McHenry of Ohio, and Christopher Cocks of California. The plaintiffs ultimately seek to pursue the suit on behalf of a class of all owners of GE microwaves manufactured since 2000, which GE has said could include millions of people.

Judge Roberts tossed the strict products liability claim brought by McHenry because Ohio law prohibits strict products liability claims for pure economic loss, and McHenry alleged only that he was damaged by having to purchase a new microwave to replace the defective one. However, the court rejected the rest of GE's attempts to get the suit thrown out at an early stage, including GE's argument that the case was time-barred despite the plaintiffs' contention that the statutes of limitations should be tolled because the company fraudulently concealed the risks involved in using its microwaves.

"The biggest aspect of this is a vindication of our contention that GE should not be rewarded for fraudulently concealing this defect," Hassan Zavareei of Tycko & Zavareei LLP, who represents the plaintiffs, told Law360 on Thursday.

But Dickinson Wright PLLC's Michelle Czapski, who represents GE, said of the ruling "procedurally, this is really just the very beginning of the case."

The lawsuit maintains that GE has been aware since at least as early as 2002 that its microwaves had a defect that caused them to begin operating unassisted but took no steps to warn consumers who had purchased its microwaves and actively concealed the problem.

The suit also claims that after its microwaves caused fires, GE made patently false statements to the press that it knew of no fire risk involving the devices.

The microwaves start without warning due to a defect in their control panels, the suit alleges. The plaintiffs claim that they had to buy new microwaves and in some cases suffered smoke-related damage.

In August, a magistrate judge granted the plaintiffs' motion for sanctions which alleged that GE had failed to hand over consumer complaints about its microwaves for discovery. GE has objected to the order that it comply with the discovery request, but not to the sanctions.

The plaintiffs are represented by Tycko & Zavareei LLP and the Miller Law Firm PC.

GE is represented by Dickinson Wright PLLC.

The case is Hennigan v. General Electric Co. et al., case number 09-cv-11912, in the U.S. District Court for the Eastern District of Michigan.

--Additional reporting by Shannon Henson and Ryan Davis  
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