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Eighth Circuit issues pro-defendant class certification ruling in consumer fraud MDL

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Takeway: Fraud claims are not typically suitable for class treatment, because the essential element of reliance is usually a fact-intensive, individualized issue. When it comes to consumer fraud statutes, however, consumer fraud classes are often certified because (among other reasons) reliance is oftentimes not an essential element of a state consumer fraud claim. But because causation is an essential element of every consumer fraud claim, it is almost impossible as a matter of sheer logic to avoid a showing of reliance to demonstrate an ascertainable loss. That basic concept was addressed by the Eighth Circuit in *In re Folgers Coffee Marketing*, --- F.4th ----, No. 24-2830, 2025 WL 3292613 (8th Cir., Nov. 26, 2025), where the panel ruled that a plaintiff seeking to represent a putative class could not avoid the fact-intensive reliance requirement, even under a statute where reliance is not an element of the claim. The panel's ruling was especially significant, given that it was issued in multidistrict litigation in which six different statewide classes are in play.

That MDL involves alleged misrepresentations pertaining to Folgers coffee. Claiming that Folgers coffee containers misrepresent the number of six-ounce cups that each container can produce, plaintiffs around the country brought putative class actions against Folger Coffee Company and its corporate parent in different federal district courts, alleging consumer fraud and related claims. The Judicial Panel on Multidistrict Litigation consolidated the actions, transferring them to the Western District of Missouri for pretrial proceedings.

The class representatives filed a consolidated class action complaint seeking the certification of six separate statewide classes. After plaintiffs moved to certify the classes, the district court elected to consider whether to certify a Missouri class before considering whether to certify other statewide classes.

Regarding the Missouri class, Missouri resident Mark Smith claimed that the containers of Folgers coffee – which state that each container makes “up to” a specific number of cups – misrepresent the number of cups of coffee that can be brewed from each container, in violation of the Missouri Merchandising Practices Act (MMPA) (he also asserted a claim for unjust enrichment). That is because the representations on the container are based on the numbers produced by the more efficient “Pot Method” (generating ten six-ounce cups from eight tablespoons of coffee), as opposed to the less efficient “Single-Serving Method” (requiring ten tablespoons to brew ten six-ounce cups).

The district court certified a Missouri class. Folgers sought leave to appeal the ruling under Federal Rule

23(f), which the Eighth Circuit granted.

The main issue on appeal involved the element of reliance. The panel observed that "[o]ur court has recognized that fraud cases are typically unsuitable for class treatment. That's because the proof required in such cases often varies with respect to what representations consumers received and whether those consumers relied on those representations, meaning that common questions do not predominate over individualized ones." *Id*. at *2.

Common law-reliance, however, is not an element of an MMPA claim. But that did not matter, because MMPA plaintiffs "still had to prove a causal connection between the deceptive act and a harm they suffered." *Id*. Quoting from a prior Eighth Circuit decision analyzing consumer fraud claims under Minnesota law, *In re St. Jude Med., Inc.*, 522 F.3d 836, 839-40 (8th Cir. 2008), in situations where "plaintiffs allege that their damages were caused by deceptive, misleading, or fraudulent statements or conduct in violation of the misrepresentation in sales law, as a practical matter it is not possible that the damages could be caused by a violation without reliance on the statements or conduct alleged to violate the statutes." *Id*. Accordingly, the Missouri consumer fraud claims were unsuitable for class treatment: "The upshot is that, even though a plaintiff need not show traditional common-law reliance, individual issues will still likely swamp any efficiencies that a class action might offer, making certification inappropriate." *Id*.

Expounding on the issue of predominance under Rule 23, which the panel observed is a "demanding" standard, the panel concluded that the question of ascertainable loss in the consumer fraud context "ineluctably" generates individualized issues that predominate over common ones: "though the representation appeared on each of these products, the conclusion seems ineluctable that a significant proportion of the proposed class did not read those representations or, if they did, did not care about them one way or the other. … What matters is that many class members weren't deceived, and figuring out who was and who wasn't will require consumer-by-consumer inquiries into each class member's individual tastes, interpretations, and circumstances, undermining the efficiencies class actions are intended to provide." *Id*. at *3.

Smith further argued that all purchasers suffered an ascertainable loss, because the misrepresentations inflated consumer demand, raising the price of Folgers coffee for all buyers, including those who did not rely on the misrepresentations. The panel rejected this "price-premium" argument, as well, ruling that "accepting Smith's argument would allow those who suffered no ascertainable loss from Folgers's representations to piggyback on the injuries of others to pursue a remedy." *Id*. at *4.

Finally, the panel easily rejected Smith's unjust enrichment claim, ruling that such claims are inherently unsuitable for class treatment: "Whether a particular transaction might be considered inequitable or unjust turns on the specific circumstances of each transaction, which again places individual inquiries front and center. We agree with the several courts and commentators who have said that, for this reason, unjust-enrichment claims are generally inappropriate for class treatment." *Id*. at *5.