

## BOARD OF CONTRIBUTORS

# 11th Circuit Issues Favorable Ruling for Consumers Seeking Class Certification

### Commentary by

**Erin E. Bohannon**

When it comes to consumer class actions, recent Florida precedent swings in favor of plaintiffs seeking class certification. On May 17, the U.S. Court of Appeals for the Eleventh Circuit affirmed class certification in the case of *Carriuolo v. General Motors*, an action brought pursuant to the Florida Deceptive and Unfair Trade Practices Act.

In *Carriuolo*, the Eleventh Circuit construed FDUPTA to focus on whether a practice is deceptive or misleading to the objectively “reasonable consumer” rather than focusing on the subjective reliance of each consumer when purchasing a product. As such, the *Carriuolo* decision favors aggrieved consumers who wish to bring class action claims by reducing defendants’ ability to challenge

the “predominance” requirement for class certification. The “predominance” requirement tests whether “questions of law or fact common to class members predominate over any questions affecting only individual members” and is often the toughest obstacle in obtaining class certification. Fed. R. Civ. P. 23(b)(3); see also Fla. R. Civ. P. 1.220(b)(3) (setting forth state court counterpart for class certification). As a result, *Carriuolo* is an important decision and represents the most recent ruling in a line of cases that broadly construe FDUPTA and promote class action litigation as a mechanism to effect FDUPTA’s broad, remedial purpose of consumer protection.

In *Carriuolo*, the plaintiff alleged that General Motors misrepresented safety information for the 2014 Cadillac GTS by including a Monroney window sticker conveying inaccurate government safety ratings



COURTESY PHOTO

**Erin Bohannon**

from the National Highway Traffic Safety Administration. At the time of purchase, the Monroney stickers on certain 2014 Cadillac GTS’s reported perfect “government five star safety ratings” in three categories. In reality, the NHSTA had not assigned any safety rating to the 2014 GTS and had not even tested the vehicles at the time of sale. As to class

certification, the district court found that the predominance requirement was met by a common question to each class member: “whether the inaccurate Monroney sticker provided by General Motors constitutes a misrepresentation prohibited by FDUPTA.”

On appeal, General Motors argued that the “predominance” requirement for class certification was not met because “the buying and leasing experiences of each proposed class member were not uniform” and that the damages would vary by class member. The Eleventh Circuit rejected General Motor’s argument, noting that General Motors essentially sought to impose an individual reliance requirement that is not mandated by the FDUPTA scheme or Florida state and federal case law. In support, the Eleventh Circuit cited to *Davis v. Powertel*, holding that the mental state of each class member is irrelevant in FDUPTA cases, and *Fitzpatrick v. General Mills*, vacating a class certification order that improperly took into account consumers’ individual reliance on labeling in making purchases.

As to damages, the Eleventh Circuit noted that the injury is

not determined by the plaintiff’s subjective reliance on the mislabeling and is instead measured by the price difference between the product as advertised (a Cadillac GTS with perfect safety ratings) versus the product as delivered (a Cadillac GTS with no safety ratings). In *Carriuolo*, it seems that General Motors attempted to conflate causation (whether the misrepresentation caused the harm) and reliance (whether individual purchasers relied on the misrepresentations). The Eleventh Circuit saw through the defendant’s argument in affirming class certification.

The *Carriuolo* decision is important precedent for plaintiffs seeking certification as aggrieved consumers under FDUPTA—particularly those who claim that a seller or manufacturer’s unfair practice, misrepresentation, or mislabeling allow it to “command a price premium and to overcharge customers systematically.”

Based on this precedent and the line of cases before it, plaintiffs will continue to bring class action claims for deceptive and misleading product labeling and will face less challenges to the “predominance”

requirement for class certification that are based on the individual conduct or reliance of class members. Likewise, defendants will have to implement new strategies that do not focus on the subjective mental state of individuals if they wish to successfully challenge the “predominance” requirement for these claims.

The continued use of FDUPTA in class action litigation is also significant from a policy standpoint. Consumers rely heavily on representations and sales practices in determining which products to purchase for themselves and their family. Consumers should be able to rely on product labeling regarding the safety of the vehicles they trust with their lives, the foods they eat, or the products they bring into their home. By rejecting improper challenges to class certification of FDUPTA claims, Florida Courts uphold the purpose of FDUPTA and promote protections for the public.

*Erin E. Bohannon is a litigation attorney at Kluger Kaplan in Miami, focusing her practice on consumer class actions, commercial litigation, and probate and trust disputes.*