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DOES ONE LAW GOVERN OR DO MANY LAWS GOVERN?

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When faced with a nationwide or multi-state product liability class action, a key question for counsel is whether the substantive law of one state or many states will apply to the claims of the putative class. If multiple states' laws will come into play, and those laws are different, that alone may defeat class certification.

Generally, a federal court sitting in diversity determines the applicable state substantive law by applying the forum state's choice-of-law rules. *See, e.g., In re Hyundai & Kia Fuel Econ. Litig*., 926 F.3d 539, 561 (9th Cir. 2019) ("[A] district court sitting in diversity must apply the substantive law of the state in which it sits, including choice-of-law rules."). That same rule applies in class actions.

States, of course, follow different choice-of-law approaches – the Restatement (First) territorial approach, the Restatement (Second) most significant contacts test, and the government interest analysis, to name a few. If the forum state's choice-of-law standard is sufficiently fluid, the class action plaintiff often will contend that one state's law applies to the claims of the entire class.

Plaintiff may point to where the product was designed or manufactured or where the principal effects of the claimed product defect were felt. If a plaintiff can persuade the court that one state's law applies, and that the application of that one law is constitutionally permissible, he or she can avoid a potential "predominance" problem under Rule 23. If, on the other hand, the forum's choice-of-law rules dictate that the law of more than one state applies to the claims of the class, plaintiff likely will seek to establish that the laws of those states are effectively the same – a "false conflict" that does not affect "predominance."

Ultimately, however, if under the forum's choice-of-law rule, the law of multiple states applies and those laws differ in material respects, the predominance requirement may be an insurmountable obstacle to class certification. *See Senne v. Kansas City Royals Baseball Corp.*, 934 F.3d 918, 928 (9th Cir. 2019) ("[P]otentially varying state laws may defeat predominance in certain circumstances."), petition for cert. filed, (U.S. June 4, 2020) (No. 19-1339); *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 741 (5th Cir.1996) ("[V]ariations in state law may swamp any common issues and defeat predominance."); *accord Georgine v. Amchem Prods., Inc.*, 83 F.3d 610, 627 (3d Cir.1996) (predominance defeated, in part, by the number of differing, applicable state legal standards), *aff'd,* 521 U.S. 591, 624 (1997).