

## Class Cert. Reversed For Firefighters Suing Federal Signal

By **Juan Carlos Rodriguez**

*Law360, New York (June 26, 2014, 5:09 PM ET)* -- An Illinois appeals court decertified a class of Chicago firefighters suing Federal Signal Corp. over claims of hearing loss from the company's sirens, ruling that a trial court failed to make the required finding of predominance of common issues.

The trial judge had partially certified a group of about 500 firefighters on the issue of whether the sirens have a design defect. But on Wednesday, the appeals panel reversed and remanded that order because although the trial court found some common issues, it failed to find that those issues predominated.

The appeals panel also said there was no proper finding on the adequacy of representation of the class by the representative plaintiffs, where the trial court instead found that the plaintiffs' attorneys adequately represented the class.

The firefighters' case is one of many pending in Illinois and other parts of the country against Federal Signal.

"The test for predominance is not whether the common issues outnumber the individual ones, but whether common or individual issues will be the object of most of the efforts of the litigants and the court," the appeals court said, citing previous decisions that addressed the predominance question.

It added that class certification is improper even on limited issues or sub-classes if the common issues do not predominate over individual questions.

Federal Signal argued that several individual issues predominate, including the plaintiffs' exposure to sirens, which siren each plaintiff was exposed to, each plaintiff's period of service and work history, hearing protection use, and emergency vehicle designs.

The trial court found there were common questions, however, including whether Federal Signal manufactured certain sirens that were used by first responders in Chicago, whether those sirens were unreasonably dangerous and whether the sirens had inadequate design or warnings.

"The court found that these were 'common questions of law' for the class but failed to make the required finding of predominance," the appeals court said. "The court focused on the 'common' issues but did not make the finding that these common issues in fact predominate over the individual issues."

And the panel said even if the trial court had made the proper required predominance finding, the

question of whether Federal Signal manufactured certain sirens is a provable fact that cannot be said to predominate over individual issues in the litigation.

In addition, the second common issue stated by the court would also be insufficient for class certification, because the case involves nine siren designs.

“In this case, given that there are nine different siren designs involved, plaintiffs have made no showing that a successful class representative’s individual claim for defective design of one of the siren designs would also establish a right of recovery in other class members,” the panel said.

The same is true of whether the sirens had inadequate design or warnings, the panel said.

The panel also said the court erred in certifying the class without any identified class representatives or determination of their adequacy. The trial court had certified the plaintiffs’ attorneys as class representatives.

“The court, however, made no finding that certain named plaintiffs would adequately represent the class. There must be a finding that the representative ‘parties’ will fairly and adequately protect the interest of the class, not the parties’ attorneys,” the panel said.

Plaintiffs’ attorney Marc J. Bern of Napoli Bern Ripka Shkolnik LLP said Thursday that the appeals panel’s ruling does not preclude the class from being certified.

“I believe that the class will be certified and we’ll be going forward with that,” Bern said.

In a statement, Jennifer Sherman, chief operating officer and general counsel for Federal Signal, said the company is pleased with the decision.

“It reaffirms our belief that a class action trial is not an appropriate mechanism to litigate hearing loss claims,” Sherman said.

Federal Signal is represented by Jeffrey A. Hall, Carolyn Frantz and John C. Fitzpatrick of Bartlit Beck Herman Palenchar & Scott LLP and Michele L. Odorizzi of Mayer Brown LLP.

The firefighters are represented by Marc J. Bern of Napoli Bern Ripka Shkolnik LLP and Jordan Margolis of The Margolis Firm PC.

The case is Albert Lamb et al. v. Federal Signal Corp., case number 1-13-1016, in the Appellate Court of Illinois, First Judicial District, Division Three.

--Additional reporting by Sean McLernon. Editing by Patricia K. Cole.