Consumer Protection Cases to Watch in 2020

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2020 could see significant consumer protection decisions from the U.S. Supreme Court and appellate courts, which are expected to hear key cases dealing with online privacy and climate change, among others.

Privacy Standing at the High Court

In one such case, Facebook is disputing a Ninth Circuit ruling that preserved a class action over its face-scanning practices, allowing the case to proceed to trial. The Ninth Circuit found that millions of Illinois Facebook users had standing to bring claims under the state's Biometric Information Privacy Act (BIPA) after the social media network allegedly collected their biometric information without consent.

In petitioning the Supreme Court, Facebook challenged the Ninth Circuit's class certification analysis, arguing that the court failed to properly analyze when BIPA applies when it found that common issues predominated.

Speaking to Law360, partner Lena Konanova explained that the case gives the high court the chance to "opine on" the class certification standard under Rule 23 and "whether threshold legal questions relevant to the predominance analysis have to be decided by the court before allowing certification."

"The Supreme Court's ruling on this issue has tremendous implications," Konanova said. "The Illinois law, for example, allows damages of one to five thousand dollars per violation for every time that someone's image is used without consent, and given that the class can include millions of members this could really expose tech companies to billions of dollars in liability."

Climate Change as a Consumer Protection Issue

ExxonMobil recently defeated a suit from the New York attorney general seeking to hold the company accountable for misleading statements made to investors about the impact of climate change on its business. That suit was brought under securities laws, but in Massachusetts, Attorney General Maura Healey is suing the oil giant under state consumer protection law.

This suit is the culmination of Healey's three-year investigation into Exxon. While it does allege that Exxon deceived investors about climate-related risks to its business, it also accuses the company of misleading consumers about how its fossil fuel products contribute to climate change and pushing deceptive "greenwashing" advertisements that promote the company as environmentally responsible.

Konanova said that in light of the defeat of the securities claims in New York, “whether companies can be held liable for deceiving consumers about climate change is the next frontier that we’re going to be watching very closely.”

A related battle is whether the case belongs in state or federal court, Konanova said. Exxon has removed the action to federal court as it seeks to use federal law preemption to get the claims tossed, while the attorney general wants the case remanded given the state law claims at issue.

Read the full article in Law360.

More About Konanova’s Practice

Named a “Rising Star” in consumer protection by Law360, Yelena (“Lena”) Konanova counsels Fortune 500 companies on the prosecution and defense of high-stakes disputes. She represents important players in the clean energy industry in proceedings against governmental and competitor entities, litigates complex financial products, and advises plaintiffs on the recovery of billions of dollars in commercial matters.

Learn more about her work and experience here.

Attorney

- Lena Konanova