

LG Wins Bid To Arbitrate Defective-Phone Fight

By **Melissa Daniels**

Law360, Los Angeles (June 29, 2017, 8:23 PM EDT) -- LG Electronics USA Inc. on Thursday won a bid to arbitrate claims in a putative class action alleging a defect caused certain phones to get stuck in a loop of crashing and rebooting, after a California federal judge found the consumers had adequate notice of the company's "in the box" arbitration agreement.

The phones at issue contained a limited warranty agreement inside the case that included a provision requiring disputes between consumers and LG to be resolved by binding arbitration, unless the consumer opts out within 30 days.

U.S. District Judge Michael Fitzgerald said five of eight named plaintiffs conceded their claims must be arbitrated because the phones' box notified them of the arbitration clause. Three others who bought LG G4's didn't see the box when they bought their phone, nor did it include a similar notification, but Judge Fitzgerald ruled they were put on notice based on *Hill V. Gateway 2000 Inc.*, a Seventh Circuit case from 1997.

"The agreement here, which could be found inside the box of the product, gave plaintiffs 30 days to return the product or opt out of the arbitration clause," the judge said. "Plaintiffs chose to keep the phones without opting out. As a result, the court agrees with defendants that plaintiffs have assented to the agreement found inside the box, including the arbitration clause."

The order dismissed the claims without prejudice, saying the parties hadn't addressed the question of whether the case should be stayed or dismissed.

Attorney for the plaintiffs, Adam E. Polk of Girard Gibbs LLP, told Law360 on Thursday they are evaluating their next steps and the possibility of seeking relief from the order.

"While we disagree with the court's finding that our clients had adequate notice of the arbitration clause, this is not the end of the road for these plaintiffs," Polk said. "We have been engaged by a substantial number of consumers who bought these defective LG phones. Our clients suffered real injuries, for which we intend to seek relief in arbitration."

The operative complaint brought a slew of state and federal warranty and consumer protection claims on behalf of a national class and subclasses for California, Washington, Florida and Illinois. The named plaintiffs, who spanned seven states, claimed they bought LG phones with a bootloop defect that caused them to crash without warning and be rendered inoperable.

LG moved to compel arbitration in May of this year, arguing its arbitration agreement is provided in the box containing the products and was enforceable given that the consumers had notice and an opportunity to reject the terms if they wished.

Thursday's order said the plaintiffs' allegations made it clear they were aware of the terms associated with LG's warranty.

"The [first amended complaint] alleges that the warranty period is one year, that the phones manifested defects both during and outside the warranty period, and that LG publicly acknowledged the phone's warranty in 2016," Judge Fitzgerald said. "Plaintiffs' familiarity with the warranty and its terms further supports the court's conclusion that plaintiffs were on notice of the terms and the associated arbitration agreement."

While a California-based plaintiff could argue that the Hill holding didn't apply to them, it applies to the other states at issue, LG said.

In a statement sent to Law360 on Thursday, LG's attorney Archis Parasharami said counsel is pleased with the court's ruling. LG's arbitration provision gives consumers a "simple, accessible and effective way" to resolve their disputes, he said.

"Notably, it was undisputed that the procedures under LG's agreement are fair to individual consumers," he said. "And the Court rejected plaintiffs' argument that the Ninth Circuit's recent decision in *Norcia v. Samsung Telecommunications of America* required a denial of LG's arbitration motion. Instead, the Court held that the three plaintiffs who had challenged the arbitration motion were bound by the terms provided in their product packages."

The plaintiffs and the proposed class are represented by Polk, Daniel C. Girard, Jordan Elias and Simon S. Grille of Girard Gibbs LLP and Joseph G. Sauder and Matthew D. Schelkopf of McCune Wright Arevalo LLP.

LG is represented by John Nadolenco, Andrew S. Decarlow, Archis A. Parasharami and Daniel E. Jones of Mayer Brown.

The case is *Meagan Chamberlain et al. v. LG Electronics USA Inc. et al.*, case number 2:17-cv-02046-MWF-PLA, in the U.S. District court for the Central District of Los Angeles.

--Editing by Philip Shea.

Update: This story has been updated to include comment from LG's counsel.