



LAW.COM

Select **'Print'** in your browser menu to print this document.

Copyright 2008 ALM Properties, Inc. All rights reserved.

Page printed from: <http://www.law.com>

[Back to Article](#)

Reversal of Heart Valve Class Action Called 'Disturbing'

Pamela A. MacLean
The National Law Journal
04-15-2008

The second appellate reversal of class certification for 11,000 Americans who received allegedly faulty heart valves was a "disturbing decision" that may curtail use of consumer class actions under Minnesota law, according to plaintiffs' attorneys.

The 8th U.S. Circuit Court of Appeals overturned a national class action certification in a defective products case, saying each plaintiff would have to show a link between any reliance on St. Jude Medical Inc. claims about the valve and subsequent injury under a Minnesota Supreme Court decision.

A different panel of the 8th Circuit earlier rejected class certification for a health "monitoring class" in the case, *In re: St. Judge Medical, Inc., Silzone Heart Valve Products Liability Litigation*, 2008 WL942274.

"This is a very disturbing decision with several major implications," said James Capretz, the plaintiffs' attorney with Capretz & Associates of Newport Beach, Calif. "The claimants will be filing for en banc review on several points," he said.

"This interpretation [of *Group Health Plan, Inc. v. Philip Morris Inc.*, 621 N.W. 2d 2 (Minn. 2001)] will destroy the ability to have consumer class actions in Minnesota. It wipes out Minnesota law in that regard," Capretz said.

He added that the circuit ducked the larger constitutional question of whether one state consumer fraud law can be applied to a nationwide class.

For those reasons, he said he would seek the full court's review.

St. Jude attorney Steve Kohn of Reed Smith in Oakland, Calif., responded, "It has been St. Jude Medical's position all along that class actions are an inappropriate means of resolving these lawsuits, and we believe the decision is the correct ruling for all parties."

He added he was pleased with the 8th Circuit's reversal of the order certifying the class in the multidistrict litigation over the heart valve.

He declined additional comment.

The lawsuit alleged that three years after their 1997 introduction, the St. Jude Medical Silzone heart valves were found to have a defective silver coating that made people sick. Lawsuits were filed that alleged St. Jude Medical was negligent in research and development of the valve and marketed it without proper research.

The 8th Circuit panel said that while the Minnesota decision in the Group Health case "does not require the plaintiffs to present direct proof of individual reliance, Group Health surely does not prohibit St. Jude from presenting direct evidence that an individual plaintiff (or his or her physician) did not rely on representations from St. Jude."

More than 36,000 were believed to have been implanted worldwide, according to the allegations. St. Jude announced a voluntary worldwide recall on all the products with the Silzone coating and many people had replacement surgeries.

There are also lawsuits in Europe and Canada related to the valve problems, according to the class claims.



Capretz said the injuries are serious enough to merit individual claims against the company should the class action ultimately be denied.