

# Eighth Circuit Cites Wiley Rein's *Amicus* Brief in *Perras v. H&R Block* Decision, Denying Class Certification

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June 18, 2015

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Washington, DC — Today the U.S. Court of Appeals for the Eighth Circuit ruled in *Perras v. H&R Block*, denying class certification to Ronald Perras and a putative class of others similarly situated, thereby affirming the decision of the U.S. District Court for the Western District of Missouri (Kansas City). Wiley Rein LLP represented the U.S. Chamber of Commerce in the case as *amicus curiae*, addressing whether the court could apply the law of a single state—in this instance, the forum state of Missouri—to the claims of class members from all around the country. A team comprised of founding partner Bert W. Rein, Laura A. Foggan, chair of Wiley Rein's Insurance Appellate Group, and associate Jennifer A. Williams filed the brief.

The case challenged a compliance fee imposed by H&R Block. H&R's headquarters are located in Missouri, where it designed and implemented the compliance fee; however, every aspect of the transactions for which the class action sought relief took place in each class member's home state. Wiley Rein pointed out that forum state's law unquestionably conflicted with the laws of other states, and that the question presented had both constitutional dimensions and important practical implications for interstate businesses, which plan their activities with the reasonable expectation that transactions will be governed by the law of a state with significant contacts with

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the transaction at issue.

In footnote 6, the Eighth Circuit explicitly quoted from Wiley Rein's *amicus* brief for the U.S. Chamber of Commerce, stating "We acknowledge Missouri's interest in policing the corporations located within its borders, and the broad scope of the [Missouri Merchandising Practice Act (MMPA)] corroborates that interest. But, as the U.S. Chamber of Commerce notes in its *amicus* brief, 'other states also have an interest in protecting their local consumers in transactions with foreign corporations.' Given that H&R's challenged conduct occurred in each class member's home state, and the MMPA does not cover those out-of-state transactions, the claims of each member belong in a lawsuit brought under those local consumer-protection laws."

The district court had concluded that Perras failed to meet the predominance requirement because each potential class member's claim would be governed not by the laws of Missouri but by the laws of the class member's home state, analyzing the claims under the Due Process and Full Faith and Credit Clauses of the U.S. Constitution. Heeding the "'longstanding principle of judicial restraint'" counseling against unnecessarily deciding constitutional issues, the Eighth Circuit addressed the question based on the scope of the state law involved here, the MMPA. It found that the MMPA did not reach the conduct at issue in the class members' claims.

The Eighth Circuit held that "the law applicable to each class member would be the consumer-protection statute of that member's state. Thus, questions of law common to the class members do not predominate over any individual questions of law. The district court did not abuse its discretion in concluding that the class action does not meet the predominance requirement."

The decision is an important one for interstate businesses, which plan their activities with the reasonable expectation that transactions will be governed by the law of a state where a contract is made and/or with significant contacts with the transaction at issue.

News of the ruling was reported in *The National Law Journal*.