KCC Class Action Services

KCC Class Action Digest
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As part of our commitment to practitioners, KCC provides this resource on decisions related to class action litigation in state and federal court.

In addition to industry resources, KCC offers interactive CLE-accredited courses geared toward class action settlement administration and legal notification, some of which carry Professional Responsibility CLE credit. Go to *www.kccllc.com/class-action/insights/continuing-education* to learn more about our courses and schedule a CLE for your law firm or industry event.

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CIVIL RIGHTS

Detainees

Mulvania v. Sheriff of Rock Island County, No. 16-cv-1711, 2017 WL 935884 (7th Cir. Mar. 9, 2017) (Hamilton, J.)
Female detainee brought suit under §1983 against a county and its sheriff, alleging use of excessive force in strip searches and unconscionable underwear policies, among other claims. After the United States District Court for the Central District of Illinois denied class certification on grounds of a failure of predominance and numerosity (and issued other rulings on procedural matters), Plaintiffs appealed.

The Seventh Circuit ultimately affirmed the district court's denial of class certification. In support of its decision, the Court focused on numerosity and predominance. In terms of predominance, the Court found fault in the district court's holding that individualized issues in calculating damages would predominate over common issues, thus justifying denial of certification, reasoning with citation to precedent that where such issues arise with respect to damages, a district court may bifurcate the litigation into a liability phase and a damages phase.

While the Court held that the district court's ruling on predominance was in error, the Court found that error ultimately harmless to the final outcome in light of correctly judged problems with numerosity. In that regard, the Court also found that the district court had correctly determined that numerosity was not satisfied, in that Plaintiff had failed to address challenges to the calculation of the class size and class period (which depended in part on when the complaint was filed), as well as impracticability of joinder then or on this appeal. While Plaintiff had cited a Seventh Circuit case (*Arreola v. Godinez*) in support of a longer relation back period for the class to the initial complaint, the Court found this case did not stand for the proposition claimed, and that Plaintiff had cited no authority to support the argument. Accordingly, the Court did not err in denying certification on numerosity grounds for a class calculated at 29 members.

CONSUMER

Products

Eike v. Allergan, Inc., No. 16-3334, 2017 WL 881834 (7th Cir. Mar. 6, 2017) (Posner, J.)
Plaintiffs brought suit against pharmaceutical companies alleging the size of eye drops dispensed for prescription medication was too large, so as to violate consumer laws in two states. Eight classes were certified and Defendant appealed.

The Court vacated the certification and remanded the case to be dismissed with prejudice, reasoning in support of its decision that there was ultimately no cause of action or injury where the drop size had a reasonable basis in biology and had been approved by the FDA. The Court reasoned that Plaintiffs could take up the issue with the FDA, whose determinations a court may review, but not bypass that so as to make safety and efficacy evaluations of eye drops, or to force companies to make different sizes of their product.

EMPLOYMENT

Security Officers

Hudson v. Protech Security Group, Inc., No. 15-cv-11046, 2017 WL 690548 (N.D. Ill. Feb. 21, 2017) (Schenkier, J.)
Security officers and patrol personnel brought suit for violations of the Fair Labor Standards Act ("FLSA") and state wage laws against their employer, alleging unpaid overtime due to misclassification as independent contractors. Plaintiff sought conditional FLSA certification.

The Court granted conditional certification and directed notice be postponed pending discussion. The Court noted that its decision was supported by: (1) payroll records and data tables; (2) admission by the Defendant that it may have paid various bonus payments in lieu of proper overtime pay; (3) an affidavit by Plaintiff attesting that he was classified as an independent contractor; and (4) an admission from Defendant that some employees were classified as independent contractors, sometimes based on the employee's choice. The Court found that this evidence supported the claim sufficiently to show that similarly situated employees may have been subject to a policy of misclassification, therefore justifying conditional certification. The Court then resolved certain disputes concerning the proposed opt-in notice, declining to limit the group to receive notice, and gave the parties the opportunity to meet and confer to resolve those issues.

Uniform Costs

Balderrama-Baca v. Clarence Davids & Co., No. 15-cv-5873, 2017 WL 951385 (N.D. Ill. Mar. 10, 2017) (Lee, J.)
Plaintiffs brought suit against a landscaper, alleging violations of the FLSA and state wage law for failing to pay for off-the-clock work and uniform costs that were deducted from Plaintiffs' paychecks. Plaintiffs sought class certification of the state law claims.

After modifying the proposed class definition, the Court granted the motion. Reasoning in support of its decision, the Court found 150 class members to be sufficient for numerosity, and turned to commonality. There, the Court rejected Defendant's contention that uniform deduction policies changed several times (such that class members did not share a common question of law and fact), reasoning that this fact would simply require subclasses for purposes of satisfying commonality. While Defendant also argued that class members may have had a variety of deduction amounts among them, as well as varied in terms of retaining the company policy or signing authorization forms, the Court found that these factors affected damages rather than class certification. Typicality, predominance, and superiority were satisfied under similar logic.

WARN Act

Carlberg v. Guam Industrial Servs., No. 14-cv-00002, 2017 WL 903457 (D. Guam Mar. 7, 2017) (Tydingco-Gatewood, J.)
Plaintiff brought suit against a former employer, alleging violation of the Worker Adjustment and Retraining Notification ("WARN") Act as well as gross negligence, seeking lost wages and punitive damages. Plaintiffs sought class certification.

The Court granted the request, reasoning in support of its decision that numerosity was satisfied on grounds that the class exceeded 150 class members, noting that the WARN Act only applied to employers with 100 employees or more. In terms of commonality, the Court found numerous questions of law and fact stemming from a common core of facts to be sufficient. Similarly, Plaintiffs' claims were typical of those of the class, and

in fact identical. The Court also found adequacy satisfied in light of a lack of conflicts between Plaintiffs and the class, and counsel being well-qualified. For ascertainability, the Court evaluated the class definition and found it satisfactory.

Turning then to Rule 23(b)(3) predominance, the Court found that common questions predominated, in that issues alleged in the case were identical for each employee. The Court further concluded the class treatment was superior to other methods of adjudication.

FAIR DEBT COLLECTION PRACTICES ACT

Settlement

Jallo v. Resurgent Capital Services, L.P., No. 14-cv-00449, 2017 WL 914291 (E.D. Tex. Mar. 7, 2017) (Mazzant, J.)
Plaintiff debtors brought suit against Defendants, alleging violations of the Fair Debt Collection Practices Act ("FDCPA") and certain state debt collection laws. After reaching a settlement, the parties moved for final approval of the terms of the settlement.

The Court granted the motion, noting in support of its decision that the payment to be made by Defendant represented more monetary relief than what the FDCPA would allow for each class member, in addition to all costs and fees, and refunds of post-charge interest payments and Plaintiff's incentive award. Accordingly, the Court approved the settlement.

INSURANCE

Personal Injury Claims

Durant v. State Farm Mutual Automobile Ins. Co., No. 15-cv-01710, 2017 WL 950588 (W.D. Wash. Mar. 9, 2017) (Jones, J.)
Plaintiff brought suit against an insurance company, claiming violations of statutory and common law after the company allegedly unreasonably denied coverage for personal injury claims after Plaintiff's costs reached a certain provisional threshold. After Defendant removed the case to federal court, Plaintiff sought class certification.

The Court granted the request. In support of its decision, the Court first found numerosity satisfied on grounds that approximately 3,000 claims were denied under the same standard. In terms of commonality, the Court found it satisfied on grounds of allegations that Defendant engaged in the same conduct toward each class member, such that common questions could be resolved on a common basis. Similar logic applied to typicality, as Plaintiff's claim was the same as all other class members. While the Court considered Defendant's contention that Plaintiff lacked standing or a cognizable injury in that he had already settled other claims, and received more care than necessary, the Court rejected those contentions, finding the settlement of other claims irrelevant, and that the question at issue was not the amount of care received, but the standard chosen to determine the amount of care to be provided.

Turning next to predominance, the Court reasoned that the common issues in the case would resolve the majority of the causes of action, and while damages might require a more individualized review, class-wide adjudication of the claims themselves was appropriate. That damages may vary was also not fatal to class

certification. In terms of superiority, while Defendant argued that Plaintiff's claim should have been brought in arbitration first, the Court found the arbitration requirement applied only to cases involving less than $50,000 in damages, and Plaintiff sought $8 million. Class treatment was thus a more efficient means of dispute resolution.

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The voting period is scheduled to run through **Monday, April 10, 2017**.

KCC appreciates your vote!

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