KCC Class Action Services

# KCC Class Action Digest
July 2018

KCC Class Action Services partners with counsel to deliver high-quality, cost-effective notice and settlement administration services. Recognized as Best Claims Administrator by *The Recorder, The National Law Journal*, and *The New York Law Journal*, KCC has earned the trust and confidence of our clients with our track record as a highly responsive partner.

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.

## INSIDE THIS ISSUE




This KCC Class Action Digest is provided by Patrick Ivie, Executive Vice President Class Action Services.

To request a proposal, or schedule a CLE, contact Patrick at 310.776.7385 or pivie@kccllc.com.

@KCC_ClassAction

## EMPLOYMENT

### *Tip Pooling*

*Pataki v. The Brigantine, Inc.,* No. 17-cv-00352, 2018 WL 3020159 (S.D. Cal. Jun. 18, 2018) (Curiel, J.)
Plaintiffs brought wage action against their employer, claiming that a tip pooling policy violated the Fair Labor Standards Act ("FLSA") and various California laws. Plaintiffs moved for conditional certification of a FLSA class and for preliminary approval of a settlement.

The Court granted the motion, reviewing the agreement for fairness and finding that: (1) it was the result of non-collusive negotiations; (2) no obvious deficiencies existed and the risks were outweighed by the potential benefits; and (3) the agreement was fair to the class, in proportion to the amount of tips reported and calculated.

Looking next at certification, the Court found that 800 potential members satisfied numerosity, and commonality was satisfied by Defendant's common policy. Typicality was similarly satisfied, and adequacy, predominance and superiority were satisfied in simple fashion.

### *Insurance Analysts*

*Andreas-Moses v. Hartford Fire Ins. Co.,* No. 17-cv-2019, 2018 WL 3015010 (M.D. Fla. Jun. 18, 2018) (Dalton, J.)
Insurance analysts brought suit against their employer, claiming unpaid overtime and statutory damages due to their misclassification as exempt. Plaintiffs sought class certification.

The Court granted the motion in part (merits only) and denied it in part (damages). Reasoning in support of its decision, the Court found numerosity satisfied by virtue of there being between 68 and 116 potential class members. For commonality, the Court found Defendant's policy of classifying employee types as exempt or non-exempt sufficient to show a common claim. For typicality, Plaintiffs were found to have the same legal claim as all class members, but the Court noted that the types of employees included were factually distinct, and removed types of employees not included among the named Plaintiffs.

In terms of predominance, the Court found common proof would be sufficiently available to prove the merits of the case. However, the Court decided to amend the class definition on grounds that the dating of the company policies at question did not match the class period. The Court then decided to bifurcate the merits case from the damages case due to the need for individual inquiries in showing which class members had worked overtime in which given weeks; Plaintiffs' damages expert had written in the report that the model used would require this type of inquiry. Finally, for superiority, the Court found the merits case proceeding as a common proof case favorable to having mini-trials, and noted no manageability concerns

## OIL & GAS

*Appalachian Land Co. v. Equitable Production Co.,* No. 08-cv-139, 2018 WL 3097318 (E.D. Ky. Jun. 22, 2018) (Caldwell, J.)
Plaintiff brought suit concerning a dispute over an oil and gas lease and royalties agreement, specifically pertaining to the terms of tax payments. Defendant moved to dismiss, and Plaintiff moved for partial summary judgment, fees and costs, and certification.

The Court denied Defendant's motion, and granted in part Plaintiff's motions. Relevant here, the Court found that while Defendant argued that it had tendered reimbursement checks to the class, Plaintiff argued the result was a rejected settlement offer. Construing the motion in the light most favorable to the Plaintiff, the Court found the claims not mooted, leaving Plaintiff as having stated a proper claim for relief, and the Court denied the motion.

In terms of certification, the Court excluded class members from 1993-1994, citing problems with identifying them from land records alone, which would require additional individual inquiries. The Court then looked at the two classes remaining: first, as to standing for the class of lessors who had cashed their reimbursement checks, Plaintiff had argued prejudgment interest and fees remained at issue. However, the Court found no likelihood of a coming judgment to collect any interest on, and that the class would lack standing to pursue this if there were. The Court also found superiority to be lacking with regard to class members who had already been made whole, and declined to require a clawback of funds already received by those class members or force those class members to litigate issues anew.

For the second class, lessors who had not cashed their checks, the Court decided to certify the class, finding numerosity, commonality, typicality, and adequacy met by 893 members and the same injury and claims, and predominance and superiority sufficiently satisfied.

## SETTLEMENT ISSUES

### *Fee Award Calculation*

*In re: Target Corporation Customer Data Security Breach Litigation,* No. 15-3909, 15-3912, 16-1203, 16-1245, 16-1408, 2018 WL 2945973 (8th Cir. Jun. 13, 2018) (Shepherd, J.)
After a consumer class action against a retailer based on a third-party hacking their personal and financial information from the company was settled and a class certified, Objectors challenged the settlement in the United States District Court for the District of Minnesota, and were overruled. Objectors appealed, and the Eighth Circuit reversed and remanded. Class certification was again granted, and Objectors again appealed.

The Eighth Circuit affirmed the district court's order, reasoning in support of its decision first that an objector's contention that the district court had fundamentally misunderstood the structure of the agreement (as purportedly evidenced by the Court commenting that zero-loss subclass members would receive a share of the settlement, despite the agreement's terms), none of the district court's conclusions were rooted in those statements.

The Court likewise rejected an objector's contention that there existed an intra-class conflict between the injured and non-injured members, referring to the United States Supreme Court's ruling in *Amchem Prods. Inc v. Windsor*, for the proposition that when the whole subclass had the same risk of harm, it was not necessary to have separate counsel to avoid a conflict.

The Court next rejected an objector's contention that it was error for the district court to allow calculation of attorneys' fees based on the overall fund rather than one reduced by the costs of notice and administration. The Court declined to follow the Seventh Circuit's approach on the topic, finding that the fee award was consistent with the lodestar and percentage methods, justified by the time spent, and well within the range of prior settlements.

The Court also rejected an objector's arguments concerning the existence of clear-sailing and kicker clauses, observing that they were negated by objector's own arguments and lacked any demonstrated support in law or the evidence.

## TELEPHONE CONSUMER PROTECTION ACT

### *Calls*

*Karpilovsky v. All Web Leads, Inc.,* No. 17-cv-1307, 2018 WL 3108884 (N.D. Ill. Jun. 25, 2018) (Leinenweber, J.)
Plaintiffs brought suit for violation of the Telephone Consumer Protection Act ("TCPA") against Defendant, alleging deceptive marketing practices. Plaintiffs moved for class certification, and Defendant moved to exclude Plaintiff's expert report.

The Court granted certification, and denied Defendant's motion. Reasoning in support of its decision, the Court first looked at Defendant's *Daubert* motion, and found the expert in question had considerable experience and used reliable methodology, and any merits questions on the weight of the testimony were not under review at this juncture, justifying denial of that motion.

Turning to class certification, the Court first identified the threshold issues of consent and standing, and found standing had been met by the statutory claims under the TCPA. In terms of numerosity, the Court found two million members sufficient. For commonality, the Court found that the question of whether the Defendant violated the TCPA to be sufficient. For typicality, the Court found the same claims sufficient.

Looking next at adequacy, while Defendant argued that Plaintiffs were subject to unique defenses, the Court found this contention to ignore the key question of whether Defendant violated the TCPA. Defendant also argued that one plaintiff was not seeking damages and that another does not understand the nuances of his own case, which the Court rejected as either or both untrue and unnecessary.

In terms of Rule 23(b)(3) predominance, the Court found Defendant's vague assertions about consent could not allege individualized issues as predominant, and found this element met. The Court then found superiority met by judicial efficiency.

Looking next at ascertainability, the Court found the definition of the class was based on actually identifying the numbers in question from Defendant's call data, satisfying ascertainability.

## Vote for KCC in the *Legal Times's* Reader Ranking

KCC Class Action Services would appreciate your vote as the "Best Claims Administrator" for the *Legal Times's Best of* reader poll. Thanks to the support of our clients and colleagues, we have been recognized in the past.

Our high-quality, cost-effective notice and settlement administration services have been recognized by *The National Law Journal, The Recorder*, *The New Jersey Law Journal's*, among other leading publications. KCC has earned the trust and confidence of our clients with our track record as a highly-responsive partner.

Please show your support and visit
https://www.surveymonkey.com/r/BestofLT2018?src=EMC-Email&cn=BestofLegalTimes2018&bu=NLJ&pt=&et=promotion
Vote for KCC on question 54 (Best Claims Administrator).
The voting period is scheduled to run through **August 24, 2018**.
KCC appreciates your vote!

With experience administering over 6,500 settlements, KCC's team knows first-hand the intricacies of class action settlement administration. At the onset of each engagement, we develop a plan to efficiently and cost-effectively implement the terms of the settlement. Our domestic infrastructure, the largest in the industry, includes a 900-seat call center and document production capabilities that handle hundreds of millions of documents annually. In addition, last year, our disbursement services team distributed over half a trillion dollars.

Lead Editor of KCC Class Action Digest: Robert DeWitte, Sr. Director Class Action Services