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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.

INSIDE THIS ISSUE

Employment	pg. 1
Fair Debt Collection Practices Act	pg. 1
Insurance	pg. 2
Securities	pg. 2



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EMPLOYMENT

Security Inspections

Heredia v. Eddie Bauer LLC, No. 16-cv-06236 (N.D. Cal. Jan. 10, 2018) (Freeman, J.)

Employee brought suit against her former retailer employer, alleging she was not paid for time spent during security inspections conducted according to company policy, in violation of state labor laws. Plaintiff sought class certification.

The Court granted the motion, reasoning in support of its decision that Defendant's records were sufficient to satisfy ascertainability and numerosity in that they identified over 1,000 class members. Turning next to commonality, the Court found that a number of common issues existed relating to Defendant's policies, whether those policies were uniformly applied, whether the time in question was compensable, and whether the policies were put into practice in Plaintiff's workplace. While Defendant argued that individual issues were at stake due to the variance in bags to be searched or lack thereof, the Court ruled that the written policy did not distinguish or exclude any one, and thus commonality was met.

In terms of typicality and adequacy, the Court found Plaintiff typical despite being unaware of the written policy, as she was subjected to it. Adequacy was similarly satisfied.

Turning then to Rule 23(b)(3) predominance, Defendant again claimed that predominance was defeated by virtue of the fact that individualized inquiries into the types of bags searched and time differences in searching different bags would be required, and cited a Central District of California case, *Ogiamen v. Nordstrom, Inc.*, in support. The Court distinguished that case on grounds that the employees in that matter were subject to random searches, not searches by company policy, which made the searches in this case predominate.

FAIR DEBT COLLECTION PRACTICES ACT

Alderman v. GC Services Limited Partnership, No. 16-cv-14508, 2018 WL 542455 (S.D. Fla. Jan. 19, 2018) (Rosenberg, J.)

Plaintiff brought suit for violation of the Fair Debt Collection Practices Act ("FDCPA"), alleging that Defendant's form demand letter did not inform debtors to dispute their debt in writing. Plaintiff sought class certification.

The Court granted the motion, reasoning in support of its decision that ascertainability was satisfied on grounds that class membership was based on objective criteria, and could be determined from Defendant's business records. Looking next at numerosity, the Court found 19,973 letters were sent to the class, which were all standardized in form. For commonality, the Court found Defendant's conduct upon the class as a whole was the key issue, and the litigation raised common claims concerning violation of the FDCPA. In terms of typicality, Defendant argued that Plaintiff was atypical in suffering only statutory damages and not actual damages. The Court found this insufficient to hold Plaintiff atypical in relation to class members with actual damages claims, who could opt out if they wished. In terms of adequacy, the Court found counsel was qualified, and that while Defendant contended that Plaintiff did not have specific knowledge of the case, the Court was nonetheless satisfied by Plaintiff's declaration attesting an understanding of the duties of a class representative.

In terms of predominance, the Court found that the only issues in the case were common claims for violation of the FDCPA, and as such common issues predominated.

INSURANCE

Auto Insurance

Jenkins v. State Farm Mutual Automobile Ins. Co., No. 15-cv-5508, 2018 WL 526993 (W.D. Wash. Jan. 24, 2018) (Settle, J.)

Plaintiffs brought suit alleging that diminished value claims for auto accident insurance coverage were improperly not paid. Among the matters for disposition before the Court was Plaintiffs' motion for class certification.

The Court denied certification, reasoning in support of its decision that in terms of the challenged elements of Rule 23, commonality was satisfied by virtue of the claims involving the implementation and structure of the insurance plan in relation to the entire class at issue. For typicality, the Court found one plaintiff to be typical on one claim, but not on an underinsured motorist claim on which he had been partially compensated. For another plaintiff, the Court found that he had never completed his claim forms after due notice and was therefore atypical.

Turning next to evaluate Rule 23(b)(3) predominance, the Court reasoned that there were too many individual issues for determining the diminished value of each vehicle in the case, including (1) history of prior accidents; (2) variance of individual claims sought; and (3) the question of whether compensation had already been paid within other all-encompassing insurance payouts. The Court found these were not just damages issues, but significant liability issues which involved unique legal questions and unique defenses. Defendant had cited numerous similar cases, but the Court found that none were authoritative or applicable so as to bind the Court in this matter. Accordingly, the Court found predominance was not met, and denied class certification.

SECURITIES

Omission

West Virginia Pipe Trades Health & Welfare Fund v. Medtronic, Inc., No. 13-cv-1686, 2018 WL 620383 (D. Minn. Jan. 30, 2018) (Tunheim, J.)

Investors brought a securities fraud suit against a medical device company and its officers, alleging losses from relying on omissions made in developing a medical product. Plaintiffs sought class certification.

The Court granted the request, first reasoning in support of its decision that numerosity was satisfied on grounds of there having been 6.5 million shares purchased or sold during the class period. The Court next found commonality satisfied by virtue of the nature of the securities claim as a common question, and then found typicality satisfied due to the fact that all the purchases in question were made within the proposed class period.

Turning then to Rule 23(b)(3) predominance, the Court considered several key issues. First, the Court addressed the issue of reliance, considering whether the misrepresentation in question involved affirmative statements, or instead omissions, which would allow for application of a presumption of reliance pursuant to *Affiliated Ute*. Plaintiffs argued that Defendants had paid the authors of their underlying studies for fourteen years to misrepresent the product specifications, constituting an omission of the truth. Here, the Court looked to a Southern District of New York decision, *Fogarazzo v. Lehman Bros. Inc.*, which held that nondisclosure of underlying *quid pro quo* agreements constituted an omission for reliance purposes. The Court found that the same situation was before it in this case and that the *Affiliated Ute* presumption thus applied. Next, the Court

considered whether Plaintiffs' expert had submitted a sufficient model to address class-wide damages, and found that this had been done. Accordingly, predominance was satisfied.

The Court then turned its attention to the proposed class period, ruling that the class period should be limited by the date of the alleged corrective disclosures being made public by a source (not necessarily the company itself making an official public statement), in line with the United States Supreme Court's decision in *Erica P. John Fund, Inc. v. Halliburton Co. (Halliburton II)*.

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