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INSIDE THIS ISSUE

Consumer	pg. 1
Employee Retirement Income Security Act	pg. 2
Fair Debt Collection Practices Act	pg. 2
Telephone Consumer Protection Act	pg. 3
Securities	pg. 3



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CONSUMER

Payday Loans

Riley v. MoneyMutual, LLC, No. 16-cv-4001, 2019 WL 174948 (D. Minn. Jan. 11, 2019) (Frank, J.)
Plaintiffs brought suit against a lending company, alleging the company lacked a lending license and had offered payday loans with extremely high interest rates in violation of Minnesota statutes and common law. Plaintiffs moved for certification.

The Court granted the motion, reasoning in support of its decision first that numerosity was uncontested. The Court then found typicality, commonality, and predominance initially met, but asked whether issues of disclosure, reliance, and damages could be resolved by common proof. The Court found that most of these questions were statutory and involved policies and practices allegedly imposed by Defendant upon the class. The Court also found that damages could be bifurcated from liability issues, but that in this case, most damages could be calculated by resort to a common model.

In terms of adequacy, while the Court found counsel's qualifications undisputed, it considered Defendant's claim that Plaintiffs lacked credibility to the point of inadequacy, citing the fact that they were in financial distress when they took out the loans. The Court found that this quality actually made them typical of the class, and that Defendants' financial status concerns regardless were speculative. The Court also found a class action to be the superior method of adjudicating the underlying litigation.

Driver's Privacy Protection Act

Wilcox v. Swapp, No. 17-cv-275, 2019 WL 334773 (E.D. Wash. Jan. 25, 2019) (Peterson, J.)
Plaintiff brought suit against the creator of traffic collision reports for soliciting legal services related to personal injuries suffered in traffic collisions, alleging violations of the Driver's Privacy Protection Act ("DPPA"). Plaintiff moved for certification.

The Court granted the motion, reasoning in support of its decision first that numerosity was undisputed, and second that there were sufficient common issues alleged. As far as typicality, while Defendants argued that Plaintiff's claim was unique due to the physical injuries she suffered, the Court found the claims were typical for the whole class as the injury at issue was due to Defendants' actions upon the whole class. The Court found that Defendants' other arguments on typicality did not evince a need for a narrower class definition, or call Plaintiff's credibility into question.

After noting that adequacy was also not in dispute, the Court turned to predominance. Here, the Court rejected Defendants' contention that individual issues would predominate as to the individual reports created and Defendants' knowledge specific to each class member's information. Here, the Court reasoned that the proposed class definition eliminated the need for individualized questions about the reports, and that the specific knowledge requirement only dealt with the knowledge that the information was knowingly obtained, such that it was not an individualized question. Defendants also argued that damages were individualized, but the Court found that Plaintiff already conceded that it would seek the statutory minimum for damages.

After noting that ascertainability was satisfied by virtue of the fact that the class could be identified by objective criteria which were clear and definite, the Court also found superiority satisfied, observing that contrary to Defendants' contentions that (1) a class action would cause more harm by invasion of privacy than by allowing individual suits, and that (2) individual recovery for DPPA claims would be higher than the typical class action suit, the statute defined the harm as the acquisition of the information, and not the emotional damages from its exposure. The Court also found the individual recoveries unlikely, as many class members might be unaware of their information being acquired and used by Defendants, and the costs would be multiplied for multiple cases.

EMPLOYEE RETIREMENT INCOME SECURITY ACT

Fees

Cunningham v. Cornell University, No. 16-cv-6525, 2019 WL 275827 (S.D.N.Y. Jan. 22, 2019) (Castel, J.) Plaintiff employees brought suit against a university and its financial advisors, alleging violation of the Employee Retirement Income Security Act on grounds of alleged imprudent management of retirement plans and allowing excessive fees to accrue. Plaintiffs sought class certification.

The Court granted the motion, reasoning in support of its decision that standing was satisfied despite Defendants' contention that Plaintiffs did not show investments in each of the hundreds of plan investments. The Court found this was not necessary, as Plaintiffs had shown "injury-in-fact" in the investments, as members of a plan group of investors who had suffered from Defendants' breach of fiduciary duty upon the class as a whole. For claims involving specific investments only, the Court found at least one Plaintiff had invested in each of those investments. As such, Plaintiffs satisfied standing.

In terms of numerosity, the Court found it satisfied by virtue of there being more than 28,000 members. Commonality was satisfied by virtue of the Court's finding that the claims at issue stemmed from Defendants' fiduciary duties to the class as a whole, and thus involved various common questions. The Court also found that any unique defenses that might be raised were not the focus of the litigation and did not preclude certification. The Court also ruled that narrowing the class based on a statute of limitations argument was not necessary at this time, but could form a basis for decertification later. The Court therefore found that commonality was met, typicality was also met by the same commonality basis, and that variations between accounts did not destroy typicality.

In terms of adequacy, the Court found it undisputed and confirmed that Plaintiff and counsel were adequate.

Finally, in terms of Rule 23(b)(1), the Court found that the allegations dealt with the plan as a whole, and as such, individual adjudications could lead to inconsistent obligations. Defendants argued a need for individual analyses, but the Court found this only dealt with the individual investments, not the plan at large. Thus, the Court found certification proper under Rule 23(b)(1)(A) and 23(b)(1)(B).

FAIR DEBT COLLECTION PRACTICES ACT

Morrison v. Clear Management Solutions, No. 17-cv-51, 2019 WL 122905 (D. Utah Jan. 7, 2019) (Waddoups, J.)

Plaintiff brought suit for violation of the Fair Debt Collection Practices Act ("FDCPA") and Utah state law against a debt collection company, alleging that collection letters were issued in violation of relevant notice requirements. Defendant moved for summary judgment, and Plaintiff filed a motion for certification and for summary judgment.

Relevant here, the Court granted the motion for certification in part and denied it in part. Looking first at the motion for certification, the Court found numerosity met by an estimate of 40,887 class members. For commonality, the Court found it satisfied by virtue of the facts that (1) the same letter had been issued to the class as a whole, and (2) the alleged FDCPA violations stemmed from that action. In terms of typicality, the Court followed the same logic to find Plaintiff's claims typical. For adequacy, the Court found no conflict and that Plaintiff would vigorously prosecute the action with qualified counsel.

Turning next to Rule 23(b), the Court considered Plaintiff's request for a hybrid injunctive/equitable relief class under subsections (2) and (3). In terms of 23(b)(2) for injunctive relief, the Court found that although the FDCPA did not provide this as a remedy (thus making class certification under this claim inappropriate), the

Utah state law did, and that it would be applicable for the class as a whole. In terms of 23(b)(3), the Court found that common questions would predominate even with separate statutes, by virtue of shared applicable facts. Accordingly, the applicable classes were certified.

TELEPHONE CONSUMER PROTECTION ACT

Text Messages

Bauman v. Saxe, No. 14-cv-01125, 2019 WL 157923 (D. Nev. Jan. 10, 2019) (Boulware, J.)
Plaintiffs brought suit for violation of the Telephone Consumer Protection Act (“TCPA”) and Nevada state law against Defendants, alleging they had received automatic text advertisements after expressly declining consent. Defendants claimed that consent was renewed by signature of a written terms and conditions statement. Plaintiff moved for certification, and one Defendant moved for sanctions.

Relevant here, the Court granted certification in part and denied it in part. Reasoning in support of its decision, the Court first evaluated the proposed class definition, and found it overbroad, including as it did class members who were unable to recover under the TCPA, and narrowed the class appropriately. The Court also found a need to divide the remainder into subclasses due to a 2013 FCC requirement concerning TCPA consent, and then again once more based on those who signed a particular form and those who did not, for a total of four subclasses.

Turning to the requirements of Rule 23, the Court found numerosity satisfied on the basis of 120,000 phone numbers at issue. For commonality, the Court found the TCPA issues were common questions. For typicality and adequacy, the Court found Plaintiffs were adequate for two subclasses, and left it pending for the other subclasses to add representatives. For Rule 23(b)(2), the Court found that it could be necessary to order injunctive relief should Plaintiffs prevail, even though Defendants’ policy has been discontinued, and certified the class under this provision. The Court also found under Rule 23(b)(3) that the TCPA liability issues and statutory damages were common questions that would predominate, and that superiority was met by the likelihood of small individual recoveries and efficiency of common adjudication. As such the Court certified the class under this provision as well.

The Court also looked specifically at Nevada Deceptive Trade Practices Act claims and found these involved issues of causation in requiring class members to be victims of fraud. The Court denied certification on this claim.

SECURITIES

In re: Sunedison, Inc. Securities Litigation, No. 16-md-2742, 16-cv-7917, 2019 WL 117315 (S.D.N.Y. Jan. 7, 2019) (Castel, J.)

Plaintiffs, retirement systems, brought securities claims against Defendant Sunedison, Inc. and other Defendants allegedly involved in public misstatements. Plaintiffs moved for certification, and Defendants counter-moved to dismiss the certification motion.

The Court granted certification in part and denied it in part. Reasoning in support of its decision, the Court first looked at the proposed class definition, and found it was overbroad, such that it was necessary to modify the class into two subclasses between purchasers of preferred and common stock. The Court also modified the class period to a shorter duration based on the timing of Defendants’ disclosures on the Securities Act claim, but found it inappropriate to modify the period for the Securities Exchange Act claim.

In terms of Rule 23, the Court looked at each claim separately, beginning with the Securities Act claim. For numerosity, Plaintiffs argued 650,000 shares of preferred stock traded in the class period was sufficient, but Defendants argued these shares belonged to only 22 “families” of purchasers. The Court could not determine the identity of these “families” from the record, and allowed for the estimate to be as low as 42, but found 42 was sufficiently numerous. For commonality and typicality, the Court found the case revolved around one set of misrepresentations or omissions for all class members, and that a common methodology would prove all issues. For adequacy, the Court found Plaintiffs and counsel sufficient.

In terms of Rule 23(b)(3) predominance, Plaintiffs argued the common questions turned on the materiality of the statements or omissions made, while Defendants contended that individual knowledge was a key factor of proof. The Court deemed Defendants’ position speculative, and found predominance satisfied. In terms of superiority, the Court found judicial efficiency sufficient.

Looking next at the Securities Exchange Act claim, the Court found numerosity met by 48.9 million shares traded in the period of common stock. For commonality and typicality, the Court found the common questions revolved around whether the statement made was materially false or misleading upon the whole class. For adequacy, the Court found both Plaintiffs and counsel qualified. For predominance, the Court found the falsity of the statement and the knowledge of Defendants to be common questions that would predominate. As above, the Court also found superiority met for reasons of judicial efficiency.

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