KCC Class Action Services

KCC Class Action Digest

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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.

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CIVIL RIGHTS

Detainees

Driver v. Marion County Sheriff, No. 16-4239, 2017 WL 2590516 (7th Cir. June 15, 2017) (Rovner, J.)
Plaintiffs brought §1983 case alleging Fourth Amendment violations by the sheriff's department on grounds of failure to release detained individuals in a timely fashion due to a policy or practice related to systems used to track detained individuals. After the United States District Court for the Southern District of Indiana granted in part and denied in part a motion for class certification, Plaintiffs sought review under Rule 23(f).

The Seventh Circuit vacated the denial aspect of the district court's ruling and remanded the case. Reasoning in support of its decision, the Court considered the two main disputed issues, which related to (1) detainees held for fewer than 48 hours, and (2) detainees held longer than 48 hours.

For those detained for fewer than 48 hours, the district court had used a 48-hour reasonability threshold presumption to apply a different standard of analysis for those who had been released within that time period, and thus denied certification of that subclass on predominance. However, the Court noted that this presumption really only applied to accused persons who had been arrested without cause for further detainment, and not to the class in this case, which was comprised of people completing a sentence or who were acquitted at trial. Rather, the Court found that these class members qualified for immediate release, but were delayed by the processing policies. The Court therefore found it was an abuse of discretion to deny certification on predominance due to the need to review individual cases for the length of time detained consistent with the above logic. The Defendant also argued that its policy was constitutional, and argued that the question of constitutionality should be reviewed immediately, as it overlapped with Rule 23 and the merits. While the Seventh Circuit acknowledged that such issues do sometimes overlap, it noted that a Rule 23 motion was not the same as a summary judgment proceeding.

In terms of the group of people detained longer than 48 hours (allegedly due to a specific computer software used), the district court had denied certification of this subclass on ascertainability grounds, citing how the system made it difficult to ascertain who had been detained too long. The Court found this to be an abuse of discretion, reasoning that such rationale actually supported certifying the entire class, rather than denying a subclass, as the system at issue caused the excessive detainments across the board. Defendant also argued that there was insufficient evidence to prove the computer software problem involved a policy or practice at issue, but the Court found there had been submitted sufficient evidence on that point for the merits issue to be weighed at the proper time, which was outside of this certification motion.

CLASS CERTIFICATION

Ohio

Konarzewski v. Ganley, Inc., No. 104681, 2017 WL 2590553 (Ohio Ct. App. June 15, 2017) (Gallagher, J.)
Plaintiffs brought suit against vehicle purchasers under Ohio consumer laws and negligence / fraud claims, alleging the use of misleading form documents for contracts. After Plaintiffs won partial summary judgment and a previous motion for certification was denied on definition problems, the trial court granted a motion for certification under Rule 23, and Defendants appealed.

The Court reversed and remanded the certification's ruling on predominance. Reasoning in support of its decision, the Court focused on the key issue, which was whether Plaintiffs could show (as required by the applicable Ohio consumer statute) that each class member had actual damages. The Court found that this question goes to predominance in terms of how individualized damages must be ascertained, a factor the trial court ignored in its determination. The Court found the trial court had erred in certifying a class when it had not found that (1) common proof would apply over the individualized issues; or (2) that the statutory requirement to show individualized damages was met.

The Court then looked at Plaintiffs' argument that a benefit of the bargain analysis could overcome these issues, finding it insufficient, as it did not meet the concrete requirement to show actual damages. The Court also took issue with ascertainability, in that without an individualized determination having been made that could show which class members suffered actual damages, it was impossible to identify the class under the statutory requirement.

EMPLOYEE RETIREMENT INCOME SECURITY ACT

Retirement Investments

Urakhchin v. Allianz Asset Management of America, L.P., No. 15-cv-1614, 2017 WL 2655678 (C.D. Cal. June 15, 2017) (Staton, J.)
Plaintiffs brought suit on behalf of investment fund participants against an investment company, alleging violation of the Employee Retirement Income Security Act as well as breach of fiduciary duty and other claims. Plaintiffs filed a motion for certification.

The Court granted the motion. Reasoning in support of its decision, the Court first considered standing, finding that Plaintiffs had alleged a proper injury-in-fact by claiming Defendants had managed their fund to their own benefit at the participants' expense. While Defendants argued that not all the class members could be shown to have standing, the Court found that doing so was not required.

Turning next to numerosity, the Court found the plan's approximately 4,000 participants to be sufficiently numerous. Commonality was uncontested, and the Court also found typicality satisfied on grounds that all class members were participants in a single plan managed at once, offering the same menu of investment options.

In terms of adequacy, while the Court found Plaintiffs had no conflicts of interest, and that although Defendant disputed whether Plaintiffs possessed adequate knowledge and ability to participate in the litigation, there was no knowledge requirement. In terms of adequacy of counsel, however, the Court reserved its ruling until Plaintiffs named individual attorneys instead of the names of two law firms.

Plaintiffs sought to certify the class pursuant to Rule 23(b)(1)(B), and the Court found that a sufficient risk of inconsistent adjudication for the class members existed to justify certification. The Court reasoned that any judgment would necessarily affect every member of the plan who shared in the fund, as well as its fiduciaries. The Court did however find that the injunctive relief sought was not proper for the whole class, as former plan participants were not at a real risk of future injury from Defendants. Accordingly, the Court certified a class for monetary damages, and a subclass for injunctive relief.

The Court also determined that for notice and opt-out provisions, neither was required under Rule 23(b)(1)(B), but allowed for notice to issue due to Defendants' concerns about due process. The Court instructed the parties to meet and confer on these issues, and advised them to review the Federal Judicial Center's checklist for class action notices.

Covered Service Claims

Roches v. California Physicians' Service, No. 16-cv-02848, 2017 WL 2591874 (N.D. Cal. June 15, 2017) (Koh, J.)
Plaintiffs brought suit against health insurers for violation of ERISA, alleging that Defendants made unnecessarily restrictive medical determinations about covered service claims due to Defendants' adherence

to a stricter definition of "medically necessary" than otherwise generally accepted. Plaintiffs sought class certification under Rule 23(b)(1) and (b)(2).

The Court granted the motion, reasoning first in support of its decision that numerosity was satisfied on grounds of there being over 7,000 class members. The Court also found commonality satisfied due to numerous common issues related to the insurers' status and duties as ERISA fiduciaries, as well as common questions concerning whether injunctive and declaratory relief would resolve the class issues. In the course of finding commonality satisfied, the Court rejected Defendants' arguments that (1) individualized inquiry was required for each class member (reasoning that case law did not require this where the relief sought was injunctive and declaratory as a precursor to re-processing the claims, as it was here); (2) that the pertinent guidelines were never adhered to rigidly (reasoning that this was irrelevant, as the class included only those whose claims were denied under overly strict guidelines and after appeals, rather than claims approved under lax application); (3) that some class members had not exhausted the appeals process for their claims (reasoning that since Plaintiffs had done this, it was sufficient to certify a class action evaluating that factor down the line for the class); (4) that joinder of self-funded plan administrators was required by case law (reasoning that the Court found this was only for monetary damages, not for solely injunctive and declaratory relief); and (5) that different plans used different standards of review (reasoning that the issue was not each individual plan's application, but whether all guidelines were consistent with ERISA). Accordingly, commonality was satisfied.

The Court then addressed typicality, rejecting Defendant's contentions that (1) the pertinent guidelines changed annually as to standards of care for each injury (reasoning that the question did not concern specific injuries, but rather guideline terms applying to all plans); (2) standing was not met by Plaintiffs, due to an employee's offer to wipe out the balance if it was not covered (reasoning that this was unenforceable, and that the debt remained).

In terms of Rule 23(b), the Court first considered whether additional suits by other class members could result in conflicting and contradictory obligations on the Defendants, found that it would, and thus that certification was appropriate. The Court also considered whether Defendants had acted on class-wide grounds so as to render injunctive or declaratory relief appropriate, and certified the class under this provision as well. However, while Defendants argued that the request to reprocess claims was improper, and that ascertainability was not met, the Court found sufficient case law showing the request was proper, and that ascertainability was not a requirement under 23(b)(2). The Court also agreed with Defendants' argument that the class lacked standing for future injunctive relief; Defendants had changed their guidelines, and it had not been shown Defendants were likely to return to those guidelines in the future.

EMPLOYMENT

Fair Labor Standards Act

Dekeyser v. Thyssenkrupp Waupaca, Inc., No. 16-2159, 2017 WL 2676765 (7th Cir. June 22, 2017) (Posner, J.)
Plaintiff brought suit against its employer, a foundry, alleging violations of the Fair Labor Standards Act ("FLSA") on grounds that Defendant failed to account for post-work decontamination procedures in hourly pay. The United States District Court for the Eastern District of Wisconsin had granted FLSA conditional certification, with the caveat that it would have to find grounds for Rule 23 class certification later. After class members from three states had an opportunity to opt in, Defendant moved for decertification, and Plaintiff sought Rule 23 certification on certain state law claims. The district court certified a Wisconsin class under Rule 23 and three separate state subclasses under the FLSA, and then severed the FLSA cases and transferred them to their respective states. Defendant sought interlocutory review of the Rule 23 certification under Rule 23(f).

The Seventh Circuit affirmed the orders, reasoning in support of its decision that although Defendant contended commonality was not satisfied, in fact, Plaintiff had presented sufficient evidence as to the need for decontamination due to a risk of health problems to all employees, satisfying commonality. The Court also rejected as improper Defendant's contention that the district court erred by severing and transferring the FLSA claims, reasoning that Rule 23(f) appeals dealt solely with issues affecting Rule 23 certification. Nonetheless, the Court found the district court's decision valid as an appropriate exercise of discretion under 28 U.S.C. §1404(a).

MOOTNESS

Rule 67 and Rule 68

Fulton Dental, LLC v. Bisco, Inc., No. 16-3574, 2017 WL 2641124 (7th Cir. June 20, 2017) (Wood, J.)
Plaintiff brought suit for violation of the Telephone Consumer Protection Act ("TCPA") on grounds of unsolicited faxes. Plaintiff sought class certification, whereupon Defendant alleged it had already mooted the case pursuant to Rule 67 by depositing funds with the United States District Court for the Northern District of Illinois. The district court therefore dismissed the case, and Plaintiff appealed.

The Seventh Circuit reversed the ruling and remanded the case, reasoning in support of its decision that if defendants could force settlements and moot underlying claims in this manner, it would in effect require a district court to tender payment to satisfy a judgment that it could never enter on the merits of the claim, which would create an unworkable procedure that would end with the escheat or return of the deposited funds. The Court found instead that the issue was better understood as an affirmative defense question of satisfaction of interest under Rule 68, and thus applied the holding of the United States Supreme Court's *Campbell-Ewald v. Gomez* ruling that an unaccepted Rule 68 offer cannot moot a case. The Court found Rule 67 was merely an authorization to deposit money with a court in escrow, and did not create a right for Plaintiffs to collect that deposit, nor did it affect the underlying claims so as to moot them.

The Seventh Circuit also noted that per its ruling in *Chapman v. First Index, Inc.*, allowing this type of pickoff exception to moot an underlying claim would render injustice to the putative class, and could not be allowed in the interest of justice.

The Court then resolved the appeal by finding that the class certification motion was still permissible if made prior to the acceptance of a settlement offer, or before the merits of a case were decided. Accordingly, the Court found that the district court had erred in dismissing the case on mootness without hearing the pending certification motion.

SECURITIES

In re Cobalt International Energy, Inc. Securities Litigation, No. 14-cv-3428, 2017 WL 2608243 (S.D. Tex. June 15, 2017)
Plaintiffs sued an oil and gas exploration company, alleging securities related claims due to issues involving a Foreign Corrupt Practices Act investigation and concern over whether Defendant had rights to where it drilled. Plaintiffs sought class certification.

The Court granted the request, reasoning in support of its decision first that numerosity was satisfied on the basis of the fact that Defendant had 350 million shares outstanding among more than 600 investors. In terms of commonality, the Court found several common issues, including whether Defendant made misrepresentations about key facts that were stated to the class as a whole.

Turning to typicality, the Court rejected Defendant's contention that one putative class representative had suffered no damages and was not in sync with the class as a claimant, reasoning that Defendant admitted that the other plaintiffs as a whole were typical of the class. For similar reasons, the Court found adequacy satisfied.

Turning then to predominance under Rule 23(b)(3), while Defendant argued that individual issues would predominate relating to actual knowledge and the facts and reliance behind each Plaintiff's purchases, in terms of actual knowledge, the Court found Defendant had made no showing of evidence to assert that any plaintiff had actual knowledge of the truth that had been misrepresented. Further, Defendant had not shown that Plaintiffs were not entitled to the fraud-on-the-market presumption of reliance. The Court also noted that Defendant's other predominance arguments went to the merits or were otherwise issues not properly before the Court, and that Defendant's sub-argument about ascertainability was both not a requirement for class certification, and would nonetheless have been satisfied.

SETTLEMENT ISSUES

Fees and Treatment of Administrative Costs

Keil v. Blue Buffalo Co., Ltd., Nos. 16-3159, 16-3164, 16-3167, 16-3169, 2017 WL 2856629 (8th Cir. July 5, 2017) (Gruender, J.)
Plaintiffs brought suit against a pet food company, alleging mislabeling and other consumer claims. After a settlement was reached and the United States District Court for the Eastern District of Missouri approved the agreement and fee award, certain objectors appealed.

The Eighth Circuit affirmed the district court's ruling, rejecting Objectors' contentions in the process. The Court first rejected the argument that the district court omitted analysis of two factors pertaining to the Eighth Circuit's relevant jurisprudence, reasoning that while this was true, the record was otherwise sufficient to find the overall settlement fair and reasonable. The Court next found that all other relevant factors had been met, as the settlement would provide substantial benefit in light of the litigation risk, the Defendant's financial condition was sufficient to pay the award, and the litigation was sufficiently complex and expensive to raise concern, and the opposition to the settlement was proportionally low. The Court then rejected Objectors' contention that since the state law claims different between each state in terms of damages, the settlement was uneven, reasoning that no case law supported the underlying argument, and that the award amount was fairly reached on its own merits.

Objectors also contended that the fee award was not reasonable in light of the alternative lodestar approach and the number of claims submitted, which the Court rejected on grounds that Objectors cited no case law requiring such an analysis, and given that the settlement allowed no reversion, the district court's treatment was reasonable. The Court also rejected Objectors' contention that the district court should have applied the Seventh Circuit's method of calculating fee awards as detailed in *Redman v. RadioShack Corp*., which excludes notice and administration costs from the amounts available for fee calculation, finding that Eighth Circuit case law allowed district courts the discretion to include those costs in the calculation.

Finally, the Court considered Objectors' argument that fees could not be approved without giving class members the opportunity to respond to counsel's fee motion under Rule 23(h) (the objection deadline was a month prior to the submission of counsel's fee motion), and while acknowledging a circuit split on the issue, the Court found that the statutory terms required the opportunity to object to the fee motion prior to the close of an objection deadline, so that objectors might have the time to review the data at issue and respond. The Court therefore found that the district court erred in failing to give this period to objectors, but nevertheless found that error to be harmless, and that the same result would have obtained.

Incentive Awards

Saska v. Metropolitan Museum of Art, No. 650775/2013, 2017 WL 2623938 (N.Y. June 15, 2017) (Staton, J.)
Plaintiffs sued museum for failing to enforce the “pay what you wish” policy for admission consistently, in that the sign was not sufficient notice and Plaintiffs thought they had to pay what was actually a suggested price. The parties moved for final settlement approval, with injunctive relief the only issue remaining to settle.

The Court granted the motion as for the settlement and attorney’s fees requested, but denied it in part as to the incentive awards. Reasoning in support of its decision, the Court looked at the settlement for reasonableness, based on five “black letter law” factors. Looking at Plaintiffs’ likeliness to succeed, and nature of legal and factual issues, the Court found that since the injunctive relief requested had already been performed (in Defendant adopting a new court-approved sign), these factors favored approval. Looking next at the extent of parties’ support, judgment of counsel, and good faith bargaining, the Court found all of these factors had been sufficiently shown as well.

The Court then recognized that because this was cause for non-monetary relief, additional factors were required by the New York Supreme Court precedent of *Gordon v. Verizon Communications, Inc.*; the Court looked at the best interest of the class as a whole and of the company, and found that in both circumstances the settlement relief was favorable to both sides.

The Court then looked at objections by additional plaintiffs but found them without any merit, finding that no evidence of collusion by counsel had been presented. The Court also found the case was not similar to merger tax cases with disclosure-only settlement agreements, and that this case did not resemble such cases.

Looking next at the fee award of $350,000 for counsel, the Court found that the evidence showed this amount was justified by the billing and work completed on the case, and that counsel had likely not profited much on the case.

The Court then looked at Plaintiffs’ request for $1,000 each as an incentive award and found it reasonable, but that the relevant court rule (CPLR 909) did not permit incentive awards to be issued in a settlement approval ruling, and thus the awards could not be granted.

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