KCC Class Action Services

KCC Class Action Digest
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EMPLOYMENT

Fair Labor Standards Act

Glatt v. Fox Searchlight Pictures, Inc., Nos. 12-cv-4478 & 12-cv-4481, 2015 WL 4033018 (2nd Cir. July 2, 2015) (Walker, Jr., J.).
Unpaid interns brought suit for alleged violations of the Fair Labor Standards Act and New York Labor Law, specifically alleging that Defendant failed to compensate them as employees as required under minimum wage and overtime provisions. After the United States District Court for the Southern District of New York granted Plaintiffs' motion for partial summary judgment, and certified a New York class and conditionally certified a nationwide collective action, Defendant appealed.

On appeal, the Second Circuit vacated the district court's order granting partial summary judgment to Plaintiffs, vacated its order certifying the New York class, vacated its order conditionally certifying the nationwide collective action, and remanded for further proceedings.

After explaining its basis for vacating the summary judgment ruling, the Court turned to class and collective action certification. First addressing the New York class, the Court determined that the district court misconstrued applicable standards for determining when common questions predominate over individualized ones, and that in this case, common issues did not predominate over individualized issues. In support of this conclusion, the Court reasoned that while evidence suggesting that Defendants sometimes used unpaid interns in place of paid employees is relevant, it is not dispositive of whether each intern was an employee, which would be a highly individualized inquiry. The Court reasoned that common evidence would not help determine (1) whether a given internship was tied to an education program; (2) whether and what type of training the intern received; and (3) whether the intern continued to work beyond the primary period of learning, along with other questions relevant to each class member's case. In contrast, the Court indicated that Defendant provided undisputed evidence that demonstrated that the internship program it offered differed substantially across many departments, and in the Court's view, the most important question in the litigation—whether each intern was an employee—could not be answered with generalized proof.

In terms of the collective action certification, the Court vacated and remanded the district court's order conditionally certifying the proposed nationwide collective action, reasoning that Plaintiffs in the proposed collective action are not similarly situated even under the minimal pre-discovery standard. The Court further pointed out that courts must consider individual aspects of a given intern's experience under the applicable test, and given the nationwide scope, the proposed collective action actually presented a wider range of experience than a limited New York class would have, creating other hurdles to certification.

Insurance Claim Analysts

Monserrate v. Hartford Fire Ins. Co., No. 14-cv-149, 2015 WL 4068388 (M.D. Fla. July 2, 2015) (Dalton, Jr., J.).
Employee claim analysts brought suit against Hartford Fire Insurance for alleged violations of the Fair Labor Standards Act ("FLSA"). Specifically, Plaintiffs claim Defendant willfully misclassified them as exempt from the FLSA's overtime provisions and correspondingly refused to pay them overtime compensation for hours worked over 40. Plaintiffs sought conditional certification of a collective action of all analysts nationwide.

The Court granted certification of a more localized class, directed Defendant to disclose contact information for all relevant analysts, and also directed Plaintiffs to file a revised proposed notice and a revised consent-to-join form. In support of its decision, the Court first addressed the applicable standards governing collective action certification, namely that movants must have a reasonable basis for claiming that other employees are (1) interested in joining the suit; and (2) similarly situated. While Plaintiffs sought to certify a nationwide suit, the Court found Plaintiffs did not meet their threshold burden of demonstrating actual interest in joining the suit on

behalf of analysts on a national scale, reasoning that they did not provide affidavits, consents to join or other evidence from any non-named employee who worked outside of Florida. The Court noted further however that Plaintiffs did succeed in demonstrating localized interest with affidavits from employees at two Florida offices, and therefore conditionally certified a localized class.

The Court further reasoned that Plaintiffs satisfied the similarly-situated requirement based on their assertion that all analysts were salaried and routinely not paid overtime compensation. Plaintiffs further contended that all analysts in question investigated and analyzed insured's claims and made adjudicatory recommendations to their supervisors, and that the analysts' jobs only superficially required them to exercise discretion and independent judgment with interview scripts, form letters and a comprehensive policy and procedure manual, which they closely followed. The Court further noted that five non-named employees who expressed interest in opting into the action worked as salaried claims analysts for over 40 hours without overtime compensation, also relied on the same provided resources, used little independent judgment, and thus had materially similar circumstances as the named plaintiffs.

Turning then to the question of notice, the Court permitted Plaintiffs to file a revised proposed notice and a revised consent-to-join form, but found the proposed contact information disclosure to be overbroad, and thus revised it to pertain only to analysts at the two facilities in Florida employed within three years of the issuance of the court order. The Court also required other revisions.

GOVERNMENT BENEFITS

Social Security

Greenberg v. Colvin, No. 13-cv-1837, 2015 WL 4078042 (D.D.C. July 1, 2015) (Collyer, J.).
Social Security beneficiaries brought a class action suit against the Social Security Administration ("SSA") and Acting Commissioner Carolyn W. Colvin in her official capacity, alleging that a provision of the Windfall Elimination Provision (WEP) unlawfully reduced claimants' SSA benefits. Specifically, the provision serves to reduce OASDI benefits when the claimant was also entitled to a monthly pension from NII Old Age Benefits for earnings not covered under Social Security. After the parties reached a Settlement Agreement and Consent Judgment that allowed the SSA to calculate the monies paid to class members, the Court explained its reasoning.

The Court found that the Settlement Agreement and Consent Judgment was fair, reasonable and adequate and that class counsel was entitled to a fee award of 20% of each payment of past-due benefits as a result of the class action. In support of its decision, the Court reasoned that the agreement was reached after arms' length negotiation: both parties demonstrated their legal abilities, class counsel engaged in informal discovery regarding the reduction in benefits suffered, class counsel has a history of investigating the claims in this action, there is no sign of collusion, and the agreement reflects compromises by both parties. The Court further concluded that the terms of the settlement in relation to the strength of Plaintiff's case were justified here in that the relief obtained—the SSA agreeing to pay each member the full amount that was deducted and overpayments assessed since 2004—was significant, and supported approval of the settlement.

The Court also noted that the settlement was appropriate because (1) delay to final resolution to the case given the aging population is of particular concern; (2) the SSA could conceivably challenge the settlement for certain class members based on their failure to appeal the final decision within 60 days; (3) the stage of the litigation at the time of the settlement was appropriate because even though settlement was reached relatively quickly, the SSA was aware of the claim underlying the class action since 2001, and the parties engaged in informal discovery and participated in extensive negotiations with realistic assessments of their potential recovery and exposure; (4) the reaction of the class was overwhelmingly positive because a

significant number of settlement claim review requests have already been submitted after ten weeks, and class counsel has an abundance of positive comments from class members, with the only objections being to the fee request; (5) class counsel and counsel for Defendants believe the settlement is fair. The Court also noted that there is no need for an allocation plan because the contemplated methodology (having the SSA provide the monetary relief to class members) is rational and no class member has objected.

Turning then to the question of fees, the Court found 20% (rather than 25%) to be a reasonable attorney fee, because (1) there is no indication a 20% fee would yield an unjustified windfall to class counsel; (2) there was no indication the quality of representation was insufficient; (3) there was no indication that 20% is significantly disproportionate to the hours spent working on the case; (4) the size of the fund and persons benefitted is sufficiently significant to warrant a higher fee award than in other matters; (5) the number of class members who may opt out and the number who will end up receiving benefits is not known with certainty at this time; (6) even though Class Counsel is skilled and worked approximately 1,600 hours on the case at the time the application was filed, based on conservative estimates, 20% is a more appropriate fee award; (7) even though there was a legitimate risk the SSA would still fail to change its practices as indicated by its failure to do so after previous litigation, and neither class certification nor approval of the settlement by the DOJ was guaranteed, the overall lesser risk borne by class counsel here justifies 20% because the SSA already agreed the previous litigation would apply to recipients of NII benefits subjected to WEP, and the SSA agreed with Plaintiffs on the merits of the case soon after filing. The Court noted in closing that a 20% award is in line with other attorney fee awards in common fund class action lawsuits.

PRODUCT DEFECT

Playground Equipment

City of Huntington Park v. Landscape Structures, No. 14-cv-00419, 2015 WL 3948411 (C.D. Cal. June 27, 2015) (Phillips, J.).
Purchasers, owners, installers and distributors of playground pad surfaces brought suit against manufacturers and sellers for alleged breach of warranty under California Business and Professions Code §17200 and unfair competition on grounds that Defendants allegedly did not live up to marketed representations that their products would not crack, fade or degrade for several years. Plaintiffs sought certification of a class of purchasers that had PebbleFlex of AquaFlex installed in playgrounds or other surfaces in California.

The Court denied Plaintiffs' motion for class certification on grounds of numerosity, typicality, adequacy of representation and superiority requirements. The Court did first addressed the question of ascertainability, finding that although Defendant did not contest ascertainability, the members of the proposed class were ascertainable from sales materials, purchase contracts, and repair orders, as well as other documentation.

The Court then turned to Rule 23(a), and found that it was not satisfied. Looking first to numerosity, the Court took issue with Plaintiffs' proposed method of combining the two companies' installation projects, on grounds that owners of projects contracted through one defendant would not have standing to pursue claims against the other defendant and vice versa. Here, because one defendant had sold its product line to the other, the Court lacked sufficient information to undertake a full analysis of the de facto merger doctrine to determine whether it was appropriate to treat the sales of the two defendants as consolidated for numerosity purposes. Numerosity was therefore not satisfied.

Turning then to commonality, the Court found it satisfied, reasoning that even though PebbleFlex and AquaFlex are manufactured and installed differently, and it would be difficult to resolve whether the products were defective in one analysis, common questions remain regarding (1) whether the warranties disseminated were

false; (2) questions surrounding identical representations in sales brochures; and (3) whether Plaintiffs relied on the representations and whether failures were a result of the quality of the product itself or acts of vandalism. The Court further ruled that Plaintiffs need not show that public and private entities relied on the representations in identical ways, and also that varying damage calculations in the repair claims alone cannot defeat class certification.

In terms of typicality, the Court found it unsatisfied, ruling that even though issues surrounding whether the products were installed correctly or subject to vandalism are not unique defenses, the proposed class representatives do not own AquaFlex, and the products in question were manufactured differently. The Court found similarly on the adequacy of representation requirement, reasoning that absent typicality, the proposed class representatives do not have the same incentives to prosecute all the claims vigorously, and thus found adequacy lacking.

Turning then to Rule 23(b)(3) predominance, the Court found it satisfied, reasoning that common issues narrowly predominate—that is, even though any inquiry into oral representations will differ by deal, sales representative and product, and individualized inquiries are required regarding vandalism, reasonable inferences can be made based on the written representations that the representations were in fact similar. For similar reasons as those concerning typicality, the Court found superiority unsatisfied, noting that there are a number of issues specific to individual purchasers, and numerosity was not satisfied.

SETTLEMENT ISSUES

Intervention by Insurer

CE Design Ltd. v. King Supply Co., LLC, No. 12-2930, 2015 WL 3941449 (7th Cir. June 29, 2015) (Posner, J.). The recipient of an unsolicited fax brought suit for alleged violations of the Telephone Consumer Protection Act against a manufacturer. After the Seventh Circuit Court of Appeals vacated and remanded a grant of class certification by the United States District Court for the Northern District of Illinois, the parties reached a settlement agreement. The manufacturer's insurer sought to intervene after the settlement was reached, but before the district court approved it.

The Seventh Circuit agreed with the district court that the insurers' motion to intervene was untimely, reasoning that the insurers should have raised their concern about potential collusion between class counsel and Defendant in reaching a settlement at the outset of the case—a risk noted by courts. The Seventh Circuit reasoned additionally that further extension of this multi-year litigation by granting intervention would effectively put the case where it was at the start of litigation. Furthermore, the insurers had reason to believe the litigation could harm their interests from the start, and an intervenor must move to intervene as soon as it knows that its interests might be adversely affected by the outcome of the litigation.

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