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CONSUMER

Labeling

In re Coca-Cola Products Marketing & Sales Practices Litigation, No. 14-md-02555, 2020 WL 759388 (N.D. Cal. Feb. 14, 2020) (White, J.)

Plaintiffs brought multidistrict litigation against related soft drink company entities, alleging misleading the public about artificial flavors and chemical preservatives, invoking various statutory violations and common law claims. Plaintiffs then brought a motion for class certification.

The Court granted the motion in part and denied in part, reasoning in support of its decision that in terms of the common law claims, class certification could not be maintained due to unaddressed variances between jurisdictions and because Plaintiffs had not demonstrated how any damages under these claims would be incidental to seeking injunctive relief.

Turning to Rule 23(b)(2), the Court questioned whether injunctive relief was needed to resolve the nature of using phosphoric acid in Coca-Cola, and found that Plaintiffs could not have a true understanding of what the statements on the labels mean after reviewing the history of their use. Therefore, the Court looked at each class representative by state, and found each had standing to seek injunctive relief on behalf of a class there. The Court also looked at whether three Plaintiffs had standing to bring some additional statutory claims without showing an ascertainable loss, found this was a merits question, and addressed it under commonality.

Looking then to Rule 23(a), the Court found numerosity was met by virtue of there being at least 1,000 members in each class. After finding adequacy undisputed, the Court turned to commonality, finding the question of whether phosphoric acid is used as an artificial flavor or as a preservative. The Court then looked at whether Plaintiffs could offer class-wide proof so as to establish materiality of statements, and found in each claim that commonality was met, including on the statutory claim challenged above on standing grounds. The Court then found typicality was met for the same reasons, and because all claims arose from the same course of conduct.

EMPLOYMENT

Wages

Hernandez v. Sysco Corp., No. 16-cv-06723, 2020 WL 533005 (N.D. Cal. Feb. 3, 2020) (Corley, J.)

Plaintiff brought state law wage claims against his former employers, alleging a failure to provide rest and meal breaks, minimum wage pay, and accurate statements. Defendants removed the matter to federal court, where the overtime claim was dismissed. Plaintiff sought class certification of the other claims.

The Court denied in part as to the break claims and granted in part on the remaining claims. Reasoning in support of its decision, the Court first noted Plaintiff's objections to Defendant's purported expert witness testimony, and decided not to consider that testimony with respect to the class certification motion.

The Court considered Rule 23 predominance and superiority first, deeming those standards more demanding than those in 23(a). With respect to the break claims, the Court found that the question of whether Defendants discouraged breaks by way of policies rewarding maximum productivity had not been demonstrated by Plaintiff as answerable on a class-wide basis. Accordingly, the Court found that individualized issues in determining this factor would predominate over common issues. Looking next at off-the-clock claims, the Court found these did meet predominance, and did not involve the same individualized analysis as the break claims.

The Court then turned to Rule 23(a) and found the off-the-clock claim satisfied numerosity and commonality, and that Plaintiff's claim was typical with the class claim. The Court also found Plaintiff to be adequate, rejecting the argument that his termination led to an improper animus against Defendants so as to render him inadequate. The Court then looked at superiority and found no manageability problems or likely interest in individual litigation, and granted certification on this claim. The claims derivative of the core wage claim were also certified by virtue of the same analysis.

GOVERNMENT

Franchise Fees

Houser v. City of Billings, No. DA 19-0277, 2020 WL 1024791 (Mont. Mar. 3, 2020) (Baker, J.)
Plaintiff franchise operators sued city government, alleging that franchise fees the city imposed constituted unlawful sales taxes, asserting claims for breach of contract, restitution, and due process violations. Plaintiffs moved for certification and the lower court certified three classes. The Defendant appealed.

The Court affirmed, reviewing commonality as the sole disputed issue under Rule 23(a). In that regard, the Court rejected Defendant's argument that one of the classes included members barred by statute of limitations who were not "common to the class," finding that the common question was the legality of the franchise fee, and that the statute of limitations did not defeat commonality.

The Court then considered Defendant's argument that the lower court failed to exclude claims derived from legislative acts which fall under immunity. The Court agreed with Plaintiffs instead, finding commonality from the fact that all Plaintiffs alleged the exact same causes of action, and that any legislative immunity would impact all members in the same degree.

Turning next to Rule 23(b)(2), the Court reviewed whether the lower court abused its discretion to certify these classes for injunctive or declaratory relief, arguing that it had express statutory authority to declare municipal taxes illegal and provide injunctive relief. The Court found the lower court had correctly found that Plaintiffs' argument about past practices of Defendant stated a proper basis for injunctive relief under Rule 23(b)(2). Defendant also argued that seeking injunctive relief was moot, in that it no longer charged franchise fees, which the Court rejected as a basis for denial of certification in that the outcome of that question would apply equally to all class members.

Turning then to Rule 23(b)(3), while Defendant argued that predominance could not exist when claims are based in both legislative and administrative acts, the Court found the common question in the case predominated over any individual questions, and that the lower court did not abuse its discretion.

HAZARDOUS MATERIALS

Reeves v. Explo Systems, Inc., No. 53,219-CA, 2020 WL 1036311 (La. Ct. App. Mar. 4, 2020) (Garrett, J.)
After Defendant's explosives storage exploded, residents of a Louisiana town brought suit against the storage company under a variety of claims. Defendant was found to be storing high quantities improperly, and a voluntary evacuation order was issued. The lower court certified a class action, and Defendant appealed, arguing Plaintiffs had failed to satisfy any requirements under state civil procedure to certify a class of mass tort plaintiffs.

The Court reversed, reasoning in support of its decision that in terms of numerosity, the Court found that Plaintiffs did not show sufficient evidence of impracticability of joinder, and found that simply alleging the possibility that people might be in the class was not enough. The Court found the lower court abused its discretion in finding numerosity.

Turning then to commonality, the Court found that although a mass tort case did not require damages to be common to all members, it was still required to prove individual causation of each member based on the same operative facts and law. The Court found Plaintiffs had not shown common questions, particularly because the case revolved around separate events in time, and there was no common nucleus of operative facts for all class members. The Court found the lower court abused its discretion in finding commonality arising solely from the explosion itself. The Court then found the lower court had abused its discretion on typicality, adequacy, and definability (ascertainability), because of the same problem in assigning commonality to claims arising from disparate events.

Moving to predominance and superiority, the Court found the lower court did not discuss the requirements of these elements but concluded from the analysis of commonality above that predominance could not be met.

INSURANCE

Auto

Morrison v. Esurance Insurance Co., No. 18-cv-1316, 2020 WL 583824 (W.D. Wash. Feb. 6, 2020) (Zilly, J.) Plaintiff brought suit against insurance company in state court, alleging that a decision to limit coverage for an accident claim based on a Maximum Medical Improvement (“MMI”) standard gave rise to six causes of action in common and statutory law. After Defendant removed the case to federal court, Plaintiff sought class certification.

The Court denied the motion. In terms of Rule 23(a), the Court reasoned in support of its decision first that numerosity was satisfied after its review of sample coverage denial letters issued by Defendant. In terms of commonality, the Court found a common question in whether Defendant limited benefits in violation of statutory law. In terms of typicality, while Defendant contended that the letter Plaintiff received did not mention a denial under the MMI standard used to terminate other claims of the class, the Court found Plaintiff’s claim to be typical of the class, in that internal records showed the same standard was applied to Plaintiff’s denial. Finding no conflicts of interest or failure to prosecute the action, the Court found adequacy satisfied as well.

However, turning to Rule 23(b)(2), the Court found that use of injunctive relief to require Defendant to comply with the statute in question would require an individualized damages inquiry. The Court also found Defendant had ceased to use the MMI standard to deny claims, so injunctive relief would be moot. Therefore, the Court declined to certify under this subsection.

In terms of Rule 23(b)(3), the Court found the central element in each cause of action was the issue of whether Defendant used the MMI standard to limit claims, which it found was sufficient to satisfy predominance. However, when it came to superiority, the Court found that (1) class members’ individual damages varied greatly and could be much higher than the potential relief offered by a class action; (2) further discovery would be needed to determine individualized claims, to the extent of requiring miniature trials that would defeat the efficiency achieved by a class action. As such, the Court denied certification.

SECURITIES

Public Employees' Retirement System of Mississippi v. Treehouse Foods, Inc., No. 16-cv-10632, 2020 WL 919249 (N.D. Ill. Feb. 26, 2020) (Dow, J.)

Plaintiff brought securities suit against a food company, alleging fraudulent reporting of acquisitions in violation of the Securities Exchange Act. Plaintiff moved for certification.

The Court granted the motion, reasoning in support of its decision first that numerosity was satisfied by virtue of weekly trading volume of 4.02 million shares of Defendant's stock. Commonality was satisfied by virtue of there being a variety of common issues related to the alleged misrepresentation or omission of material facts and price inflation.

In terms of typicality and adequacy, while Defendant argued that Plaintiff lacked typicality because of unique defenses that would create individualized issues based on relying on its investment manager rather than the market price, the Court found this did not constitute a unique defense against typicality. Also, for adequacy, the Court rejected Defendant's contention that Plaintiff was too close to counsel and commonly worked with counsel to identify potential securities frauds, and that its officers were not sufficiently knowledgeable about the case. The Court found the relationship was not enough to defeat adequacy, and that the officers need not have extensive knowledge to be adequate.

In terms of predominance, the Court found this to be a typical case involving fraud and securities, in which common issues were likely to predominate, and rejected Defendant's argument that Plaintiff's expert had failed to match a theory of liability to a damages theory, or that inflation figures were not exact.

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