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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## ANTITRUST

*Opelousas General Hospital Authority v. Louisiana Health Service & Indemnity Co.,* No. 19-736, 2019 WL 5883534 (La. Ct. App. Nov. 12, 2019) (Cooks, J.)
Plaintiff medical provider brought antitrust case against insurance company, alleging violations in its contracting practices and reimbursement policies. After the lower court granted certification, Defendant appealed.

The appellate court affirmed the order. Reasoning in support of its decision, the Court found numerosity satisfied by virtue of 11,000 class members. For commonality and typicality, the Court found a common course of conduct leading to a common claim, and that Plaintiff's claims shared the same legal theory.

In terms of adequacy, the Court agreed with the lower court's finding that counsel was adequate, as well as the finding that Plaintiff had no conflict of interest due to a particular ethical question related to the attorney-client relationship. Here, the Court credited the lower court's reference to the state ethics board's finding in its decision that the matter could proceed on a class basis.

In terms of ascertainability, the Court noted that the lower court found the class was defined by objective criteria, and turned to predominance. There, the Court credited the lower court's finding that differing rates based on location and services were not a problem, as the data could be readily retrieved from the parties' billing systems, and did not therefore create a situation where individualized issues would predominate over common ones.

## CLASS CERTIFICATION

### *Satisfaction*

*Vaughn v. Mercy Clinic Fort Smith Communities,* No. 19-cv-217, 2019 Ark. 329 (Ark. Nov. 14, 2019) (Hudson, J.)
Former employees of a medical provider brought suit in state court, alleging vacation benefits were not transferred over after the acquisition of their employer by another company. The benefits were later paid out as cash. Certification was denied, and Plaintiffs appealed.

The Court reversed and remanded, first evaluating Plaintiffs' contention that the lower court abused its discretion in finding Rule 23 unsatisfied, and that the payments to class members were grounds for denying the motion. Here, while the Court noted that Defendants had argued that the class no longer existed, in that every class member had been paid, the Court found that the lower court had heard no proper arguments as to whether Rule 23 was met, and that Defendants' argument of satisfaction was properly an affirmative defense, not proper to the certification analysis. As such, the Court found the lower court had abused its discretion in denying the motion for certification on those grounds.

## CONSUMER

### *Mortgage Loan*

*Kivett v. Flagstar Bank, FSB,* No. 18-cv-05131, 2019 WL 6219221 (N.D. Cal. Nov. 20, 2019) (Alsup, J.)
Plaintiff brought suit against a mortgage loan servicer, alleging improper escrow accounting practices, and sought class certification.
The Court granted both motions, reasoning in support of its decision that numerosity was satisfied by virtue of

125,000 class members, and that the sole claim at issue was a common one typical to that of Plaintiffs. Furthermore, the class was narrowly defined and adequately represented.

Turning then to Rule 23(b)(3) predominance, the Court found that (1) differences in restitution damages calculations did not defeat certification; (2) individual inquiries to determine class membership were not fact-intensive; (3) any affirmative defenses would not defeat predominance; and (4) the small percentage of individual cases that did not fit well in the class action would not predominate in the matter. As such, the Court found predominance was met.

### *Fair Debt Collection Practices Act*

*Zangara v. Zager Fuchs, P.C.,* No. 17-cv-6755, 2019 WL 6310056 (D.N.J. Nov. 25, 2019) (Shipp, J.)
Plaintiff brought suit for violation of the Fair Debt Collection Practices Act against certain debt collectors, alleging excessive damages had been sought. Plaintiff moved for summary judgment, and separately for certification, and Defendants moved for summary judgment as well.

The Court denied the certification motion without prejudice, reasoning in support of its decision that Plaintiff had not shown why joinder was impracticable for 26 class members, and also reasoned that there was no showing as to efficiency, management, costs of litigation, or other factors. As such, the Court found numerosity was not met and did not review the other Rule 23 elements.

## OIL & GAS

*The Anderson Living Trust f/k/a The James H. Anderson Living Trust v. Energen Resources Corp.,*
No.13-cv-00909, 2019 WL 6618168 (D.N.M. Dec. 5, 2019) (*per curiam*)
Plaintiff oil and gas trusts brought suit against a natural gas company, alleging underpayment of royalties. Plaintiffs moved for certification.

The Court granted the motion, reasoning in support of its decision that numerosity was unchallenged, and in terms of commonality, there were common claims of good faith and dealing with class members, and that any variation in lease language did not defeat commonality, nor did the quality of gas from well to well, as all contracts required the gas simply to be “marketable.”

In terms of typicality and adequacy, the Court noted that the claims were so interrelated that Plaintiffs were easily found typical and adequate.

Turning then to predominance, the Court found that any potential differences in damages did not defeat certification, as the issue could be segregated from liability and would likely be proven by common evidence.

Finally, in terms of ascertainability, the Court found that varieties in lease language were not enough to preclude certification as a class, and noted the Defendant’s long-term use of its own system of calculating royalty payments to the class members showed the class was sufficiently ascertainable.

## SETTLEMENT

### *Fees*

*In Re BankAmerica Corp. Securities Litigation,* No. 99-md-1264, 2019 WL 5887363 (E.D. Mo. Nov. 12, 2019) (Perry, J.)
After parties to a securities litigation reached a settlement in 2002, one of the class representatives moved for all class counsel to disgorge almost $59 million in fees that were awarded in 2002, on the grounds that this exceeded the applicable lodestar calculation amount.

The Court denied the motion, reasoning in support of its decision that as a general matter, the movant had not supported its motion with any evidence of misconduct in timekeeping or work performed. The Court further found that the motion was barred by the doctrine of *laches*, reasoning that the class representative had no excuse for the delay in raising the issue 7-15 years after the alleged relevant events had occurred, and far in excess of any relief that may have been sought in the time the original fee order was approved.

The Court also reinstated a supplemental fee award to one of the firms for the same reason.



Lead Editor of KCC Class Action Digest: Robert DeWitte, Vice President, Class Action Services