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As part of our commitment to practitioners, KCC provides this resource on decisions related to class action litigation in state and federal court.

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CIVIL RIGHTS

Greco v. Grewal, No. 19-cv-19145, 2020 WL 5793709 (D.N.J. Sep. 29, 2020) (Martinotti, J.)
Plaintiff brought suit challenging the constitutionality of New Jersey's Extreme Risk Protective Order ("ERPO") Act, which was used to prevent him from possessing firearms for a limited period of time under the basis of there being "good cause" to believe he posed an immediate and present danger of causing bodily injury. Plaintiff moved for preliminary injunction, which was denied for failure to show a likelihood of further harm. Plaintiff then sought class certification.

The Court denied the motion, first addressing commonality. In that regard, contrary to Plaintiff's contention that legal and factual questions arising from Defendant's common procedures do not vary from one class member to the next, the Court found that while the legal issue of constitutionality of the act would be common, the factual circumstances of each class member would not be, as each invocation of the ERPO Act depends on individual circumstances establishing an independent basis for "good cause." The Court therefore found commonality was not satisfied and did not discuss the other elements.

EMPLOYEE RETIREMENT INCOME SECURITY ACT

White v. Hilton Hotels Retirement Plan, No. 16-cv-856, 2020 WL 5946066 (D.D.C. Oct. 7, 2020)
(Kollar-Kotelly, J.)

Plaintiffs brought suit for violation of the Employee Retirement Income Security Act ("ERISA") related to their retirement plan, alleging grievances separate from a larger class action that had lasted 17 years. After the Court initially denied a motion for certification without prejudice, Plaintiff filed a renewed motion for certification after amending the complaint.

The Court again denied the motion without prejudice. Reasoning in support of its decision, the Court focused on definiteness, finding that the proposed class was a "fail-safe" class, with membership contingent on individual merits determinations as to whether class members "have vested rights" to denied benefits. The Court found the same problem present in the subclasses, and although the rule against fail-safe classes had not been applied by the D.C. Circuit, it had been rejected only in the Fifth Circuit in a narrow and older decision. Therefore, the Court applied the rule and denied the motion, permitting Plaintiffs another opportunity to amend the class definition.

The Court also found one subclass lacked commonality in that it would require individualized assessments to be made in order to demonstrate class membership. Further, the Court found this subclass sought to collapse distinct legal issues under a standard of class members having been not provided with "proper equivalencies" due to "multiple, disparate failures to comply" with ERISA. The Court found a separate issue was in the subclass including those who were employed by Hilton through managed property agreements, which the Court found to be a contested issue in the case and thus not proper for determining certification. As such, the Court found commonality had not been met, as this was another fail-safe class.

Additionally, one subclass representative's claim was not typical of the subclass represented, as his denial of benefits was not solely related to lack of entitlement to surviving spouse benefits, but to additional bases presented in the same denial letter. The Court found these were not simply ancillary defenses that might skew the focus of litigation, but fundamental components of the claim, and therefore were not typical of the class claims.

LANDLORD TENANT

Mosaic Baybrook One, L.P. v. Cessor, No. 018-cv-01057, 2020 WL 5637212 (Tex. App. Sep. 22, 2020) (Goodman, J.)

A renter brought suit against certain apartment complex companies, alleging that late fees were improperly assessed for late payment of rent in violation of relevant property code statutes. After the trial court certified a class, Defendants appealed, contending that the trial court abused its discretion in certifying a class without sufficient analysis as to claims and defenses at issue, and with lack of adequacy.

The Court affirmed. In reviewing the trial court's decision, the appellate court considered whether the certification order met the relevant state rule, and found that state supreme court precedent held that certification did not depend on proof of the merits of a claim being made, and instead found the common questions identified to be sufficient for certification. The Court also noted that Defendant did not amend its pleadings to add defenses until three days before the certification hearing, meaning that those defenses were not properly brought before the lower court, and thus rulings related to them not eligible for appeal. The Court also found that Plaintiff did not lack sufficient knowledge of the representation and hired attorneys to cover any deficiency while serving as an understanding and willing representative. Accordingly, the Court found no abuse of discretion.

RICO

Wacker Drive Executive Suites, LLC v. Jones Lang Lasalle Americas (Illinois) LP, No. 18-cv-5492, 2020 WL 5658709 (N.D. Ill. Sep. 23, 2020) (Harjani, J.)

Plaintiff brought a class action for violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO") alleging that Defendant conspired with labor unions to force commercial tenants to hire union contractors and movers only. Plaintiff sought class certification and Defendant moved to exclude expert testimony.

The Court denied both motions without prejudice, reasoning in support of its decision first that while Plaintiff had proposed six common questions to satisfy commonality, the first would not resolve an issue central to the claim, and the rest were allegations restated without evidence of facts showing a conspiracy, a requirement of bringing the RICO claims. Accordingly, the Court concluded that the facts on record were not sufficient to find commonality satisfied and deferred further review of Rule 23 and the motion to exclude.

RULE 23(f)

Hudock v. LG Electronics U.S.A., Inc., No. 16-cv-1220, 2020 WL 5849204 (D. Minn. Oct. 1, 2020) (Tunheim, J.)

Plaintiffs brought suit against a television manufacturer, alleging misrepresentation of their television's refresh rate capability as labeled. The Court granted class certification, and Defendants appealed under Rule 23(f). Defendants moved for a stay of proceedings in light of the pending appeal.

The Court granted the motion. Reasoning in support of its decision, the Court noted it would weigh the parties' competing interests as to hardship or inequity. The Court found Plaintiffs had initially agreed to the stay of discovery and litigation, but not to stay ten motions unresolved before the Court. Since then, the Court determined seven motions and found the remaining three were joint motions, such that the parties no longer have competing interests. The Court also found no likely hardship would be imposed due to saving both parties costs and resources.

TELEPHONE CONSUMER PROTECTION ACT

Calls

Abboud v. Agentra, LLC, No. 19-cv-00120, 2020 WL 5526557 (N.D. Tex. Sep. 14, 2020) (Starr, J.) Plaintiff brought suit for violation of the Telephone Consumer Protection Act (“TCPA”) action against an insurance agency, alleging use of an auto-dialer system to solicit Plaintiff after she manifested rejection of consent. Plaintiff moved to extend the discovery deadline and certification motion deadline, and for class certification.

While the Court denied the request for extended discovery, it also granted class certification. Reasoning in support of its decision in terms of certification, the Court first considered ascertainability, finding that objective criteria could be used to determine class membership in terms of phone records and affidavits. In terms of numerosity, the Court found that thousands of likely class members were sufficient. Turning to commonality and typicality, the Court found the main question to be common, and that Plaintiff’s claims were typical of the class. For adequacy, the Court found counsel qualified and Plaintiff able to serve as a willing representative.

Looking next at predominance and superiority, the Court found that the class was narrowly tailored enough that only common questions would be at issue, and that a class action was superior in adjudicating the claims for thousands at once, and was the most efficient form of adjudicating this type of case.

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