KCC Class Action Services

KCC Class Action Digest
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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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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.

HEALTHCARE

Russell v. Educational Commission for Foreign Medical Graduates, No. 18-cv-05629, 2020 WL 1330699 (E.D. Pa. Mar. 23, 2020) (Wolson, J.)
Plaintiffs, former patients of a man falsely posing as an OB/GYN doctor, brought suit against a non-profit organization that certified him as an international medical graduate, while failing to investigate allegations of identity fraud against him. Plaintiffs sought class certification on liability only, so as to proceed to individual damages proceedings.

The Court granted the motion for the duty and breach elements of Plaintiffs' claims, but not for causation or damages. Reasoning in support of its decision, the Court first evaluated ascertainability, and found that the class definition was sufficiently narrow and the class itself identifiable from medical records. For numerosity, the Court found more than 712 class members to suffice. In terms of commonality, the Court found questions about duty and breach were common to all class members, and that any choice-of-law concerns did not alter this calculus.

In terms of typicality, the Court found that Plaintiffs' claims were typical of those treated after Defendant's certification and investigation, but not with those treated prior to that investigation, and thus tailored the class accordingly. In terms of adequacy, the Court rejected Defendant's contention that Plaintiffs had sought to represent a class in a different case that was dismissed without prejudice, finding no basis to support any adequacy determination in this case based on a separate case.

Turning then to Rule 23(c)(4), the Court questioned whether it could sever all liability issues from the damages issues for certification. The Court found that both causation and damages issues in this case would be highly individualized inquiries.

The Court also looked at whether it might certify nine specific issues, the liability issues of the claims in the case. The Court declined to certify one of the proposed claims as not being properly included in the case, but deemed issues of duty and breach appropriate for certification, as it would be more efficient to deal with these issues in a single trial and determination, and that other alternatives would not be realistic to achieve the same efficiency.

INSURANCE

Homeowners Insurance

Mitchell v. State Farm Fire & Casualty Co., No. 18-60776, 2020 WL 1503107 (5th Cir. Mar. 30, 2020) (Jolly, J.)
Plaintiff brought suit against an insurance company for breach of contract, negligence and other causes of action stemming from alleged improper valuation of labor costs in determining actual cash value.
After the United States District Court for the Northern District of Mississippi certified a class, Defendant appealed.

The Fifth Circuit held that the district court did not abuse its discretion in certifying the breach of contract claim class. While Defendant had challenged certification on predominance grounds, contending that certain relevant insurance policy definitions were unambiguous and therefore the meaning of those terms could not be a predominant issue, the Court found the district court properly decided that the common issues (such as when Defendant may dispute or adjust an initial estimate) would predominate over individualized damages questions, which could be determined by a common formula. The Court also looked at superiority and found the district court did not abuse its discretion in finding superiority met by the thousands of class claims likely to be too small for individual litigation.

LANDLORD TENANT

Fair Housing Center of Central Indiana, Inc. v. Rainbow Realty Group, Inc., No. 17-cv-1782, 2020 WL 1493021 (S.D. Ind. Mar. 27, 2020) (Miller, J.)
Plaintiffs brought suit against a rental property owner, alleging that the conditions of homes rented and the agreement terms violated state and federal law. Plaintiffs moved for certification, and then filed an additional motion to supplement the first motion.

The Court granted the motion to certify in part, and denied the motion to supplement as moot. In terms of class certification, the Court first found numerosity satisfied by virtue of there being 2,000 class members at issue. In terms of typicality and adequacy, the Court found that the parties agreed on typicality except for one plaintiff who had signed her contract only as a renewal from her husband as the original signer. However, the Court noted that this plaintiff was adequate to represent the class as a typical member in that she signed a contract within the relevant timeframe. The Court found the other plaintiffs were also adequate to represent the class, as well as counsel.

In terms of commonality, the Court looked at the four common questions proposed. The Fair Housing Act and Equal Credit Opportunity Act claim was found to be a common question. For habitability, the Court found the claim for declaratory relief was a common question, but that the claim for individual relief was not. For the Home Loan Practice Act, the Court found one issue was a common question, but that the other three issues were fact-specific and not common questions. For the Truth in Lending Act, the Court found one issue to require an individual analysis, but the other three were common questions.

For Rule 23(b), the Court found the claims for declaratory relief suitable for class treatment under Rule 23(b)(2), as well as Rule 23(b)(3) on superiority grounds. The Court then looked at the damages claims, and found all claims would require individual calculations except the claim under the Truth in Lending Act for class-wide statutory damages which was incidental to declaratory relief. The Court found the other claims were not incidental to declaratory relief claims, and did not meet predominance under Rule 23(b)(3). Instead, the Court certified those liability claims appropriate for class resolution under Rule 23(c)(4), and left the damages issues for resolution via individual trials.

SECURITIES

In re Chicago Bridge & Iron Co. N.V. Sec. Litig., No. 17-cv-1580, 2020 WL 1329354 (S.D.N.Y. Mar. 23, 2020) (Schofield, J.)
Plaintiffs sought class certification of a securities suit against Defendants. After a special master recommended the motion be granted, the Court adopted the special master's Report and granted the motion.

Reasoning in support of its decision, the Court reviewed the report, which focused specifically on Defendant's objections. The first set of objections on predominance dealt with the Basic presumption of reliance on a class-wide basis. The first objection was to the conclusion that Defendants bear the burden of persuasion to rebut the Basic presumption. The Court found this objection overruled, as it was contrary to binding precedent in the 2nd Circuit case *Waggoner v. Barclays PLC*.

The second objection, to the rejection of Defendant's argument that a press release disclosure had no statistically significant price reaction with a 5% threshold, was also overruled. There, the Court found that the 5% significance threshold was not an exclusive factor in rebutting the Basic presumption, and the special master report noted the lesser significance of this factor in reaching an ultimate finding.

The third objection, that the Report adopted a legally erroneous test of "correctiveness" to uphold four disclosures, was also overruled. There, the Court reasoned that, as a limited inquiry into "correctiveness" was appropriate at the certification stage, the disclosures were sufficiently corrective of specifically alleged misrepresentations.

The fourth objection concerned Defendant's contention that the Report treated a stock analyst's report as a corrective disclosure. The Court overruled this objection as well, reasoning that the Report found some information in the report was new to the market, and sufficiently corrective of alleged misrepresentations. The Court noted that a third-party report was corrective in that its expert analysis of public information raised new concerns not publicly understood by the market up to that point. The Court noted that the contrary precedent relied on by Defendant pertained to a disclosure that presented no new information and no relation to the misrepresentation at issue, thus distinguishing the instant case. The Court also found the information in the report to be more than mere speculation in that it included detailed analysis revealing new information to the market.

The fifth objection, that certification was granted as to a misrepresentation without front-end impact or an identifiable corrective disclosure, making it impossible for Defendants to prove absence of back-end impact, was also overruled.

In terms of the other Rule 23 factors, while Defendants argued the proposed class representatives were inadequate due to a fee-sharing agreement between Plaintiffs' attorneys, the Court disagreed, reasoning that the test for adequacy was whether counsel was "qualified, experienced and able." The Court found no problem in proceeding with the fee sharing agreement, noting that the special master had not found any misleading activity from counsel on this issue.

Finally, the Court found the other Rule 23 elements met, finding numerosity, commonality, typicality, ascertainability, and superiority sufficient from the nature of a sizable class of shareholders in a securities action alleged to share a common claim with the representative Plaintiffs.

SETTLEMENT ISSUES

Incentive Award

Bronson v. Samsung Electronics America, Inc., No. 18-cv-02300, 2020 WL 1503662 (N.D. Cal. Mar. 30, 2020) (Alsup, J.)
After a settlement was reached in litigation concerning a plasma television manufacturer's alleged failure to provide replacement parts for its product, providing injunctive relief, Plaintiffs sought final approval of fees and costs and the settlement agreement.

The Court granted the motion approving the settlement, and granted in part the motion for fees and costs. Reasoning in support of its decision, the Court first found the implemented class notice sufficient. Similarly, the Court was satisfied with the scope of the release, as well as with the fairness and reasonableness of the settlement.

In terms of fees and costs, which the Court analyzed under the Song-Beverly Consumer Warranty Act, the Court found that Plaintiff was a "prevailing buyer" under the Act, and that the class was entitled to fees and costs under the statute. The Court then approved the attorney fee and expense request, finding it to be below the lodestar amount due to discounting by class counsel and paid directly by Defendant rather than from a class fund.

Turning to the incentive award, the Court found the additional $1,000 requested for a new television was beyond what was afforded to the class, denied this amount, and also lowered the requested $5,000 award for the work in prosecuting the action down to $500 for the same reason.

TELEPHONE CONSUMER PROTECTION ACT

Faxes

Innovative Accounting Solutions, Inc. v Credit Process Advisors, Inc., No. 15-cv-793, 2020 WL 1465981 (W.D. Mich. Mar. 26, 2020) (Maloney, J.)

Plaintiff brought suit for violation of the Telephone Consumer Protection Act ("TCPA") against certain debt collection agencies, alleging receipt of unsolicited marketing faxes. Plaintiff moved for certification.

The Court granted the motion, first reasoning in support of its decision that in terms of numerosity, 14,000 members sufficed. In terms of commonality, the Court found a variety of common questions stemming from the same course of conduct, centered around Defendants' alleged transmission of the same fax to the class. For typicality, the Court found Plaintiff's claim arose from the same course of conduct and legal theory as that of the class, and declined to review individual consent issues prior to a merits stage review.

While Defendants contested adequacy on the grounds that Plaintiff and one of its attorneys were not adequate due to having an ongoing business relationship, the Court found it could not discern how the simple fact of a prior business relationship would impair the class's interests or prevent adequate representation. The Court also noted the involvement of other attorneys representing Plaintiff in the class action, and found that collectively, adequacy was satisfied.

Turning to predominance, while Defendants argued that issues of consent to receiving the fax(es) at issue would require individualized adjudication, the Court found that the evidence of individual issues of consent was closer to speculation than to proof that Defendants took steps to obtain such consent, and that the issue of whether Defendants' means of obtaining consent was adequate was itself a common question. As such, the Court found predominance satisfied. The Court also found superiority satisfied on grounds of the nature of TCPA claims and their limits on individualized damages.

The Court then looked at ascertainability and found the fax log and the transmission at issue were sufficiently ascertainable to proceed from the certification stage, and that any issues of whether class members actually received the fax could be resolved through simple mechanisms at a later stage.

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