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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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ANTITRUST

In re: Suboxone (Buprenorphine Hydrochlorine and Naloxone) Antitrust Litigation, No. 19-3640, 2020 WL 4331523 (3rd Cir. Jul. 28, 2020) (Shwartz, J.)

Direct purchasers of prescription drug for opioid addiction brought a Sherman Act suit against manufacturer, alleging anti-competitive conduct that impeded the generic market. After the United States District Court for the Eastern District of Pennsylvania certified a class, Defendant appealed.

The Third Circuit affirmed. Reasoning in support of its decision, the Court looked at predominance and adequacy as the contested issues, observing that in terms of predominance, sufficient evidence of commonality had been presented. Further, the proposed damages model did not require individualized inquiries worthy of denying certification, and damages could be proven by the theory proposed. Accordingly, predominance was appropriately satisfied.

In terms of adequacy, while Defendant had contended that the putative class representative had a conflict with the class and lacked control over the litigation, the Court found the alleged conflicts to be hypothetical, and insufficient to warrant denial of class certification. Furthermore, Plaintiff's ceding control to class counsel did not give rise to a conflict, and Plaintiff was sufficiently engaged in the representation of the class through its counsel.

Sidibe v. Sutter Health, No. 12-cv-04854, 2020 WL 4368221 (N.D. Cal. Jul. 30, 2020) (Beeler, J.)

Plaintiffs brought a Sherman Act and state law suit against health care provider alleging anti-competitive practices in wielding its market power to force unfair pricing and premium charges. The Court certified an injunctive relief class but denied a motion to certify a damages class on the grounds of failure of predominance. Plaintiffs then filed a renewed motion for certification of the damages class.

The Court granted the motion, reasoning in support of its decision that given the previous grant of 23(b)(2) certification, only satisfaction of Rule 23(b)(3) needed to be assessed. In that regard, the Court focused on whether damages could be calculated on a class-wide basis, allocation of premium increases by percentage, and pass-through rate measurements. Here, the Court found that Plaintiffs had not shown that damages could be calculated on class-wide basis for the years 2008 - 2010 due to a lack of data for those years, but otherwise had met the requirements to show predominance. Accordingly, the class definition was conformed to the appropriate date range.

EMPLOYEE RETIREMENT INCOME SECURITY ACT

In re: EpiPen ERISA Litigation, No. 17-1884 (PAM/HB), 2020 WL 4501925 (D. Minn. Aug. 5, 2020) (Magnuson, J.)

Plaintiffs brought suit for violation of the Employee Retirement Income Security Act ("ERISA") against pharmacy benefit managers, alleging violation of fiduciary duties for failing to acquire sufficient rebates, and causing the inflation of prices. Plaintiffs sought class certification, and Defendants brought motion to exclude expert witnesses.

The Court denied the motion for certification and denied Defendants' motion as moot. Reasoning in support of its decision, the Court first considered commonality, finding that it could not be met due to problems with the proof requirements for the underlying action, which require a showing of how a defendant exercises control as a fiduciary under the terms of each individual plan, and how such duties were breached. The Court found that the instant case met the same characteristics, and that Plaintiffs would also be unable to establish injuries suffered on a class-wide basis as well. As such, commonality could not be met.

INSURANCE

In re: AXA Equitable Life Insurance Company COI Litigation, No. 16-cv-740, 2020 WL 4694172 (S.D.N.Y. Aug. 13, 2020) (Furman, J.)

Plaintiff foundations brought claims for breach of contract and statutory violations against an insurer after an increase of the cost of insurance on a group of policies. Plaintiffs moved for certification of a nationwide class for breach of contract, and five subclasses for statutory claims, which the Court reframed to a motion for certification of two nationwide classes (one for claims based on the policies themselves and one based on Defendant's alleged misrepresentations purportedly giving rise to statutory claims), and related sub-classes.

The Court granted the motion in part and denied in part. In terms of the policy-based nationwide class, the Court found numerosity satisfied on grounds of there being more than 1,400 class members. The Court further noted that the class was sufficiently identifiable to satisfy the applicable ascertainability requirement. The form nature of the policies in question satisfied typicality and commonality. In terms of Rule 23(b)(3)'s requirements, the Court noted that predominance and superiority were uncontested, and the Court agreed, finding that all class members' claims: (1) would rise and fall together; (2) were identical in all material respects; and (3) stemmed from a common course of action. The Court then considered two policy-based subclasses, and denied certification to both, in part based upon a failure of predominance and superiority due to the presence of an affirmative stranger-oriented life insurance defense that the owners of certain policies had entered into illegal transactions and had unclean hands, and otherwise due to typicality and adequacy concerns as to the proposed representative of one subclass.

Turning then to the alleged misrepresentation (illustration-based) nationwide class and subclasses, the Court reasoned that for the illustration-based subclass, numerosity, commonality, typicality and ascertainability were easily met, and that Defendant had previously conceded on Rule 23(a), disputing only on predominance. However, the Court found Defendant now opposed certification on the grounds of adequacy for using a claims-splitting strategy that posed a conflict of interest. The Court disagreed, and found adequacy satisfied. Turning next to predominance, the Court found common issues outweighed the two individualized issues in the case, and that neither undermined predominance. The Court also found superiority satisfied by virtue of the advantage of unitary adjudication, and that the individualized questions in the case did not create a manageability problem.

For the New York illustration-based claim subclass, the Court found similarity to the previous illustration-based claim class, and only commented on a few additional points confirming the subclass met the Rule 23 elements. Finally, the Court looked at the California illustration-based subclass and found that the applicability of the stranger-oriented life insurance defense here would cause a predominance problem, and denied certification of this subclass.

Brasher v. Allstate Indemnity Company, No. 18-cv-00576, 2020 WL 4673259 (N.D. Ala. Aug. 12, 2020) (Axon, J.)

Plaintiff brought suit against an insurer for breach of contract and unjust enrichment, alleging that depreciation of labor costs led to denial of his claim for storm damage as below the deductible. Plaintiff sought class certification.

After discussion of its decisions concerning motions to exclude certain experts by both sides, the Court denied certification on predominance. Reasoning in support of its decision, the Court analyzed only predominance. Here, the Court reasoned that individual inquiries needed to establish the elements of breach of contract precluded certification, in proving validity of each contract and the depreciation strategy used in each claim. The Court also found damages here would require a complex and fact-specific determination as well, such that a class-wide damages model would not be sufficient for calculating depreciation or actual cash value.

The Court also noted that Defendant could raise some affirmative defenses that would also be individual questions. As such, the Court found predominance could not be met.

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