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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

City of Providence, Rhode Island v. Abbvie Inc., No. 20-cv-5538, 2020 WL 6049139 (S.D.N.Y. Oct. 13, 2020) (Liman, J.)

Plaintiffs in two sets of pharmaceutical antitrust lawsuits sought to appoint interim lead counsel for the certified end-payor class from among applications from multiple law firms.

The Court appointed the interim lead counsel. Reasoning in support of its decision, the Court analyzed the applications under Rule 23(g) factors: (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class. In terms of the first factor, the Court found interim lead counsel had done the most deliberate work in identifying claims and involvement in the litigation. For the second and third factors relating to experience, the Court found that interim lead counsel had been involved in nearly every major pharmaceutical antitrust case, particularly with cases similar to the instant case in "pay-for-delay" issues, and that the lead lawyers of the firm had substantial experience in this area.

The Court then looked at other factors such as commitment to diversity as related (but not as a substantial requirement) to the ability to represent a diverse class, and proximity to the Court and admission to the local bar. The Court found these factors weighed in favor of the candidate as well, but noted that these did not necessarily carry over for the direct purchaser class yet to be certified. As such, the Court denied appointing interim lead counsel to represent that subclass, noting two other candidates that would be more suitable.

EMPLOYMENT

Hubbard v. RCM Technologies (USA), Inc., No. 19-cv-06363 (N.D. Cal. Oct. 20, 2020) (Rogers, J.)

Plaintiff brought a California labor law case against a healthcare staffing company, alleging unpaid overtime and other violations caused by per diem subtractions. Plaintiff moved for certification, and Defendant moved for modification of the class notice to include disclosures about potential tax liability.

The Court granted certification, and denied the specific request of Defendant, but granted Defendant's motion with the Court's own modification instead. Reasoning in support of its decision, the Court first looked at certification under Rule 23. In terms of numerosity, the Court found over 100 members to be sufficient. For commonality, the Court found the claims in common centered around state law statutes violated by a common policy and were sufficient. For typicality, the Court found Plaintiff's claims were not unique from the class claims. For adequacy, the Court found no conflict of interest, and a likelihood of vigorous prosecution. The Court then noted that predominance was met by the fact that all liability issues were common, and therefore the class action was superior. Thus, the Court granted certification.

Looking next at the objection to the notice, the Court agreed with the need to be mindful and provide important information, but found that the proposed modification was likely to dissuade class members from joining the action, and denied the specific language, but granted the request to add a more neutral notice language of its own drafting.

MUNICIPALITIES

Santiago v. City of Chicago, No. 19-cv-4652, 2020 WL 6717516 (N.D. Ill. Nov. 15, 2020) (Kennelly, J.) Plaintiff sued the city after her vehicle was towed, impounded, and disposed, alleging violations of federal and state law and seeking monetary damages as well as declaratory and injunctive relief. Plaintiff moved for certification of classes under Rules 23(b)(2) and 23(b)(3).

The Court granted the motion as to the Rule 23(b)(3) class only, reasoning in support of its decision first that while numerosity was not contested, regardless, Plaintiff had provided an investigative report showing that one-third of cars towed in 2017 were unclaimed and 24,000 were sold for scrap value. In terms of commonality, the Court found that the claims arose from the City's standardized conduct of failing to provide statutory notices before disposing of unclaimed vehicles. Typicality was satisfied by virtue of the commonality inherent to the claims.

In terms of adequacy, while Defendant argued that Plaintiff was subject to a unique defense in receiving actual notice when her agent saw and removed a tow notice sticker. However, the Court ruled that this did not prevent Plaintiff from challenging the procedural insufficiency of notice. Defendant also argued that sending two notices on the same day met the applicable requirements, but the Court disagreed, finding that this was a central issue in the merits of the case typical to the whole class. Third, Defendant argued that Plaintiff lacked standing to represent an injunctive relief class, in that any threat of future injury was merely "conjectural." The Court found that this argument failed to accurately describe the basis for standing in a class action as a separate analysis from adequacy, but nonetheless agreed that Plaintiff was inadequate for purposes of the proposed Rule 23(b)(2) class. The same logic did not apply to the Rule 23(b)(3), and adequacy was therefore satisfied in that regard.

Turning to predominance, the Court found the issues in the case to be common to all class members, in that the main inquiry was whether standard practices provide adequate notice, and whether the operative ordinances are constitutional. While Defendant argued that there was a need for individualized damage inquiries, the Court found this would not defeat predominance. The Court then found superiority satisfied on the basis of the same arguments supporting commonality and predominance.

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