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by: Colin E. Flora
Associate Civil Litigation Attorney

7th Circuit Examines Boundaries of Class Action Fairness Act

After a couple weeks of near silence, the Seventh Circuit returned in force issuing eight opinions. However, the court seemed to be suffering from a tad bit of a hangover from its lull, resulting in two of the decisions requiring an order correcting errors. That said, the court did weigh in on the topic of class actions with a couple decisions. As class action cases from the Seventh Circuit are the bread and butter of the Hoosier Litigation Blog, we would be remiss to not take a look at what new insight we acquired this week.

The first of the two cases broke no new ground in the class action arena. In *CE Design, Ltd. v. Cy's Crab House North, Inc.*, the court continued in the series of cases that are the fallout of what were highly questionable tactics of class counsel in gaining records of violations of the Telephone Consumer Protection Act. We first addressed this issue in a previous post discussing the case *Reliable Money Order, Inc. v. McKnight Sales Co.* Contrary to what the Seventh Circuit initially said in *CE Design*, *Reliable Money Order* found that a class should not be decertified simply for the questionable actions of class counsel. This was one of the cases that needed a correction to clarify an error – chiefly the court had accidentally stated that *Reliable Money Order* affirmed a decertification. Regardless, *CE Design* stands in accordance with *Reliable Money Order* in requiring denial of class certification only upon the most egregious actions of class counsel.

Because *CE Design* did little to alter the class action landscape, our primary focus in this week's post is upon the second case: *Addison Automatics, Inc. v. Hartford Casualty. Ins. Co.* Our second case required the court to examine the boundaries of the Class Action Fairness Act (CAFA). As we have discussed before, the express purpose of CAFA is to attempt to remedy what some perceived to be abuses by crafty practitioners utilizing state courts to do what they could not accomplish in federal courts: the successful certification of class actions. Personally, I think this is a purpose built more in myth than reality. That's not to say that state courts have not historically been more friendly fora, but CAFA appears to have less to do with the perception of gamesmanship than it does a growing hostility toward class actions by the Supreme Court. The merits of CAFA aside, it functions to allow defendants to draw putative class action cases out of state court and into federal court under certain circumstances. The *Addison* decision stands to shed some light on the parameters of CAFA's reach.

Addison stems from a settlement agreement in a previous case in which the settlement resulted in no money paid by the defendant. The settlement provided for an assignment to the class of the rights of the defendant to insurance coverage. Seeking to avoid the reach of CAFA, the plaintiff, Addison Automatics, Inc., who had been the class representative in the prior class action case, filed an individual declaratory judgment case in state court against Hartford Casualty Insurance. Hartford sought to exercise its rights under CAFA and pull the case into federal court. The federal district court found that CAFA did not apply and ordered the case sent back to the state court. Hartford appealed.

The Seventh Circuit found that despite the fact that the case was not filed as a putative class action, it was subject to CAFA. The basis for the decision is, as I was prone to say in my younger days, a real beard scratcher. The court determined that the only way Addison had standing to bring the claim was as the class representative. That stems from the fact that the claim was not assigned to Addison as part of a settlement, but rather was assigned to the entire class. This part I absolutely agree with. While your first thought may be that the claim should pass through to each individual class member, that does not actually make sense in light of what was transferred. The class did not gain some divisible right but rather the individual right of the defendant in the first case to sue its insurance company to cover it for liability arising out of the class action.

The court also held that Addison, as class representative, owes fiduciary duties to the class that continue on into the second case. Again, I do not disagree with this conclusion either. The part that throws me is that the court opted to read a class action into a complaint that never said class action or laid the foundation of class allegations.

While it is true that Addison owes fiduciary duties to the class and that Addison lacks standing to sue individually, it chose to do just that. It seems that the court's real option was to dismiss the case for lack of standing thereby forcing Addison to re-file the case as a putative class action or to bring the matter in the form of proceedings supplemental to the original case. I understand the desire to not require such *pro forma* mechanics for the mere sake of formality, but to issue a decision in which the court chooses to essentially read class allegations into a complaint for the sake of finding standing, all in the name of permitting CAFA jurisdiction, seems like it may tread the dangerous waters of unforeseen consequences.

Join us again next time for further discussion of developments in the law.

Sources

- *CE Design, Ltd. v. Cy's Crab House N., Inc.*, ---F.3d---, No. 11-3731, 2013 WL 5425342 (7th Cir. Sept. 30, 2013), *as corrected* (Oct. 1, 2013).
- Telephone Consumer Protection Act – codified at 47 U.S.C. § 227.
- Colin E. Flora, *Questionable Actions of Class Counsel Did Not Merit Decertification in Class Action*, HOOSIER LITIGATION BLOG (Jan. 11, 2013).
- *Reliable Money Order, Inc. v. McKnight Sales Co., Inc.*, 704 F.3d 489 (7th Cir. 2013).
- *Addison Automatics, Inc. v. Hartford Cas. Ins. Co.*, ---F.3d---, No. 13-2729, 2013 WL 5452085 (7th Cir. Oct. 2, 2013).
- Class Action Fairness Act of 2005 – P.L. 109-2.
- Colin E. Flora, *Class Action Fairness Act: Amount in Controversy after Knowles*, HOOSIER LITIGATION BLOG (Mar. 22, 2013).

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