



Supreme Court Blocks Plaintiffs From Taking Shortcuts In Class Action Cases

Insights

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The Supreme Court unanimously held today that plaintiffs cannot immediately appeal a federal court's denial of class certification when the named plaintiffs voluntarily dismiss their claims following the denial of class certification, handing a victory to employers and others who face costly class action litigation. This decision maintains the status quo, and continues to deny the plaintiffs' bar the ability to do an end-run around the general prohibition barring provisional "interlocutory" appeals brought while the underlying litigation is still being maintained. While not an employment law decision, this ruling is welcome news for those employers facing class action lawsuits (*Microsoft Corp. v. Baker*).

Plaintiffs Take Shortcut To Appeals Court Over Company's Objections

The plaintiffs were a group of Xbox 360 owners who filed a nationwide class action lawsuit against Microsoft claiming that defective videogame consoles scratched game discs. Microsoft argued that only 0.4% of Xbox owners reported discs being scratched by their consoles, and that the scratches to game discs were caused by improper use rather than any manufacturing defect. The company moved to have the class allegations stricken, or, in the alternative, to have class certification denied.

A federal court in Washington granted Microsoft's motion and struck the class allegations, relying on an earlier decision which held that class certification was not proper in product defect cases if the defect did not manifest in a large percentage of products sold. The plaintiffs petitioned for leave to file an "interlocutory" appeal, which would allow them to get a ruling on the class action question from an appeals before the individual litigation brought by the named plaintiff was resolved by the lower court. That petition was denied. The plaintiffs agreed to dismiss their underlying litigation with prejudice in order to bring the matter to a head and advance the issue to the appeals court.

On appeal, Microsoft argued that the 9th Circuit Court of Appeals should dismiss the case because a plaintiff's voluntary dismissal with prejudice should not create proper appellate jurisdiction. But the 9th Circuit rejected Microsoft's argument and accepted the case. It then reversed the lower court's ruling and permitted the plaintiffs to proceed with their product defect class action.

Potential Impact Of The 9th Circuit's Decision

Substantively, the appeals court determination – that class certification was not precluded just because the alleged Xbox defect scratched discs in only a small percentage of cases – was unsurprising and not likely to have a meaningful impact on the field of class action litigation.

Certainly, most employment counsel will not lose sleep over the issue of whether consumers can maintain class claims on product defect claims.

The more serious potential impact of the decision was the principle that plaintiffs could now obtain immediate review of an order denying class certification, removing the finality often associated with a voluntary dismissal with prejudice. The 9th Circuit's decision made it easier for plaintiffs to obtain review of class certification denials, which, in turn, made class action litigation more efficient for plaintiffs, only serving to encourage more class action lawsuits.

Because the process of certification makes or breaks a class action, the ability to obtain a final decision on certification without first having to litigate a single plaintiff case to a decision would have drastically changed the economic analysis that goes into whether a plaintiffs' attorney would file a class action lawsuit. Moreover, the 9th Circuit's decision tipped the class action playing field towards plaintiffs, because defendants would continue to have to wait for a final decision before appealing issues related to the grant of class certification, whereas plaintiffs could immediately run across the street to an appeals court to get an immediate ruling on the same issue.

SCOTUS: Shortcuts Not Permissible

The Supreme Court reversed the 9th Circuit and ruled in favor of Microsoft, holding that federal courts of appeals lack jurisdiction under § 1291 to review an order denying class certification (or, as here, an order striking class allegations) after the named plaintiffs have voluntarily dismissed their claims with prejudice.

The SCOTUS echoed earlier decisions which had examined a similar tactics, and explained that "if respondents' voluntary-dismissal tactic could yield an appeal of right, Rule 23(f)'s careful calibration – as well as Congress' designation of rulemaking as the preferred means for determining whether and when prejudgment orders should be immediately appealable – would be severely undermined."

What Does This Mean For Employers?

This decision provides some reassurance to those employers that may face class action lawsuits. The Court's decision keeps the playing field level for class action defendants when it comes to obtaining review of decisions related to class certification. By reversing the 9th Circuit, the Court removed a procedural scheme that would have required employers to second guess whether they should ever stipulate to voluntary dismissals with prejudice. More importantly, the SCOTUS blocked putative class action plaintiffs from taking a faster, "one-sided" view – and looser – path to appeal, refusing to make class actions more appealing to plaintiffs and their attorneys.

Employers still need to take every precaution to avoid class action lawsuits, most common in the wage and hour area of employment law. This decision does nothing to change employees' substantive rights. Classes of employees will still be able to recover large amounts from employers through wage and hour class actions, so long as they can show that class treatment is appropriate.

What this decision does, however, is preclude plaintiffs from getting an additional bite at the apple, without first obtaining a final decision from the district court.

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