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Seventh Circuit Rules: Just Saying it Doesn't Make it So, for Class Certification

Minding Your Business on **May 3, 2023**

Defendants on the losing side of a class certification order were recently provided with a roadmap of how to challenge a district court's analysis on appeal.

On April 12, 2023, the United States Court of Appeals for the Seventh Circuit vacated and remanded a district court's class certification order because it failed to "rigorously analyze" the prerequisites to certify a class under Federal Rule of Civil Procedure 23. The appellate court held that the district court abused its discretion by failing to "go beyond the pleadings" – in other words, the plaintiffs' *allegations* – in its analysis.

The putative class was composed of students who alleged that Bradley University had breached its implied contract with students and unjustly enriched itself when the university eliminated a week of classes and certain student activities during the COVID-19 pandemic, while still charging full tuition and student activity fees.

District Court Judge Michael M. Mihm granted the students' motion to certify two classes of students: one consisting of students who sought to recover a portion of the full tuition payments already made; and a second consisting of students seeking to recover payments made to access school facilities (to which access was restricted during the pandemic). The district court declined to certify a third class that sought to recover fees paid for course supplies, which was not appealed.

On appeal, the Seventh Circuit vacated the class certification order. Circuit Judge Flaum, joined by Judge Scudder and Judge St. Eve, penned the decision and identified two key faults. First, the appellate court held that the district court appeared to rely on the pleadings rather than the complete record. For instance, the district's court's analysis of "commonality" was simply that "all members *allegedly* suffered a common injury," without referencing any of the evidence that purported to support those allegations.

Second, the Seventh Circuit held that the district court abused its discretion by not separately analyzing the elements of the students' claims for purposes of the predominance factor. Predominance requires that common questions – as opposed individual questions – represent a significant aspect of the case. According to the Seventh Circuit, this requires the district court to break down each claim into its individual elements and separately analyze each element's importance. Here, the district court did not address the university's arguments that the breach of contract claim would lead to many individual questions regarding damages, and dismissed related arguments about the unjust enrichment claim without explanation.

The Seventh Circuit's decision also provided guidance about the extent to which a district court may examine the merits of a purported class's claim, cautioning that it may do so only to determine if class certification prerequisites are met.

The decision is a reminder to class action defendants that a bad class certification decision may not be the end of the story – a keen eye on a district court's analysis may provide an opportunity to turn things around.

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