Where the (class) action is

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Where the (Class) Action Is

The first quarter of 2014 brought a number of interesting class decisions, including cases involving kosher beef, a weight-loss product, and allegedly moldy baby seats. There were important decisions in the privacy area, including denials of class certification in the Gmail Privacy MDL. There were also two significant decisions in class actions involving RICO claims. We saw a great deal of activity in the arbitration context—with results going in different directions—as courts continue to work out the contours of the Supreme Court’s landmark Concepcion decision. We also saw a trend in courts rejecting attempts to narrow the reach of CAFA.

As always, we welcome your feedback about the Round-Up. Please share your thoughts and let us know how we can make it better. We hope you enjoy the report.

This advisory is published by Alston & Bird LLP to provide a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.
**Banking**

- **Ninth Circuit Breathes New Life into Libor Class Action**


  In a mortgage-related row, the Ninth Circuit reversed the Central District of California’s grant of summary judgment in favor of several bank defendants, including Deutsche Bank and Barclays. The plaintiff, on behalf of a putative class of borrowers, alleged that she would not have purchased her loan if she had known that the defendant financial institutions manipulated the Libor rate—a benchmark rate used to set adjustable mortgage rates.

  The district court held that the plaintiff did not suffer an injury-in-fact because her mortgage payments were not affected by the Libor manipulation. The Ninth Circuit reversed, holding that the plaintiff’s injury crystallized when she bought her loan, not when she made her loan payments. The Ninth Circuit also reversed the dismissal of the plaintiff’s wrongful foreclosure, unfair competition, and good-faith-and-fair-dealing claims. The Ninth Circuit affirmed the dismissal of claims against Deutsche Bank because the plaintiff failed to present any evidence that Deutsche Bank was involved in the alleged Libor manipulation.

- **Student-Loan Borrowers Fail Ascertainability Test**


  Student-loan borrowers sued Sallie Mae alleging that late fees it charged were improper and usurious and that the choice-of-law provision in Sallie Mae’s loan agreement was unenforceable. The borrowers sought certification of three California subclasses.
Consumer Protection

- Where's the (Kosher) Beef? Failure to Allege Purchase of Improperly Labeled Meat Dooms Class Action Against ConAgra


Purchasers of ConAgra’s Hebrew National meat products (including hot dogs) filed a putative class action in Minnesota state court, alleging that “meat from cows that should not qualify for kosher certification ends up being marked kosher and used in Hebrew National products.” The named plaintiffs asserted claims for negligence, violations of the Nebraska Uniform Deceptive Trade Practices Act, Nebraska Consumer Protection Act, other state consumer protection laws, and breach of contract. After ConAgra removed the case to federal court, the district court dismissed the case because the First Amendment prohibited it from adjudicating the consumers' claims given the underlying religious elements.

The Eighth Circuit reversed holding that the named plaintiffs lacked “traditional Article III standing to pursue” their claims, which meant that the district court did not have authority to decide the First Amendment issue in the first place. The court held that the purchasers had “not alleged that the products they each purchased were defective,” analogizing the case to a product defect case in which some products are admittedly defective, but most are not. The purchasers failed to properly allege that any of the packages of beef that they “personally purchased” contained non-kosher beef. The Court of Appeals rejected the plaintiffs’ benefit-of-the-bargain argument that standing existed because they “paid a premium price . . . believing them to be 100% strictly kosher, when they weren’t.” Because the plaintiffs lacked standing, the appellate court ordered the cases remanded to state court.

- Ninth Circuit Snuffs Out Bid for eBay Class Action

Block v. eBay, Inc., No. 12-16527 (9th Cir.) (Apr. 1, 2014). Affirming grant of eBay’s motion to dismiss.

An eBay customer claimed that the company’s use of an automatic bidding system breached its User Agreement, violated California’s Unfair Competition Law (UCL), and intentionally interfered with the customer’s prospective economic advantage in transactions between eBay customers. The district court dismissed the plaintiff’s complaint for failing to state a claim.

The Ninth Circuit affirmed, holding that it could not presume reliance (as required for a UCL fraud claim) because the User Agreement and website fully explained the purpose and function of the automatic bidding system. The plaintiff also failed to properly allege that he relied on any eBay representations. The court also affirmed dismissal of the breach of contract claim because the two User Agreement provisions were not promises “not [to be] involved in the actual transaction between buyers and sellers” or “not to enter into agency relationships with its users.” The plaintiff’s intentional-interference claim failed because he could not establish an underlying bad act.

- 1292(b) Is Only Option for Appealing Arbitration Grant in “Triple Advantage” Class Cases

Johnson v. Consumerinfo.com, No. 11-56520 (9th Cir.) (Mar. 20, 2014). Dismissing the plaintiffs’ appeal and denying petition for writ of mandamus.

Consumers filed putative class actions alleging that Consumerinfo.com violated various California consumer protection laws in connection with sales of its “Triple Advantage” credit report monitoring program. Consumerinfo.com filed motions to compel arbitration in each case. The district court granted the motions, stayed the actions, compelled arbitration of each individual claim, and denied the plaintiffs’ motion to certify an appeal under 28 U.S.C. § 1292(b). The plaintiffs appealed anyway.

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The Ninth Circuit held that the plaintiffs ran afoul of 9 U.S.C. § 16(b), which clearly “bars appeals of interlocutory orders compelling arbitration and staying judicial proceedings.” In a matter of first impression, the court was “not persuaded by plaintiffs’ creative argument” that an order staying proceedings and compelling arbitration could be deemed “final” and therefore appealable under the collateral order doctrine. The court of appeals followed other circuits in concluding that “§ 1292(b) provides the sole route for immediate appeal of an order staying proceedings and compelling arbitration.”

**California District Court Takes a Bite out of “Duty to Disclose” Jurisprudence in Apple Matter**


An Apple customer alleged that Apple’s 27-inch iMac computers have a defect that causes the screen to dim permanently, contrary to Apple’s advertising, which “trumpeted the high quality nature of the screen and the ‘long productive life’ of Mac computers.” According to the plaintiff, Apple’s failure to disclose the defect violated California’s Legal Remedies Act and Unfair Competition Law.

The district court dismissed the action because companies do not have a “duty to disclose” a non-safety defect that manifests itself after the warranty expires. In all events, the court reasoned, the language used in Apple’s advertisement constituted non-actionable puffery.

**Plaintiff Suffers Meltdown Trying to Certify Class of Weight Loss Customers**


The plaintiff purchased Vital’s “Meltdown” product, a dietary supplement that Vital says can be used to “burn fat” and achieve rapid fat loss. Claiming that the product is ineffective for its advertised purpose, the plaintiff filed a putative class action alleging violation of the Magnuson-Moss Warranty Act, breach of express warranty, unjust enrichment, and violation of Florida’s Deceptive and Unfair Trade Practices Act.

The court denied certification because the proposed classes were not ascertainable. Class members were third-party purchasers, and the defendant did not have a record of the identities of most members of the proposed classes. Moreover, customers were unlikely to maintain proofs of purchase for the products and refused to allow self-identification as a methodology for determining class membership. The court further rejected most of the plaintiff’s proposed classes on predominance grounds, highlighting the problems with certifying a nationwide class of consumers under a single state’s laws.
Insurance

- **Fifth Circuit: CAFA Jurisdiction Continues for Individual Suits Severed from Class After Removal**


  Louisiana sued several insurance companies in state court seeking to collect on benefits claims that individual policyholders had assigned to the State in exchange for its assistance with repairing and rebuilding their homes after Hurricanes Katrina and Rita. After the insurers removed the case to federal court under CAFA, the federal district court certified a question to the Louisiana Supreme Court: Did the anti-assignment clauses in the policyholders’ insurance policies forbid the post-loss assignments to the State? The State High Court’s answer? It depends. The court held that Louisiana law does not categorically forbid courts from applying an anti-assignment clause to a post-loss assignment, but the court left open the possibility that applying an anti-assignment clause to a post-loss assignment could violate Louisiana law in some instances. The upshot is that the court’s decision requires a policy-by-policy analysis.

  In response to the ruling, the federal district court ordered the State to sever each assigned claim into a separate action, which the State did. Once severed, the district court held that the individual actions no longer met the requirements for federal jurisdiction and remanded the cases to state court.

  The Fifth Circuit reversed. It held that the district court continued to have jurisdiction over the severed individual actions because federal jurisdiction is assessed at the time of removal and does not change based on later events.

- **Declaratory Judgment Sufficient for CAFA Jurisdiction**


  A health care provider, as assignee of its patients’ personal injury protection (PIP) benefits, sued Allstate for a declaratory judgment that form policy language did not unambiguously state that PIP payments would be limited under a certain Florida statutory fee schedule. Allstate removed the case under CAFA and submitted an affidavit to show that the requested declaratory relief could result in more than $68 million in additional PIP benefits. The district court ordered remand based on its finding that the possible financial effects of a declaratory judgment action are too speculative to satisfy CAFA’s amount-in-controversy requirement.
The Eleventh Circuit reversed, holding that Allstate's affidavit was enough to show that more than $5 million was at issue. The court rejected the district court's finding of speculativeness because Allstate could identify amounts billed in a specific number of transactions that had already occurred and that could be affected by the declaratory judgment.

### Insureds Abandon Arguments on Appeal; Eleventh Circuit Affirms Dismissal of Rate Challenge Suit


Insureds sued Allstate to recover profits from revised premiums filed after the State of Florida made subsidized reinsurance available to Florida insurers. The insureds claimed that Allstate's revised rates did not meet the requirements for reinsurance and that the company improperly benefitted at customers’ expense. The district court dismissed the complaint on multiple alternative grounds, including the filed-rate doctrine, that the Florida legislature had not created a private right of action to enforce the reinsurance legislation, and the legal inadequacy of each cause of action.

On appeal, the insureds' opening brief challenged only the first two bases for dismissal and did not address the rulings on the legal adequacy of each claim. The Eleventh Circuit held that the insureds had abandoned any argument of error about those additional grounds and affirmed the dismissal.
Labor & Employment

- **Sixth Circuit: Arbitration Clause Trumps Survival Clause**
  
  
  In a case of first impression, the Sixth Circuit held that an arbitration clause in an employment agreement can be enforced after the agreement expires, even when the arbitration clause is omitted from the list of provisions that survive expiration.

  The strong federal policy favoring arbitration won the day. Rebutting that presumption "is a difficult task," the court reasoned. The omission of the arbitration clause from the survival clause didn't give rise to a "clear implication" that the parties intended the arbitration clause to expire with the employment agreement. The court noted that if a survival clause lists all clauses except for the arbitration clause, a different result might follow.

- **Ninth Circuit Keeps Hertz Class Action Off the Road**
  
  *Friend v. Hertz Corp.*, No. 11-16195 (9th Cir.) (Mar. 18, 2014). Affirming denial of class certification.

  The Ninth Circuit affirmed a decision rejecting class certification for a group of Hertz employees claiming that they were wrongly denied overtime pay. The panel shot down the argument that the district judge abused her discretion by failing to consider corporate policies offered to prove that the claims were amenable to class-wide resolution. Those policies didn't need to be weighed, the panel reasoned, because the plaintiffs hadn't shown that the policies "reflect the realities of the workplace" or "actually controlled the day-to-day experiences" of Hertz employees.

- **Eleventh Circuit Follows Suit: Class Action Waivers Are Enforceable in the FLSA Context**
  

  A group of window repairers brought a putative class action under the Fair Labor Standards Act alleging that the defendants did not pay overtime. The defendants moved to compel arbitration, but the plaintiffs said that their right to file a collective action was a non-waivable substantive right. The district court granted the motion to compel in light of the FAA's strong policy in favor of arbitration.

  The Eleventh Circuit agreed. After examining the FLSA's text, legislative history, purposes, and Supreme Court precedent, it discerned no "contrary congressional command" that precluded the enforcement of the plaintiffs' arbitration agreement and the collective action waivers contained therein.
• **Class of Call Center Employees Certified in Overtime Suit Against Bloomberg**


A putative class of call center telephone support staff sought certification of their claims that Bloomberg violated New York labor laws by failing to pay overtime.

The court granted the employees’ motion. According to the court, the class satisfied Rule 23’s commonality requirement because the employees all worked more than 40 hours per week without proper compensation. Additionally, Bloomberg’s affirmative defense applied equally to all employees and did not create individual issues. The court also rejected Bloomberg’s argument that a class could not be certified because the employees’ damage model was not consistent with their liability theory.

• **Lowe’s Nails Certification of Putative Class of Installers**


Installers of products purchased from Lowe’s alleged that the home improvement store misclassified the installers as independent contractors.

The court denied certification. Even though each installer signed an identical contract, they could not demonstrate commonality. Whether an installer was an independent contractor turned on whether they were free from Lowe’s control, a fact-bound inquiry that defied common proof across the proposed class of installers.
Privacy & Security

- Privacy Class Gone in Gmail Ad Targeting Action

  *In re Google Inc. Gmail Litigation*, No. 5:13-md-02430 (N.D. Cal.) (Mar. 19, 2014). Judge Koh, denying with prejudice the plaintiffs’ requests to certify four classes and three subclasses.

  In September, Judge Koh denied most of Google’s motion to dismiss the plaintiffs’ challenges under state and federal anti-wiretapping laws to Google’s operation of Gmail because he was not persuaded that Google’s practice of scanning email to target advertisements and creating user profiles fit within the “ordinary course of business” exception to the Wiretap Act or that the plaintiffs consented to Google’s practice.

  Google might have lost the battle, but it won the war, because in mid-March, Judge Koh refused to certify the putative classes, holding that the plaintiffs could not satisfy Rule 23’s predominance requirement. Whether either the sender or recipient of the emails consented—either expressly or impliedly—to Google’s practice must be litigated on an individual basis. Judge Koh noted that implied consent is fundamentally a factual question that involves consideration of surrounding circumstances that were “likely to overwhelmingly predominate over common issues” given that the class members could have learned about Google’s interceptions from various Google disclosures or media sources (or not at all).

- Callers Take Care: Two Circuits Revive Calling Suits


  The plaintiff alleged that his call to the 1-800-HAMPTON reservation line, during which he updated his credit card information, was recorded without his consent in violation of California’s call-recording statute, Penal Code Sections 632 (which prohibits recording of confidential communications over a telephone line) and 632.7 (which proscribes eavesdropping and recordation on cellular and cordless telephones, but contains no similar confidentiality caveat). By a 2-1 decision, the lower court dismissed the claims based on Hilton’s argument that the calls were not confidential, but the Ninth Circuit reversed based on additional protections afforded to cell phone calls. The court reasoned that the California Supreme Court has applied Section 632.7 to service-observing calls even where no confidential information was exchanged.

  *Osorio v. State Farm Bank FSB*, No. 13-10951 (11th Cir.) (Mar. 28, 2014). Reversing grant of summary judgment to State Farm, reversing summary judgment on State Farm’s counterclaim, and reversing lower court’s grant of State Farm’s attorneys’ fees in defending the TCPA suit.

  The plaintiff alleged that State Farm Bank violated the TCPA after he received 327 autodialed debt collection calls over a six-month period that were intended for the debtor, who was the mother of the plaintiff’s child and lived with the plaintiff. The Southern District of Florida granted summary judgment to State Farm on the TCPA issue, finding that the debtor had consented to the plaintiff receiving the calls and that neither the debtor nor the recipient had revoked that consent in writing. The court also granted summary judgment on State Farm Bank’s negligent misrepresentation counterclaim against the debtor because she had provided the plaintiff’s telephone number to State Farm Bank when she signed up for a credit card.

  The Eleventh Circuit reversed because the “intended recipient” is not the “called party” who must provide prior express consent to such communications under the TCPA. Because the intended recipient—the debtor—could not consent on the called party’s behalf, disputed factual issues remained about whether State Farm Bank obtained lawful consent for the calls from the plaintiff recipient and for what purposes the debtor had provided the plaintiff’s number to the bank.
Facebook Wins Face-Off with Minors over Use of Images in Ads

_C.M.D. v. Facebook, Inc._, No. 3:12-cv-01216 (N.D. Cal.) (Mar. 26, 2014). Judge Seeborg, dismissing proposed class action.

The plaintiffs, minors who use Facebook that opted out of the settlement in _Fraley, et al. v. Facebook, Inc._, No. 3:11-cv-01726 (N.D. Cal.), alleged that Facebook’s terms of service—the Statement of Rights and Responsibilities (SRRs)—violated California law limiting minors’ ability to contract. After finding that the plaintiffs had standing, Judge Seeborg dismissed the plaintiffs’ claims for declaratory relief and relief under the Illinois Right of Publicity Act, concluding that minors do have the ability to enter into binding contracts except in certain specified circumstances that were not present.

The court held that the minors’ agreement to the SRRs was not tantamount to the minors unlawfully delegating power or “[m]aking a contract relating to any personal property not in the immediate possession or control of the minor.” By agreeing to the SRRs, the plaintiff minors were not appointing Facebook as an agent or delegating to Facebook the authority to enter into additional contracts on their behalf.
### Products Liability

- **Court Declines to Certify Moldy Baby-Seat Class**
  

  The Central District of California declined to certify a class of consumers in a case alleging that the Fisher-Price Rock 'n' Play Sleeper had poor ventilation and a “dangerous propensity” to grow mold. The court found that, although there was some evidence that the sleeper may develop mold under certain circumstances, there was no evidence that those circumstances were common across the class or even frequently experienced among the class.

- **Plaintiffs Claim that Safeway Is Not Living Up to Its Name**
  

  Safeway couldn’t escape plaintiffs’ claims of negligence in a class action in the Northern District of California. On a motion to dismiss, Safeway argued that it had no continuing duty to warn Safeway “Club Card” holders about later food product recalls. The court disagreed, finding no basis to carve out an exception to the general duty of reasonable care.
RICO

• A Change of Heart: California District Court Changes Its Mind and Certifies a Nationwide Class


Lessees of credit and debit card processing equipment alleged that Merchant Services, their former lessor, conspired to defraud them by collecting taxes that were not due or paid to any taxing authority.

Judge Wilken originally denied class certification, but reconsidered the denial and rejected Merchant Services’ argument that the lessees failed to establish reliance and causation. The court reasoned that reliance and causation did not have to be established at the class-certification stage.

• Multimillion-Dollar Pyramid: Texas District Court Certifies Class of Pyramid Scheme Victims


Independent sales agents for Ignite, a natural gas and electricity services company, brought a RICO action against SGE Management alleging that Ignite was an illegal pyramid scheme.

Judge Hoyt certified a Rule 23(b)(3) damages class, holding that common issues predominated because all the sales agents believed that they were joining a lawful venture and were damaged by the pyramid scheme. But the court denied certification of the agents’ misrepresentations claims, because individualized reliance issues predominated. And Judge Hoyt refused to certify an injunctive relief class because there was no evidence that sales agents faced future harm.
Securities

- High Court Narrowly Construes Securities Litigation Uniform Standards Act in Chadbourne & Parke LLP: “Connection” with Covered Security Must Be One That “Matters”

Chadbourne & Parke LLP v. Troice et al., No. 12-79 (U.S.) (Feb. 26, 2014). Affirming the Fifth Circuit’s reversal of the district court’s dismissal of state law securities class actions.

The Securities Litigation Uniform Standards Act of 1998 (SLUSA) prohibits plaintiffs from bringing large securities class actions “based upon the statutory or common law of any State” in which the plaintiffs allege “a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security.” 15 U.S.C. § 78bb(f)(1). A “covered security” is a security traded on a national exchange. Id. at §78bb(f)(5)(E).

The plaintiffs, who purchased certificates of deposit (CDs) in now-disgraced financier Allen Stanford’s Stanford International Bank, brought class actions under state law alleging that law firm Chadbourne & Parke helped Stanford perpetrate a Ponzi scheme by falsely representing that uncovered securities that the plaintiffs were purchasing were backed by covered securities. Although recognizing that the CDs themselves were not covered securities, the district court held that SLUSA required dismissal. The bank’s misrepresentation that its uncovered securities were secure investments because they were backed by covered securities provided the requisite “connection with the purchase or sale of a covered security.” The Fifth Circuit reversed on the ground that the bank’s misrepresentation about the covered securities was too “tangentially related” to the fraud to trigger SLUSA.

The Supreme Court agreed, holding that SLUSA does not extend further than misrepresentations that are material to the decision of an individual (other than the fraudster) to purchase or sell a covered security. Justice Breyer, writing for the Court, explained that the language of the Act “suggests a connection that matters,” and “a connection matters where the misrepresentation makes a significant difference to someone’s decision to purchase or sell a covered security, not to purchase or sell an uncovered security.”

- Shareholders Sprint over Class Certification Finish Line


A group of shareholders sued Sprint and several of its former executives over stock losses that they allegedly suffered during the company’s $37.8 billion merger with Nextel in 2005. The plaintiffs claimed that the defendants violated the Securities Exchange Act by making false and misleading statements regarding Sprint’s business performance and financial results.

The court rejected the defendants’ sole argument that the plaintiffs had not met the typicality requirement because the plaintiff purchased different bonds than other class members.
• Avanir Proxy Statement “Full and Fair” Under Delaware Law—Proxy Need Not “Bury Shareholders in Needless Information and Summaries”


Shareholders of biotechnology company Avanir sued to enjoin a shareholder vote on the company’s plan to buoy its equity compensation plan by authorizing an additional 17 million shares. The shareholders allege that the firm’s proxy statement failed to adequately disclose, among other things, the reasons for the plan and its effects, including how the plan might dilute shareholders’ interests in Avanir.

The court rejected the shareholders’ motion because under Delaware law, the proxy “fully and fairly” disclosed “all material information” pertinent to the vote: The proxy stated that issuing the shares “would provide a sufficient additional number of shares to enable the Company to continue to make awards at historical average rates for the next four years” and gave the actual annual rates for 2011, 2012, and 2013. To require more, the court asserted, “would either risk affirmatively misleading shareholders or would bury shareholders in needless information and summaries.”

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Settlements

- Antitrust


On December 13, 2013, Judge Gleeson granted final approval of a $7.25 billion settlement to a class of roughly 12 million merchants who accused Visa Inc. and MasterCard Inc. of conspiring to price-fix card swipe fees. The National Retail Federation is now moving to overturn the settlement, claiming that it is a flawed agreement that fails to address the retailers’ interests as a whole.


Several direct purchasers of buttons, zippers, and other fasteners settled a case alleging that Prym, YKK, and Coats conspired to fix prices and allocate customers and markets for fasteners. The plaintiffs claimed that the defendants met to sign “anticompetitive agreements” from the mid-1970s until about 2003. The defendants argued that the class action was time-barred, but Judge Surrick refused to dismiss the suit in 2011. Although the defendants denied any wrongdoing, they established a settlement fund of $17.55 million. The court approved the request of plaintiffs’ counsel for $5.85 million in attorneys’ fees.

- Consumer and Financial Fraud

**Pearson v. NBTY Inc.**, No. 1:11-cv-7972 (N.D. Ill.) (Jan. 6, 2014). Judge Zagel, approving settlement.

Plaintiff Nick Pearson and five other plaintiffs settled claims alleging that the joint health dietary supplement Up & Up Glucosamine did not provide the joint health benefits as promised on the label. The settling defendants NBTY Inc., Rexall Sundown Inc., and Target Corp., all market and sell the supplement. The agreement included a fund of up to $14.2 million available to class members. The class members could receive up to a $50 refund with proof of purchase, or a $3 refund with no proof of purchase. The settlement guarantees a minimum $2 million payment to class members or to a cy pres fund if the class members submit claims for less than $2 million. The settlement also provides for injunctive relief changing the labeling on the relevant products for 30 months.


The parties settled a putative class action in which the plaintiffs alleged that Porsche vehicles contained a defect in the engine shaft and that Porsche violated the California Consumer Legal Remedies Act, the California Unfair Business Practices Act, and committed fraud. The settlement provides that Porsche will pay to repair the vehicles affected by the engine shaft problem and will reimburse expenses already incurred by consumers related to the alleged defect.


The plaintiffs alleged that Louis Vuitton violated California’s Song-Beverly Act by requesting customers’ personal information at the time of credit card sales. Under the settlement, Louis Vuitton will establish a $1 million fund from which class members can make claims to receive a $41 merchandise credit. The court held that the merchandise certificates were vouchers and not coupons and thus CAFA did not apply. In addition to establishing the settlement fund, Louis Vuitton agreed to modify its procedures for gathering customers’ personal identifying information by requesting that customers fill out a preprinted information card. The court also approved a $5,000 incentive award for the named plaintiff and $375,000 in attorneys’ fees and costs.

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WHERE THE (CLASS) ACTION IS

• CONSUMER PROTECTION
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• RICO
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• SETTLEMENTS

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Homeowners settled claims alleging that JPMorgan Chase & Co. and other banking defendants, including Bear Stearns Cos., used misleading loan documents to dupe homeowners into purchasing adjustable-rate mortgages in violation of the Truth in Lending Act. Under the terms of the settlement, class members received payment of $500 to $5,400 and named plaintiffs received incentive awards of $5,000 each. Of the 5,084 class members, only seven asked to be excluded from the settlement. The settlement also includes approximately $500,000 to be split among the 1,935 members of the Truth in Lending Act subclass.


Customers of JP Morgan Chase NA (“Chase”) accused the bank and Assurant, Inc., of conspiring to artificially inflate premiums charged under Chase’s standard mortgage agreement, which ostensibly forced borrowers to pay costly premiums for hazard and wind insurance on the property securing their loan. They further alleged that the high cost of the insurance policies resulted from kickbacks that Assurant allegedly paid Chase for their “force-placed business.” Under the terms of the agreement, Chase and Assurant will pay class members a 12.5 percent refund on their net annual premiums and will discontinue their alleged forced-placement practices.

ERISA


Participants in Textron’s retirement plan alleged that the market price of Textron common stock was artificially inflated because Textron concealed its true financial condition. The class members alleged that Textron and its top officials breached their fiduciary duties under ERISA by keeping Textron stock as a retirement plan investment option when the stock was artificially inflated. The settlement included $162,757 in expenses for class counsel and four incentive awards of $10,000. The court also approved a 30 percent attorneys’ fees award of $1.2 million, to be paid out of the settlement fund.

Labor & Employment


Delivery drivers alleged that Bimbo Bakeries violated the Fair Labor Standards Act by misclassifying them as independent contractors instead of employees. Judge Goldberg approved a $905,000 settlement that will provide a $900 payment to each current driver and $450 to each former driver.


Fourteen-thousand workers alleged that Harvest Management shorted their wages in violation of the Federal Labor Standards Act and California labor laws mandating employee rest and meal breaks. The settlement provides for payment of around $543 each to employees in California and $70 each to employees in other states.


A class of 296 individuals accused the National Collegiate Scouting Association of failing to pay “scouting coordinators’ overtime wages in violation of both federal and state law. The average payment to each class member is $3,949.55, with the largest settlement payout totaling almost $20,000.
- **Products Liability/Personal Injury**


  A class of former NFL players brought claims that the NFL did not protect them from the effects of concussions. The court rejected the proposed settlement because the $675 million fund was not large enough to cover all injured players' claims: “Even if only 10 percent of retired football players eventually receive a qualifying diagnosis, it is difficult to see how the monetary award fund would have the funds available over its lifespan to pay all claimants at these significant award levels.”


  The plaintiffs alleged that Merck and Organon USA Inc. failed to warn that NuvaRing carries a higher risk of blood clots and stroke than other hormonal contraceptives such as birth control. The settlement requires a 95 percent participation rate among approximately 3,800 current eligible participants.

- **Privacy**


  Customers sued AvMed for failing to maintain adequate data security safeguards, which resulted in the theft of 1.2 million customers' personal information. In a landmark decision, Judge King gave final approval to a $3 million data breach settlement deal that, for the first time, allows plaintiffs who did not suffer identity theft to recover $10 for each year they bought insurance from AvMed—up to a $30 cap.


  The Seventh Circuit affirmed a $75 million class settlement involving privacy claims against Trans Union Corporation, a credit information provider. Beginning in 1998, numerous proposed class actions were filed against Trans Union under the Fair Credit Reporting Act alleging that Trans Union violated federal law by selling lists of customer credit reports to marketers. A settlement was reached where all class members received credit monitoring services. Class members could also claim cash from the $75 million settlement fund or could claim “enhanced” in-kind relief consisting of additional financial services. In addition, class members who did not request cash or enhanced in-kind relief could preserve their right to bring individual claims worth between $100 and $1,000 in statutory damages. Under the agreement, Trans Union was permitted to pay judgments or settlements of these individual post-settlement claims and then get reimbursed by the $75 million settlement fund. The result was that Trans Union found little reason to fight these individual claims because it could settle them without paying any additional money.


  Customers accused Kohl’s of illegally asking for their ZIP codes during credit card transactions and using that information for marketing purposes, including junk mail. Under the final settlement deal, Kohl’s will create a $425,000 gift card fund to be divided upon class members and will pay $135,000 in attorneys' fees plus a $3,000 incentive award to the class representative.

More than 18,000 Southwest customers settled claims accusing the airline of violating the Fair and Accurate Credit Transactions Act by printing on their receipts both the last five digits of a credit card number and the credit card expiration date. Each claimant will receive roughly $60 under the settlement.

- Securities


Participants in Coventry Health Care's 401(k) plan settled claims alleging that Coventry's top officials breached their ERISA-imposed fiduciary duties by offering Coventry stock as a plan investment option at a time when the company was allegedly making misrepresentations about its financial condition. The court awarded class counsel attorneys' fees of $1 million, which represents about 28 percent of the recovery.

Enjoyed what you’ve read so far? Want to learn more? We'll come to you! We offer Class Action CLEs that provide recent trends and enhanced strategies for your business.

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