Sixth Circuit Vacates Class Certification Based on Preclusion, Interprets Wal-Mart

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Full text of the 6th Circuit opinion

The Sixth Circuit, in Gooch v. Life Investors Ins. Co. of Am., Cases Nos. 10-5003/5723 (6th Cir. Feb. 10, 2012), has vacated a Middle District of Tennessee decision granting class certification, remanding the case for further proceedings.

At issue was the District Court's decision certifying a class action consisting of individuals covered by cancer-only insurance policies issued by Life Investors Insurance Company over a six-year period. The plaintiffs claim that Life Investors improperly paid their claims for cancer treatments and supplies using costs calculated after discounts in violation of policy language allowing reimbursement for "the actual charges," which the plaintiffs claim are the list prices before discounts.

Amid a tortured procedural history, the District Court entered a preliminary injunction against Life Investors and then certified the class, defined as "[a]ll individuals throughout the United States who are, or between six (6) years from the filing date of this action until the present have been, insured by Cancer Only Policies issued by Life Investors."

The Sixth Circuit, however, vacated the order certifying the class based upon preclusion due to a settlement approved in a similar Arkansas state court class action on the same day as the District Court certified the class in Gooch. See Hunter v. Runyan, ___ S.W.3d ___, 2011 WL 478594, at *12 (Ark.); see also Pipes v. Life Investors Ins. Co. of Am., No. 1:07-cv-00035-SWW (E.D. Ark. 2008).

Fully analyzing and giving full faith and credit to the Runyan settlement, the Sixth Circuit's decision was based upon the fact that many of the putative plaintiffs in Gooch settled their claims by failing to opt out of the Runyan settlement. Therefore, while the Sixth Circuit surmised that Gooch might still be able to pursue claims on behalf of some class (for example, those such as himself who had opted out of the Runyan settlement), the class actually certified had been gutted by the settlement.

The Sixth Circuit conducted a thorough analysis not only of preclusion under the standard in Matsushita Elec. Indus. Co. v. Epstein, 516 U.S. 367, 374 (1996), but of the merits of class certification as it related to any claims not barred by the Runyan settlement.

One such issue was whether the decision in Wal-Mart Stores, Inc. v. Dukes, ___ U.S. ___, 131 S. Ct. 2541 (2011), precluded certification of a declaratory judgment class under Rule 23(b)(2) when Gooch also sought monetary relief. Parsing Wal-Mart, the Sixth Circuit found the answer is no: A declaratory judgment class can still be certified under Rule 23(b)(2) so long as a declaratory judgment remains a separable and distinct type of relief that will resolve an issue common to all class members.

Here, because Life Investors interpreted the policy uniformly as to all policyholders, the same declaratory judgment as to policy interpretation would apply to each class member, regardless of whether they did or did not have a separate claim for damages. In that way, the Sixth Circuit circumvented the concern discussed in Wal-Mart that individual class members would be entitled to different declaratory judgments. That was so even though some class members had never and would never make a claim for benefits under the policy and, thus, only some would have damages and the amounts would differ.

The Sixth Circuit remanded for further proceedings to consider

whether Gooch could re-define the class to include sufficient members not impacted by the Runyan settlement. Stay tuned for further discussion of this and other cases considering the ongoing impact of the Wal-Mart decision.

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