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## How Does a Class Action Case Work?

This week the attorneys here at Pavlack Law are taking a brief respite from the series on damages to discuss the basics of how Class Action law works. Recently, we have been in contact with many of the persons who suffered losses as a result of the fire and defective hydrants at the Deer Chase Apartments. A very common topic in those conversations is discussing how a class action works. As you may know, Pavlack Law filed a putative class action case against Crestline Communities, LLC and Crestline Property Management, LLC which own and operate the Deer Chase Apartments in Noblesville, Indiana for their failure to comply with their duties to maintain the fire hydrants on the property. So, we decided to dedicate this week's post as an overview of how Class Action cases work.

When discussing Class Actions the best place to start is with the legal foundation for bringing a "putative class action case." Class Actions are generally – as lawyers would say – governed by Rule. What this means is that the basis for bringing a Class Action is governed by the Trial Rules if in Indiana state court or the Federal Rules of Civil Procedure if in federal court. Indiana's Trial Rules, for the most part, mirror the Federal Rules of Civil Procedure. This makes life a lot more convenient for practicing lawyers and judges, chiefly, because Indiana courts are willing to look to guidance from federal courts in interpreting one of the Trial Rules. The specific rule governing Class Actions is Trial Rule 23 or Federal Rule 23.

The way that a Class Action case is brought is by filing the case with one or

only a handful of persons as the named plaintiff(s). This means that there is no need to round up a bunch of signatures or to line up potential class members. The named plaintiff files a case that is on behalf of him/herself and “all other similarly situated persons.” Even though the complaint – the initial document filed with the court laying out the causes of action – claims to be on behalf of the entire class, at the moment of filing the complaint it is only on behalf of a “putative class.” A “putative class” is essentially a hypothetical class of people that has been defined in the complaint and that the named plaintiff has asked to represent. But, at this stage in the proceedings there has not yet been a class formed.

After the named plaintiff files his case the next step is to conduct discovery. This is the portion in the case where the parties exchange documents and take depositions to discover the facts of the case. Once the named plaintiff and his counsel have sufficient information to move forward, he files for class certification. Class certification – typically called class cert. for short – is where the named plaintiff lays out the facts and asks the court to determine that the case can go forward as a class action with a certified class. If the court certifies the class then from that point on every person fitting within the defined class of persons is now a party to the case with the named plaintiff now appointed as the class representative. But before all of that can happen, the court must determine that the class can be certified by one of three methods under Rule 23.

In order to get a class certified a putative class representative must meet the requirements of Rule 23(A) and the requirements of Rule 23(B)(1), (B)(2), or (B)(3). The Rule 23(A) requirements are typically stated as Numerosity, Commonality, Typicality, and Adequacy of Representation.

What Numerosity means is that the number of class members must be so numerous that it is impractical to conduct the case with each person as an individual party. There is no set standard for how many persons this requires. The case law indicates that 40 or more should almost always be enough and, given the specific facts of the case, fewer than 20 may be sufficient.

The Commonality requirement means that the claims of each person must arise from a common nucleus of events. This makes sense if you think about. What a Class Action case does is take events that have impacted a lot of people and choose a handful of people to go to court and prove the claims. In order for this to happen the claims have to possess some common thread from which a handful of people can represent what happened to a much larger group. The Typicality requirement also follows this logic. It requires that the class representative – the person speaking in court on behalf of the class – is typical of the injured people. Essentially, it means that when that person describes what happened to him, that

can be used to relate to what happened to every other class member.

The Adequacy of Representation requirement means that the class representative must both himself as an individual be able to adequately speak and conduct himself on behalf of the client and the counsel he chooses must also be capable and experienced at representing a class. Fortunately, in the case of Pavlack Law there are very few attorneys with the depth of experience possessed by the firm's owner and name sake Eric Pavlack when it comes to conducting a Class Action.

Once a plaintiff has shown those four elements he can progress on to show that the class should be certified under one of the three methods under Rule 23(B). Under (B)(1) – which was the traditional style of class action – required a putative class representative to show that if the case were not certified as a class that there would be a high danger of inconsistent decisions or that a decision for one member of the putative class would essentially decide the matter for other members any way. If a class is certified under this section then the class members are not allowed to opt out and are bound by whatever happens in that case no matter what. While this was the classic form of class action, it is very rarely used in modern cases. Modern Class Action cases are typically brought either under (B)(2) or (B)(3).

A Rule 23(B)(2) class is typically used when what is sought is an injunction or something similar to that. An injunction is a legal mechanism whereby a party seeks non-monetary damages but rather a court order stopping the other party from taking a specific action. Like (B)(1), a class member under (B)(2) also cannot opt out of the class. However, this makes sense. If what is being sought is something like stopping a corporation from dumping chemicals into the town's water supply, then it makes no sense that a class member could opt out, as one person cannot just say, "I'm ok with the corporation dumping the chemicals so the corporation gets to continue doing it." Now, keep in mind that not opting out does not mean that the class members all of a sudden have to open their checkbooks and pay an attorney. It just means that those class members cannot later bring a separate lawsuit.

The Rule 23(B)(3) classes are far and above the most widely used in cases seeking damages. In order to be certified under (B)(3), a putative class representative must show that "questions of law or fact common to the members of the class predominate over any" individual issues. This means that the primary thrust of the case is issues that are common among all parties. Under this method, unlike (B)(1) & (B)(2) a member of the class can opt out. What this means is that when the class is certified, notice will be sent to all persons who are members of the class. That notice will explain how and by what time a party must opt out. A person would opt out because he or she has a large enough claim so as to bring it on his

own at a later time. Typically this is not the case for most class members. Most class members have a relatively small claim, and thus would not be able to afford to hire an attorney and bring a standalone claim. A good example for when a person would opt out is an instance in which a car has a major defect. The class would be comprised of all people who bought the car with the defect. For most people in the class they just want the defect fixed. However, for the people seriously injured in accidents caused by the defect, it may be wise to opt out and bring a standalone claim.

Once the class is certified the class representative and his counsel go forward and try to either negotiate a settlement or take the case to trial. If a settlement is reached or the class succeeds at trial then the court will approve some method by which the proceeds are paid out to the individual class members. This method varies dramatically based upon the type of injury that occurred. In many class action cases the injury to any individual can be mere pennies and the value of the case is punishing the wrongdoer. However, there are class action cases in which the injuries suffered by the class members are quite severe. Take for example the injuries suffered through the Deer Chase Apartments fire. Those losses are not just pennies. Those losses were serious and devastating impacts upon the residents' lives. In such a case the distribution of funds would likely be much more recognizable and meaningful.

Now, for the greatest misconception about Class Actions, lawyers are not paid based on fixed agreements with the named plaintiff. The way lawyers are paid in class action cases is by filing a petition to the Court after resolution of the case and asking the court to determine reasonable fees. In a Class Action case the lawyers for plaintiffs are not taking an hourly fee or being paid by anyone out of pocket. In the truest sense of contingency fees, plaintiffs' lawyers in a Class Action do not make one red cent until they reach a favorable verdict. Compare this to the legion of people who bemoan legal fees in Class Action cases. Bear in mind that the only attorneys making hourly fees are the defendant's own attorneys.

We hope that this brief overview has been helpful in understanding the class action process. We tried to make the explanation as straight forward as possible, but realize that it is a complex area of the law. Very many attorneys do not really have an understanding of how Class Actions actually work. That is why it is important to always find counsel that is not only adequate but is seasoned and well experienced in navigating the twists and curves of Class Action law.

Join us again next week for another post helping you to understand the ins and outs of the practice of law in Indiana and elsewhere.

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