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[U.S. District Court Grants Motion to Dismiss Malpractice Claims Against Class Counsel Because Alleged Errors Did Not Cause Harm](#)

Friday, December 17th, 2010

The United States District Court for the Northern District of California has dismissed claims of legal malpractice and breach of fiduciary duty against former class counsel for failure to state a claim. The malpractice claims arose out of a class action prosecuted on behalf of retired NFL players against the NFL Players Association (“NFLPA”). The underlying class claimed the NFLPA failed to adequately pursue the marketability of retired NFL players. That case went to trial and resulted in an award of \$7 million in compensatory damages and \$21 million in punitive damages. The case was settled while on appeal, with approval by the district court, for \$26.5 million.

The subsequent malpractice action, pending before the same judge who presided over the prior action, sought certification of two classes, one comprised of claimants who contended they had been wrongly excluded from the underlying class, the other made up of members of the alleged class. Both purported classes alleged that class counsel failed to present “critical” evidence on their breach of contract claim which lessened the recovery in the underlying action and failed to present a plausible damage theory on the breach of fiduciary duty claim. The claims were based on comments made by the trial court in ruling on the class counsel’s fee petition. The court had declined to make a “premium” fee award based on these shortcomings it identified in class counsel’s efforts.

The court noted that as to the claimants who were not encompassed within the previous class, they had no standing as their rights had been reserved. The court’s prior orders made clear that the non-class members retained their rights to bring a claim. Thus, nothing which class counsel did or failed to do prejudiced them. Accordingly, they had not been harmed and had no standing to allege malpractice or breach of fiduciary duty.

As to the malpractice plaintiffs who were within the previous class, the court held they were estopped from bringing claims. The court noted that many of the claimants had submitted letters objecting to the underlying settlement. The court had taken those letters into consideration when ruling on the adequacy of the proposed settlement. However, none of the objecting would-be class claimants had raised the theories they proposed to pursue in the malpractice action. The court held that the time to address any dispute over the propriety of the settlement had passed, that the would-be claimants had an opportunity to challenge the outcome and handling of the underlying matter, and therefore they were estopped from further litigating the adequacy of the settlement and counsel’s conduct of the matter.

The claimants argued that the court’s determination of the adequacy of the settlement could not serve as a determination that counsel’s performance was adequate and, further, they had not had a full and fair opportunity to litigate their claims in the underlying action as the claims did not accrue until after the settlement had been approved.

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The court rejected both theories, as its ruling did not rely on a finding that counsel had acted competently or that the “issue” had been fully litigated. Rather, the court relied on the fact that the issue in the malpractice action had not been litigated and that, due to the claimants’ failure to raise their concerns during the settlement approval process when they had a duty to do so, they could not do so in a separate, subsequent action. The court held that the general principles of estoppel prevented the claimants from belatedly putting new contentions regarding the propriety of the outcome in the underlying case into issue.

However, the court declined to embrace the defense argument that approval of the settlement acted to bar all malpractice claims in which a court has approved a fee application. The cases on which the defendants relied only addressed claims that arose from negotiation of a settlement. If there had been trial-related errors which resulted in a reduced settlement, such claims could be pursued notwithstanding court approval of a settlement. The court took pains to point out that, notwithstanding its having noted the failure of class counsel to put forth certain evidence on damages, which led to the court awarding less in attorney’s fees than it might otherwise have done, and the jury awarding less in compensatory damages than it might otherwise have done, the court felt that overall class counsel had done an excellent job. In particular, the court felt that class counsel “made up for” the low compensatory award by securing a large punitive award and “hanging on to it” during the appeal and settlement process. Thus, at least implicitly, the court indicated that any error by counsel on proof of damages caused no harm when the verdict as a whole was taken into account.

The unpublished decision is *Parrish v. Manatt, Phelps & Phillips, LLP*, 2010 U.S. Dist. LEXIS 131754