Class Action Settlements - Seventh Circuit Limits Injunctions of Competing State Actions and Ninth Circuit Clarifies Permissibility of Gift Cards and Incentive Awards

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In two recent decisions, the Seventh and Ninth Circuits address important issues surrounding class action settlements. Most significantly, in Adkins v. Nestle Purina PetCare Company (7th Cir. Mar. 2, 2015), authored by Judge Easterbrook, the Seventh Circuit curtailed the ability to enjoin competing state court actions pending final approval of federal class action settlements. In In re Online DVD-Rental Antitrust Litigation/Resnick v. Netflix, Inc. (9th Cir. Feb. 27, 2015), the Ninth Circuit confirmed that (1) gift card settlements are not necessarily coupon settlements subject to heightened scrutiny under the Class Action Fairness Act (“CAFA”), and (2) disparity between the amount of class representative incentive awards and individual recovery for class members is not inherently improper.

Defendants often settle federal class actions, expecting that competing state court actions (either class or individual) asserting similar claims will not proceed following preliminary approval. To that end, federal preliminary approval orders routinely enjoin settlement class members from prosecuting similar claims in other courts, pending final approval of the settlement. In Adkins, however, the Seventh Circuit concluded that the Anti-Injunction Act, 28 U.S.C. § 2283 (the “AIA”), does not support entry of an injunction by a federal court barring parallel state court proceedings pending final settlement approval. In that case, a statewide class had already been certified by a state court when the federal district court preliminarily approved a nationwide class action settlement asserting the same claims and enjoined settlement
class members from pursuing the settled claims in another forum. The state court class representative moved to intervene in the federal action to challenge the injunction, but the district court refused to allow intervention or lift the injunction. On appeal, the Seventh Circuit dissolved the injunction pursuant to the AIA, finding that enjoining competing state court litigation is not “necessary” to preserve the district court’s jurisdiction or to “protect or effectuate” a federal judgment as contemplated by the AIA. As explained by the Seventh Circuit, even if the settlement collapses because of ongoing parallel proceedings, the district court’s “adjudicatory competence remains. A need to adjudicate a suit on the merits after settlement negotiations fail does not undermine the nature or extent of a court’s jurisdiction.” Accordingly, the Seventh Circuit reasoned that the AIA prohibits an injunction until after the federal court enters a final judgment.

The Ninth Circuit’s opinion in In re Online DVD-Rental Antitrust Litigation/Resnick, by contrast, provides greater flexibility in settling class actions. There the Ninth Circuit found that CAFA’s heightened scrutiny of coupon settlements did not apply to the Walmart gift cards issued as part of the settlement because they were sufficiently unlike coupons – “especially given the fact that claimants could choose between gift cards and cash, the gift cards were freely transferrable, and they had no expiration date.” Noting that CAFA does not define “coupon,” the Ninth Circuit referenced the Senate Judiciary Committee’s Report on CAFA, which noted that, with a coupon, “class members receive nothing more than promotional coupons to purchase more products from the defendants. These discounts require class members to hand over more of their own money before they can take advantage of the coupon, and they often are only valid for select products or services.” As the Ninth Circuit found, the gift cards at issue, if chosen instead of an equivalent cash payment, provided class members with the ability to spend $12 on anything sold on the website of a “giant, low-cost retailer,” much of whose merchandise could be purchased within the gift card amount. Additionally, affirming $5,000 incentive awards to the class representatives as consistent with typical incentive awards, the Ninth Circuit confirmed that incentive awards are intended to compensate class representatives for work undertaken on behalf of a class and do not inherently involve a conflict when the award far exceeds the recovery for ordinary class members – in that case, $12. The Ninth Circuit distinguished the incentive awards from those criticized in Rodriguez v. W. Publ’g Corp., 563 F.3d 948, 963 (9th Cir. 2009), where there was a pre-settlement incentive award agreement between class representatives and class counsel, and Radcliffe v. Experian Info. Solutions Inc., 715 F.3d 1157, 1164 (9th Cir. 2013), where the incentive award was conditioned on support for the settlement.

We would be pleased to discuss these decisions and their implications in greater detail.

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