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CLASS ACTION BLOG

Eighth Circuit Rejects Solitary Californian's Objections to Nationwide Class Settlement

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Joshua Rawa and others filed a California class action against Monsanto alleging that its labeling on Roundup herbicide was misleading. After a California class was certified, class counsel filed another case in Missouri on behalf of a putative class of consumers from the other 49 states. After a nationwide settlement agreement was entered into, the California case was transferred to Missouri, where Monsanto has its headquarters, to consolidate all cases. After the Missouri court granted preliminary settlement approval, James Migliaccio, a member of the original California class, objected to the settlement on multiple grounds. The district court overruled his objections and granted final approval at which time, Migliaccio appealed. The Eighth Circuit concluded that the class was adequately represented and that the settlement was "reasonable, fair, and adequate," and therefore affirmed.

According to the settlement terms, Monsanto would pay $21.5 million into a "non-reversionary Common Fund for claims, notice and administration costs; incentive awards; and attorneys' fees." The agreement allowed for attorneys' fees up to one-third of the common fund. Any unclaimed funds would be paid to "*cy pres* recipients." Class counsel sought a fee of one-third of the Common Fund.

Migliaccio filed objections contending that the consolidation of the California class with the nationwide class "diluted the California class members' claims, creating a conflict of interest for the nationwide class counsel that rendered their representation inadequate." Migliaccio also challenged the fairness of the settlement terms and the attorneys' fee award and asked the court to do a lodestar cross check on that award. The district court required class counsel to submit its billing records and rates and then conducted a two-hour final fairness hearing in which Migliaccio participated. The court granted final approval, but limited the attorneys' fees to 28 percent of the Common Fund.

One of the key issues Migliaccio raised was the size of the settlement class compared to the claims submitted. The district court relied on plaintiff's calculations rather than Migliaccio's larger number. According to the district court, roughly 13 percent of the class submitted claims. Two years earlier, the circuit court had found that "a claim rate as low as 3 percent is hardly unusual in consumer class actions and does not suggest unfairness." The Eighth Circuit then dismissed Migliaccio's argument that the district court had based its rulings on "mostly inaccurate figures" stating that he had failed to show that the figures were flawed. Furthermore, the court was not required to use pre-notice estimates, rather than "a simple, evidence-based calculation." In addition, the court restated its prior conclusion that the "most important factor in determining whether a settlement is fair, reasonable, and adequate is a balancing of the strength of the plaintiff's case against the terms of the settlement."

Similarly, the Eighth Circuit dismissed the conflicts of interest objection by stating that any California class member "who submitted a valid claim recovered *at least* 100 percent of his or her alleged out-of-pocket damages under the nationwide settlement." In addition, the "per-unit payment to claimants is higher than what plaintiffs sought through the damages model in the abandoned California case." Migliaccio failed to show that California class members' claims were diluted. Nor was the court convinced that class counsel had a true conflict of interest. Rather, the court endorsed his actions in seeking an ethics opinion. The district court described that action as "a sign of responsible behavior by class counsel and not some admission that a conflict exists," a finding the appeals court endorsed.

The attorneys' fee objection was also rejected considering the discretion district courts have in deciding whether to use "either a lodestar or percentage-of-the-fund method in determining an appropriate recovery." Plus, the district court, as required, considered the "relevant factors from the twelve factors listed in *Johnson v. Ga. Highway Express, Inc*., 488 F.2d 714, 719–20 (5th Cir. 1974)." The Eighth Circuit noted that the district court had considered the *Johnson* factors, the parties' arguments, the billing records, and relevant case law before making an award of 28 percent of the common fund. Although the "lodestar multiplier of 5.3 is still quite high compared to similar cases," it was not unreasonable "in light of the results obtained."

Finally, the court rejected Migliaccio's *cy pres* argument by pointing out that the district court would have had to re-write the settlement agreement if it disagreed with the *cy pres* distribution and wanted to distribute any remaining funds to the settlement class members who submitted claims. But district courts do not have the power to rewrite settlement agreements. Rather they must either approve them or reject them according to the Supreme Court's ruling in *Evans v. Jeff D*., 475 U.S. 717, 726 (1986). The Eighth Circuit found no error by the district court approving the settlement.

The *Rawa* case is significant for class action litigators in the Eighth Circuit because it gives meaningful guidance for how courts in the Eighth Circuit will deal with attorneys' fee issues and also reiterates its longstanding rule that the "most important factor" for district courts to consider is "a balancing of the strength of the plaintiff's case against the terms of the settlement." Whether that will remain the Eighth Circuit's rule in light of amended Rule 23(e)(2) remains to be seen. That amendment became effective December 1, 2018, thirty years after the court identified what it considered to be "single most important factor" in determining the fairness, reasonableness, and adequacy of a class settlement. Presumably the adoption of the amended rule will take precedence over the rule declared in *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988). Those practicing in the Eighth Circuit need to be aware of what *Rawa* states, but at the same time be on the lookout for either strong *dicta* or holdings demonstrating that the court will no longer follow the *Van Horn* rule.

Case Citation: Rawa v. Monsanto Co. 934 F.3d 862 (8th Cir. 2019)