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Blog Entry: In a Scorching Opinion, Sixth Circuit Refuses to Undo Class Action Settlement

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Sometimes, appellate decisions are written in a purely clinical voice. Other times, they're infused with a dash of hot sauce.

Plaintiffs, who worked for defendants' "Fourth Street Live" entertainment district in downtown Louisville, brought a putative class action against defendants in the Western District of Kentucky alleging violations of the Kentucky Wage and Hour Act relating to "their policies regarding off-the-clock work and mandatory tip-pooling." The court granted plaintiffs' class certification motion. Defendants then sought interlocutory appellate review but that was denied, as was their motion to reconsider. Settlement discussions ensued, and the parties eventually reached agreement on the financial aspects. It took them nearly another year, however, to agree on the non-monetary terms. When that occurred, the parties filed a joint status report advising the court that they'd settled and that formal settlement documents would soon follow.

But then the storm clouds gathered. Defendants learned that three weeks before filing the joint status report, a Kentucky intermediate appeals court held in another case that the Kentucky Wage and Hour Act "could not support class action claims."

Newly emboldened, defendants moved to stay approval of the class action settlement, but the district court denied their motion and granted preliminary approval. Defendants again sought appellate review, but the Sixth Circuit denied that as untimely, although in its order doing so it noted that defendants "remained free to move the district court to decertify the class on the basis of new developments."

So that's what defendants did. They moved the district court to decertify the class based on the intervening Kentucky appellate decision, which was then subject to a request for discretionary review at the Kentucky Supreme Court.

Hope springs eternal, but not always: the district court declined to decertify. As narrated by the Sixth Circuit, the lower court found that "regardless of the present meaning of" the Kentucky Wage and Hour Act, it was "bound to maintain class certification and enforce the settlement agreement as a binding contract under Kentucky law." In so holding, it "rejected the defendants' two arguments 1) that both Rule 23 of the Federal Rules of Civil Procedure and the Rules Enabling Act require decertifying the class in light of [Kentucky's] prohibition against class-action litigation and 2) that Rule 23(e) requires the district court to refuse to enforce the class-action settlement in light of the same state statutory prohibition."

Defendants appealed to the Sixth Circuit - the very court that acknowledged that defendants were "free to move the district court to decertify the class on the basis of new developments." Perhaps hope does spring eternal.

And perhaps not. The court of appeals affirmed. It gave short shrift to the intervening Kentucky appellate decision and "conclude[d] that a post-settlement change in the law does not alter the binding nature of the parties' settlement agreement, nor does it violate Rule 23 of the Federal Rules of Civil Procedure or the Rules Enabling Act." As for appellants' contention that *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997) mandated decertification in light of the intervening change of Kentucky law, the court rejected it, noting that "appellants fundamentally misread *Amchem*" because that case focused on the protection of absent class members and appellants here were not an *absent* class member: they were, instead, the named defendants in the case. "Appellants' reliance upon *Amchem*," the court therefore noted, was "misplaced."

These observations were mild compared to the more heated comments that followed. From the court:

- "[A]ppellants have failed to make any argument explaining why the prohibition against class-action litigation in" Kentucky's Wage an Hour Act "disturbs any of the class-certification requirements set forth in Rule 23(a) or (b). In fact, the appellants seem to hope that this court will fill in the gaps on their behalf."
- "Throughout their brief, the appellants cannot cite a single case that stands for the proposition that a state statutory provision prohibiting class-action suits results in a failure to meet Rule 23(a) or (b) certification requirements."
- "Moreover … the court-approval mechanism contained in Rule 23(e) is designed to protect absent class members and other non-parties to the litigation, not the defendants who misread the law and agreed to an unfavorable settlement offer."
- "[I]t would be perverse to the aims of Rule 23(e) to employ it in such a way as to rescue a litigating party from a bargain poorly struck."

Or, as they say, you broke it, you bought it.

The case is *Whitlock v. FSL Management, LLC*, Sixth Circuit Court of Appeals, case no. 16-5086, dated December 14, 2016: http://www.opn.ca6.uscourts.gov/opinions.pdf/16a0287p-06.pdf.