
Seventh Circuit Orders Disgorgement of Objector Side Payments in Federal Class Action

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In recent years, courts and other commentators have expressed frustration with those who assert bad-faith objections to proposed federal class-action settlements to extract a personal payoff to withdraw their objection. In 2018, Federal Rule of Civil Procedure 23 was amended in part to address these concerns. See Fed. R. Civ. P. 23 advisory committee's note to 2018 amendment. Rule 23(e)(5) now requires that any objecting class member specify whether the objection applies only to a specific class member, to a group of class members, or to the class as a whole. Rule 23(e)(5) also now requires court approval for any payments made to an objecting class member in connection with withdrawing an objection or an appeal thereof.

On August 6, 2020, the United States Appeals Court for the Seventh Circuit addressed an instance of such “objector blackmail,” where the side settlement agreements and payments had been made before the 2018 amendments to Rule 23. *Pearson v. Target Corp.*, 2020 WL 4519053 (7th Cir. Aug. 6, 2020). The Court held that, where the objection asserted was on behalf of the class, the appropriate remedy is disgorgement of the side payments.

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