
Sixth Circuit Rejects Certification of Novel "Negotiation Class"

Date: 10/27/20

The United States Court of Appeals for the Sixth Circuit has reversed a district court order certifying a novel "negotiation class" under Federal Rule of Civil Procedure 23 in the multi-district litigation addressing opioid-related claims brought by municipalities across the country against some of the largest drug distributors and pharmacies. *In Re: National Prescription Opiate Litigation*, ---F.3d---, 2020 WL 5701916 (September 24, 2020). The Sixth Circuit held that a negotiation class was outside the bounds of and "not authorized by the structure, framework or language" of Rule 23.

A "negotiation class" is a class certified to negotiate a settlement only: generally, (1) class members are given notice of a negotiation class, including the formula for allocation of any settlement reached, (2) class members are given their only opportunity to opt out before the certification, and (3) if a settlement is reached, all class members are given the chance to vote on the final settlement amount, which can only be accepted by a supermajority. The District Court in the opioids litigation was the first court in the country to use the procedure. Previously, courts have certified only settlement classes and litigation classes under Rule 23.

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