

Seventh Circuit Class Action Litigation | Winter 2019/2020

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[*Dennis v. Niagara Credit Solutions, Inc.*, 946 F.3d 368 \(7th Cir. 2019\)](#)

Seventh Circuit affirms judgment on the pleadings that a debt collector's notice clearly identified the current creditor and did not violate the FDCPA.

Plaintiff filed a putative class action, claiming that defendants violated Section 1692g(a)(2) of the FDCPA by “fail[ing] to identify clearly and effectively the name of the creditor to whom the debt was owed.” Plaintiff had fallen behind on his debt owed to Washington Mutual Bank and, after plaintiff's default, LVNV Funding bought the debt. Niagara Credit sent a notice of collection letter to plaintiff on LVNV's behalf, identifying Washington Mutual as the “original” creditor and LVNV as the “current” creditor.

The Seventh Circuit unanimously affirmed judgment on the pleadings for defendants, calling the plaintiff's claim “meritless” because the letter “expressly” identified LVNV as the current creditor. The district court opined that the letter could have elaborated that LVNV had purchased the debt from Washington Mutual and that LVNV was defendant Niagara's client, but Section 1692(g)(a)(2) of the FDCPA does not require such a detailed explanation of the transactions leading to the debt collector's notice. All that is required is that the debt collector's notice state the required information clearly enough that a debtor would understand it.

Plaintiff further asserted that the district court wrongly prevented him from introducing extrinsic evidence of consumer confusion to prove his case. The Seventh Circuit disagreed, stating that where a letter accurately and clearly identified the creditor to whom the debt was owed, “no evidence of confusion could change the result.”

[*Butler v. BRG Sports, LLC*, 2019 Ill. App. LEXIS 841 \(Ill. App. Ct. 2019\)](#)

Illinois appellate court affirms dismissal of claims against football helmet manufacturers as time-barred.

An Illinois appellate court upheld dismissal on statute of limitation grounds of more than 50 former NFL players' claims against helmet manufacturers. Plaintiffs alleged that defendants were aware of

the harmful effects of repeated concussive and subconcussive traumas to players' brains but failed to warn users about these dangers, and therefore should be liable for causing plaintiffs' long-term brain damage.

The issue on appeal involved the "discovery rule," which states that the statute of limitations period does not start until an injured party knows or reasonably should know of his injury. Plaintiffs claimed that the limitations period did not start until they were diagnosed with neurodegenerative disorder, or that it should be tolled due to alleged fraudulent concealment committed by defendants.

The appellate court held that the case was time-barred because it was filed over two years after the same plaintiffs previously sued the NFL in federal court as part of a multi-district litigation. The same plaintiffs had alleged the existence of "head problems" while playing football, which the appellate court panel here found to be an "incontrovertible admission of knowledge" of their injuries. The statute of limitations, therefore, accrued at least as early as the plaintiffs' class action filings against the NFL in federal court. Furthermore, the appellate court rejected plaintiffs' fraudulent concealment claim, finding that defendant Riddell did nothing to "lull the plaintiffs" into not filing suit earlier or discovering their harm.

[*Roberson v. Symphony Post Acute Care Network*, 2019 IL App \(5th\) 190144-U \(Ill. App. Ct. 2019\)](#)

Illinois appellate court overturns class certification in case alleging violations of Biometric Information Privacy Act.

The plaintiff sued a health care network, Symphony Post Acute Care Network (SPAN), due to alleged violations of the Illinois Biometric Information Privacy Act (BIPA). Specifically, the plaintiff claimed that defendants violated sections 15(a) and 15(b) of BIPA "by 'actively collecting, storing, and using' the plaintiff's biometric information without providing notice to her, obtaining her written consent, or publishing its data retention policies."

The circuit court granted class certification and certified a primary class that included "[a]ll Illinois citizens whose biometric information was collected, captured, purchased, received through trade, or otherwise obtained in Illinois at any location associated with [SPAN], as set forth in [BIPA]." The defendants appealed, challenging the breadth of the certified class. While noting that class certification is "within the discretion of the circuit court," the Illinois Fifth District Appellate Court assessed the circuit court's certification ruling under 735 ILCS 5/2-801, which requires the satisfaction of traditional class action elements similar to those within Federal Rule of Civil Procedure 23.

Taking issue with the scope of the class, the appellate court held "that the circuit court abused its discretion in certifying the 'primary' class as all Illinois citizens whose biometrics were collected by any SPAN location." The court found that the named defendants owned only the SPAN location in Swansea, Illinois. Therefore, the class as certified could not establish "common questions of law or fact common to the class that [would] predominate over any questions affecting individual members of the class beyond those who were employed [at the Swansea location]." Ultimately, the appellate court modified the class certification to include only plaintiffs "whose biometric information was collected, captured, purchased, received through trade, or otherwise obtained . . . at the [SPAN], location in Swansea, Illinois . . ."

On a Rule 23(f) appeal, Seventh Circuit emphasizes the importance of alleging sufficient details to satisfy the diversity requirements under the Class Action Fairness Act (CAFA).

In this lawsuit, Christine Dancel alleged that Groupon improperly used class members' photographs to promote its product and sued under the Illinois Right of Publicity Act "on behalf of a class of '[a]ll Illinois residents (1) who maintain an Instagram account, and (2) whose photograph(s) from such Instagram account have appeared on a Groupon Deal offer page'." The district court denied plaintiff's motion to remand and later denied class certification.

Plaintiff received permission to appeal under Rule 23(f), but her argument in this first appeal focused on the denial of her motion to remand, including her argument that Groupon failed to allege diversity of citizenship because the notice of removal merely stated that the proposed class "undoubtedly would include at least some undetermined number of non-Illinois and Non-Delaware citizens as class plaintiffs." Finding that this allegation was insufficient, the Seventh Circuit remanded the case to the trial court so that the defendant could conduct discovery and identify "at least one member of the putative class" who was a non-Illinois or non-Delaware resident at the time of the case's removal.

[Dancel v. Groupon, Inc., No. 19-1831, 2019 U.S. App. LEXIS 37515 \(7th Cir. Dec. 18, 2019\)](#)

Seventh Circuit addresses when district courts must address merits issues in deciding motions for class certification.

This was the second decision involving Christine Dancel's allegation that Groupon violated the Illinois Right of Publicity Act (IRPA) by including her social media account username on a third-party business's website without her permission. After the Seventh Circuit remanded the case, Groupon submitted declarations from several putative class members showing minimal diversity under CAFA. The Seventh Circuit issued this opinion affirming the denial of class certification.

The key issue on this second appeal was when a court must address merits issues in deciding class certification. Plaintiff argued that the district court had improperly decided a merits issue when denying class certification. She argued that her certification theory was that a username was a categorically protected "identity" under the IRPA, and that, by deciding this issue in defendant's favor, the district court improperly addressed a merits question.

The Seventh Circuit rejected this argument because whether the IRPA categorically protected usernames went to the merits *and* to commonality. The court reasoned that, if plaintiff was right, a substantial portion of the case was subject to common proof. But this alone did not make class certification proper because, if plaintiff was wrong, the case was not subject to common proof. As the court explained, plaintiff was "trying to define the concept of identity in a common way so that it covers up individual questions that each class member might raise." This was not improper, the Seventh Circuit explained, but whether it was successful required a decision on whether the IRPA categorically protected usernames.

Turning to that issue, the Seventh Circuit reasoned that, although the IRPA protects individuals' identities, the protection "extends only so far as that photograph, that name, that *username* 'serves

to identify *that* individual to an ordinary, reasonable viewer.” The Seventh Circuit thus concluded that determining whether any given username was an “identity” under the IRPA would require an individualized analysis of the username and whether it reasonably identified the associated class members, thus precluding certification.

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