

West Virginia Takes Another Step Toward More Conservative View of Class Actions

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Plaintiffs seeking class action treatment in West Virginia state court may find a less hospitable environment in the wake of a recent decision. In [*State ex rel. Surnaik Holdings of WV, LLC v. Bedell*](#), the Supreme Court of Appeals of West Virginia looked to federal law for guidance in interpreting the predominance and superiority requirements of Rule 23(b)(3). Rejecting its previous test for predominance and superiority, the Court instead adopted from federal law a multi-factor test and emphasized the rigorous, thorough analysis required before class certification.

An October 2017 fire at a Parkersburg, West Virginia warehouse owned by Surnaik Holdings blazed for eight days. Community members—including Paul Snider—alleged that the smoke had infiltrated their homes and, in some instances, injured them.

Mr. Snider sued Surnaik on behalf of himself and a class of all residents and businesses within an 8.5-mile radius of the warehouse, alleging claims of negligence; reckless, willful, and wanton indifference motivated by financial gain; nuisance; and trespass. Mr. Snider moved to certify a class of all owners and lessees who resided or conducted operations near the warehouse at the time of the fire. The complaint requested damages for personal injuries as well as property damage, including the diminution in value and loss of use of property.

In West Virginia, a plaintiff wishing to represent a class must comply with West Virginia Rule of Civil Procedure 23. Rule 23(a) contains four threshold requirements: numerosity, or that the class be “so numerous that joinder of all members is impracticable;” commonality, or the existence of legal or factual questions common to the class; typicality, or that the claims of the named plaintiff are typical of the claims of the other class members; and adequacy, or that the named plaintiff “will fairly and adequately protect the interests of the class.” In addition to these four prerequisites, a plaintiff must satisfy one of the prongs of Rule 23(b). As relevant here, the plaintiff must establish predominance, that questions of law or fact common to the class members predominate over questions affecting individual class members, and superiority, that the class action mechanism is superior to other methods of adjudicating the dispute.

The circuit court granted Mr. Snider’s motion and certified the class. Surnaik filed a petition for a writ

of prohibition, asking the Supreme Court of Appeals to vacate the class certification order. Surnaik lodged several complaints regarding the order, including that the circuit court had failed to conduct a thorough analysis of the four Rule 23(a) prerequisites and the Rule 23(b)(3) predominance and superiority requirements.

Tightening the Belt: Analogizing to Federal Law

In the past, the Supreme Court of Appeals had cautioned against relying on federal courts' interpretation of Rule 23. Instead of a "rigid test" for the predominance requirement, the Supreme Court of Appeals had adopted an "all-things-considered balancing inquiry." The Court in *Surnaik* rejected the "all-things-considered" test as vague and unhelpful. Instead, the Supreme Court of Appeals looked to federal law for guidance in interpreting Rule 23. In doing so, the Court noted the current trend toward heightening plaintiffs' burden—often at the expense of class-action treatment of low-value claims.

The Supreme Court of Appeals held that a thorough analysis of the predominance and superiority requirements is mandatory when certifying a class action under Rule 23(b)(3). Looking to federal law for guidance, the Court explained that a "thorough analysis" of predominance and superiority includes identifying the parties' claims and defenses and the elements thereof, determining whether the issues are common to the class or only germane to individual class members, and then deciding whether common issues predominate over individual issues. A circuit court should assess the predominance requirement with an eye to its ultimate purpose—to ensure that a class action saves time, effort, and expense and promotes uniform results for similarly situated people. The failure to conduct a thorough, written analysis under Rule 23(a) or (b) amounts to clear error, correctable on a writ of prohibition. The Court's reliance on federal law to interpret Rule 23 is a continuation of the trend of recent decisions, including *State ex rel. University Hospitals, Inc. v. Gaujot*, where the Court applied federal law in the context of Rule 23(a)'s commonality requirement.

Here, the circuit court failed to conduct a thorough analysis of the Rule 23 requirements, including predominance and superiority. The Supreme Court of Appeals explained that the circuit court's order did not identify the parties' claims and defenses and their respective elements, determine whether the issues involved were common to the class or individual in nature, or decide whether common questions predominate. The Court also found the superiority analysis lacking, explaining that the circuit court's discussion was conclusory in that it listed mass-accident cases where class certification was found to be appropriate without explaining why those cases fit the facts of this matter. The Court thus granted Surnaik's petition for a writ of prohibition and vacated the circuit court's class action order.

To Sum It Up

The Supreme Court of Appeals' decision reflects a continuing shift toward a more conservative view of the Rule 23 class action requirements. In relying on federal law, the Court adopted a more rigid test for predominance and superiority and rejected the prior "all-things-considered" test. By continuing to follow the federal trend toward heightening a plaintiff's burden in class certification decisions, the Court again signaled that class certification in West Virginia no longer can be presumed.

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