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The Sixth Circuits Rejects The "Juridical Link" Test For Class Actions

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In Fox v. Saginaw County (No. 22-1265/1272), the Sixth Circuit rejected a class action where multiple defendants have identical policies, but the named plaintiff was only injured by one defendant. Until recently, Michigan law permitted counties to obtain complete ownership of a property during a tax foreclosure, even if the value of the property far exceeds the taxes owed. So enterprising attorneys filed a class action against twenty-seven Michigan counties under the auspices of the "juridical link" doctrine, but only presented one named plaintiff—who had only been injured by one county.

Don't feel bad if you've never heard of this doctrine. Proposed (but not applied) by the Ninth Circuit in the early 1970s, it allows class representative may sue multiple defendants, regardless of any link to the named plaintiff, if the defendants' conduct was "linked" to the same contract or state law. Its high point was Payton v. County of Kane, 308 F.3d 673, 678–80 (7th Cir. 2002), which allowed plaintiffs injured by two counties to sue nineteen counties because each had the same practices. The key to the Seventh Circuit's decision was to decide class certification first, and then look at standing—because certification will provide class members that have been injured by the other defendants. But the doctrine was criticized more than applied, and no other circuit courts have adopted it. The Second Circuit explained the chief problem with the doctrine, asking "why a plaintiff's injury resulting from the conduct of one defendant should have any bearing on her Article III standing to sue other defendants, even if they engaged in similar conduct that injured other parties." Mahon v. Ticor Title Ins., 683 F.3d 59, 65 (2d Cir. 2012).

Writing for a unanimous panel, Judge Murphy's opinion tries to put the doctrine down for good. It explains that Article III's "case or controversy" clause requires class representatives must allege their own case against a defendant before they can seek to represent a class against that defendant. It also notes that the Supreme Court always applies standing at the outset of litigation, and not after class certification. The opinion also has strong words for the plaintiffs' argument that practicality and efficiency should trump the constitution in this instance. Interestingly, it also takes an originalist look to the doctrine. Analyzing the "lengthy pedigree" of the class action "in English equity," the opinion concludes that representative actions from before the Founding did not allow suits against defendants that did not injure the plaintiff. The panel thus decides that the "juridical link" doctrine is unconstitutional.

Finally, the opinion offers "a few observations to help guide any renewed certification proceedings,"

casting some doubt on the plaintiff's ability to meet Rule 23's requirements at all. Article III traditionalists might say that a panel offering detailed advice about an issue that is not necessary to the decision seems like an advisory opinion. But, as a practical matter, that kind of advice will often narrow the issues and save may pages of briefing or large discovery costs. Unlike the juridical link doctrine, dicta has a long pedigree in our tradition.

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