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Management Alert

U.S. District Court Denies Motion For Class Certification In Wage Suppression Antitrust Case

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Seyfarth Synopsis: *On January 22, 2019, in Maderazo v. VHS San Antonio Partners, L.P., C.A. No. 06-CV-535 (available here), a case alleging that hospitals in San Antonio conspired to suppress nurses' wages that had been pending for nearly 13 years, the U.S. District Court for the Western District of Texas issued a decision denying Plaintiffs' motion for class certification In doing so, the Court expressly disagreed with a class certification decision issued in a nearly identical case by the U.S. District Court for the Eastern District of Michigan in Cason-Merenda, et al. v. Detroit Medical Center, 2013 U.S. Dist. LEXIS 131006 (E.D. Mich. Sept. 6, 2013).*

Background

In 2006, five nearly identical antitrust class actions were filed in different cities around the country alleging that hospitals in each of those cities unlawfully conspired to fix nurse wages below free market levels and agreed to unlawfully exchange nurse wage information in a way that had the effect of suppressing nurse wages. Class certification was defeated in the cases in Memphis and Chicago. In cases in Detroit and Albany, the courts certified or partially certified the classes, and those cases thereafter reportedly settled for millions of dollars.

Now the court in the San Antonio case has denied class certification also.

The Court's Class Certification Ruling

Like the other cases, the complaint in *Maderazo* asserted two claims, including: (1) that the defendants agreed to suppress nurse wages, allegedly a *per se* violation of §1 of the Sherman Act; and (2) that the defendants agreed to, and did, exchange nurse wage information in violation of §1 of the Sherman Act under the rule of reason. The class certification decision turned on the question of the whether Plaintiffs could demonstrate, with proof common to the class, that common issues predominated over individual issues, consistent with the requirements of Rule 23(b)(3).

One of the issues in an antitrust case is whether the harm allegedly suffered was caused by the alleged conspiracy, often referred to as "antitrust impact." Plaintiffs in *Maderazo* attempted to satisfy this element through the testimony of their expert, Henry Farber. In analyzing Farber's expert report and deposition testimony, the Court concluded that Farber provided "no factual explanation of how Plaintiffs could show a causal link between the conspiracy and the wages of staff registered nurses." In fact, the Court quoted the following testimony from Farber: "I don't know anything about the precise effect of the – of any conspiracy or information exchange on the wages of different nurses." As a result, the Court excluded Farber's testimony under *Daubert* and denied Plaintiffs' motion for class certification.

The Court in *Maderazo* further noted that the court in the Detroit nurse wage fixing/exchange case had found a similar problem with the testimony of the expert in that case. Nonetheless, the judge in the case in Detroit certified the class while stating that the defendant was free to attempt to persuade the trier of fact that the case lacked a sufficient causal connection between the plaintiffs' theory of liability and the alleged injury. By contrast, the Court in *Maderazo* disagreed and ruled that this was an issue that had to be resolved at the class certification stage. (We previously blogged about the Detroit class certification decision here.)

Implications For Employers

This is obviously a helpful decision for employers because it requires plaintiffs to demonstrate at the class certification stage that they can show, with evidence common to the class, that there is a causal connection between the alleged conspiracy and the alleged harm suffered by the class. Sending the issue to the jury when plaintiffs are unable to demonstrate that they can make this showing at the class certification stage unnecessarily adds to the parties' costs and wastes judicial resources. Often, if the stakes are high, employers may be unwilling to risk having a jury decide what is potentially a complicated question based on evidence provided by an economic expert. This in turn puts undue pressure on employers to settle cases that are baseless. The ruling in *Maderazo* levels the playing field in this respect.

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