

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

February 21, 2022

Lyle W. Cayce
Clerk

No. 21-30157

ERIC PRUDHOMME, *individually and on behalf of others similarly situated*;
ELVIN JACK, *individually and on behalf of others similarly situated*,

Plaintiffs—Appellants,

versus

GOVERNMENT EMPLOYEES INSURANCE COMPANY; GEICO
GENERAL INSURANCE COMPANY,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 6:15-CV-98

Before KING, COSTA, and WILLETT, *Circuit Judges*.

PER CURIAM:*

In this appeal of the district court's denial of class certification, Appellants are a group of GEICO customers in Louisiana who received payouts for total-loss automobile claims. These customers allege GEICO's

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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proprietary valuation system violated LA. R.S. 22:1892B(5) and LA. R.S. 22:1973(A), (B)(5), but their suit veered off the road at the class-certification stage. The district court concluded that Appellants' proposed class failed for want of commonality, adequacy, and predominance. Because the district court did not abuse its discretion in denying class certification based on its adequacy concerns, we AFFIRM without comment on commonality or predominance. *Cf., e.g., Bell Atl. Corp. v. AT&T Corp.*, 339 F.3d 294, 303 (5th Cir. 2003) (affirming narrowly).

The Federal Rules of Civil Procedure require that the “representative parties [in a class-action] will fairly and adequately protect the interests of the class.” FED. R. CIV. P. 23(a)(4); *see also, e.g., Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625–26 (1997) (observing that “[a] class representative must . . . ‘possess the same interest and suffer the same injury’ as the class members” (citations omitted)). This compels attention to “the risk of ‘conflicts of interest between the named plaintiffs and the class they seek to represent.’” *Slade v. Progressive*, 856 F.3d 408, 412 (5th Cir. 2017) (quoting *Feder v. Elec. Data Sys. Corp.*, 429 F.3d 125, 130 (5th Cir. 2005)).

Consistent with this obligation, the district court questioned whether Appellants' theory of liability was, in fact, beneficial to the proposed class. It was not. Indeed, a portion of the proposed class members received payments *above* (that is, benefitted from) the allegedly unlawful valuation. This undermined Appellants' class-wide theory of liability and thereby doomed adequacy. *See, e.g., Langbecker v. Elec. Data Sys. Corp.*, 476 F.3d 299, 315 (5th Cir. 2007) (noting “intra class conflicts may negate adequacy,” citing as examples *Valley Drug Co. v. Geneva Pharms., Inc.*, 350 F.3d 1181, 1189–92 (11th Cir. 2003), and *Pickett v. Iowa Beef Processors*, 209 F.3d 1276, 1280 (11th Cir. 2000)); *see also, e.g., Slade*, 856 F.3d at 411–12 (remanding given newly raised claim that created intra-class conflict and thereby implicated adequacy). *See generally Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 n.5

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(2011) (recognizing other Rule 23(a) requirements “tend to merge with” the adequacy standard, which typically pertains to conflicts (citation omitted)).

Neither are we compelled by Appellants’ belated, remedial assertion that class members who received overpayments were hypothetically entitled to other damages under Louisiana law. Even if true, this does little more than raise unanticipated impediments to certification—like typicality, *see* FED. R. CIV. P. 23(a)(3) (“[T]he claims . . . of the representative parties [must be] typical of the claims or defenses of the class.”); *see also, e.g., Stirman v. Exxon Corp.*, 280 F.3d 554, 562 (5th Cir. 2002) (analyzing typicality)—that we decline to address as a matter of first impression on these facts. *Cf. Slade*, 856 F.3d at 412–15 & n.1 (remanding intervening adequacy problems). Appellants simply offer too little, too late.

Appellants’ remaining arguments are equally unavailing. For one, Appellants suggest cases like *Mitchell v. State Farm Fire & Cas. Co.*, 954 F.3d 700 (5th Cir. 2020), or *Stuart v. State Farm*, 910 F.3d 371 (8th Cir. 2018), involved adequacy. They did not. *See Mitchell*, 954 F.3d at 710–12 (discussing predominance and superiority); *Stuart*, 910 F.3d at 375–77 (analyzing predominance, superiority, and standing). Likewise, Appellants’ invocation of *Slade* is inapt. Nary a word of *Slade* supports the notion that class representatives can shoulder a theory of liability that disadvantages a portion of the class they allegedly represent.¹ Nor did we insinuate in *Slade* that a lower court errs by failing to *sua sponte* remediate intra-class conflicts through opt-out.² Appellants’ belief otherwise is mistaken.

¹ To the contrary, we remanded precisely because the district court needed to assess adequacy given the potential waiver of class members’ claims. *Slade*, 856 F.3d at 415.

² This much is evident in the fact that questions about a potential intra-class conflict (and as a corollary, the remedial capacity of opt-outs) arose *after appeal*—not before. *Id.* at 412–15 & n.1.

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AFFIRMED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

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February 21, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 21-30157 Prudhomme v. Govt Empl Ins
USDC No. 6:15-CV-98

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and 5th Cir. R. 35, 39, and 41 govern costs, rehearings, and mandates. **5th Cir. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and 5th Cir. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5th Cir. R. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that plaintiffs-appellants pay to defendants-appellees the costs on appeal. A bill of cost form is available on the court's website www.ca5.uscourts.gov.

Sincerely,

LYLE W. CAYCE, Clerk



By: Nancy F. Dolly, Deputy Clerk

Enclosure(s)

Ms. Judy Y. Barrasso
Mr. Stephen R. Barry
Mr. Kenneth W. Dejean
Mr. Dan W. Goldfine
Ms. Margaret K. Heitkamp
Mr. Stephen B. Murray Jr.
Mr. Mark J. Neal
Mr. Michael T. Raupp
Mr. Dominique Savinelli
Mr. Kenneth David St. Pe'
Mr. John Randall Whaley