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BLOG

The Eleventh Circuit Holds That the Class Definition in a Settlement Agreement Must Be Limited to Class Members With Article III Standing

AUGUST 19, 2022

Key Takeaway:

- In the Eleventh Circuit, every class member must have Article III standing in order to recover individual damages.
- Be mindful of how courts confront class definitions in your forum. Article III standing requirements may apply even to settlements depending on the jurisdiction.

In August 2019, plaintiff Susan Drazen filed a class action complaint against GoDaddy.com, LLC ("GoDaddy") for alleged violations of the Telephone Consumer Protection Act of 1991 (TCPA). Drazen alleged that GoDaddy called and texted her through a prohibited automatic dialing system. After Drazen's case was consolidated with other cases asserting similar TCPA violations against GoDaddy, the named plaintiffs proposed a class action settlement agreement. Importantly, the class definition included those who had received just a single text message from GoDaddy. Under Eleventh Circuit precedent, receipt of a single text message does not confer Article III standing due to lack of injury. However, operating under the premise that only the named plaintiffs must have standing, the district court nevertheless approved the class action settlement.

On appeal by an objector to final approval of the settlement agreement, the Eleventh Circuit *sua sponte* raised the issue of standing. The court confronted the approximately 7% of the class members that did not have standing because they had received just one text message. Reiterating the Supreme Court's holding in *TransUnion*, the Eleventh Circuit wrote that "[t]o recover individual damages, all plaintiffs within the class definition must have standing." *Drazen v. Pinto*, 41 F.4th 1354, 1361 (11th Cir. 2022) (quoting *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2208 (2021)). In *TransUnion*, the Supreme Court explained that while ordinarily in non-class litigation, parties may settle whenever they want, this is not the case in class litigation, where settlements may only be finalized with district court approval. The Eleventh Circuit likened absent class members' recovery from a court-approved class action settlement to absent class members' recovery after trial, reasoning that standing would have to be satisfied in either case. Thus, the court held that "when a class seeks certification for the sole purpose of a damages settlement under Rule 23(e), the class definition must be limited to those individuals who have Article III standing." The Eleventh Circuit remanded the case for the parties to redefine the class.

This case is significant in that it establishes the standing requirement for absent class members at the settlement stage. This decision, however, creates tension with the Ninth Circuit's *en banc* decision in *Olean Wholesale Grocery*

Co-op Inc. v. Bumble Foods LLC, 31 F. 4th 651 (9th Cir. 2022), which rejected prior Ninth Circuit decisions suggesting a *per se* rule that "Rule 23 does not permit the certification of a class that potentially includes more than a de minimis number of uninjured class members." *Olean*, 31 F.4th at 669. One difference in the cases is that the Eleventh Circuit's decision in *Drazen* dealt with class settlements, while *Olean* dealt with class certification. On August 8, defendants in the Ninth Circuit's *Olean* case filed a petition for a writ of certiorari. It is possible, then, that the Supreme Court may step in for clarity.

Practitioners should be cognizant of the jurisdictional approach to class action standing requirements and, depending on the forum, should be judicious in crafting class definitions in settlements to ensure that even absent class members satisfy the injury-in-fact requirement.

2 Min Read

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