

FINANCIAL SERVICES LITIGATION
CLASS ACTIONJUNE
2013

A L E R T

FEDERAL COURT DISMISSES CLASS ACTION COMPLAINT
BASED ON PRE-COMPLAINT OFFER OF SETTLEMENT

By *Monica C. Platt and John K. Gisleson*

In *Datascope Analytics, LLC v. Comcast Cable Communications, Inc.*, No. 13-608, 2013 U.S. Dist. LEXIS 70215 (E.D. Pa. May 17, 2013), the District Court dismissed a proposed class action at the inception of the lawsuit because defendant Comcast Cable Communications, Inc. mooted the case by offering to settle with the named plaintiffs for the full amount of their alleged damages before the complaint was filed. This decision gives potential class action defendants an avenue for avoiding class litigation in a narrow group of cases.

Plaintiffs were customers of Comcast's Business Class Service for voice and/or internet services who claimed that Comcast charged Business Class customers fees inconsistent with their contracts. They initially sued Comcast in the U.S. District Court for the Northern District of Illinois. However, before the plaintiffs moved to certify the class in that case, Comcast offered to settle with the individual named plaintiffs by paying them the full damages they requested, plus costs and attorney fees, and by offering to let the only plaintiff that was still a Business Class customer terminate its contract without paying an early termination fee. The total value of the settlement before attorneys' fees and litigation costs was less than \$1,200. Following this offer, the named plaintiffs voluntarily dismissed the Illinois action without prejudice. Plaintiffs' counsel later rejected the offer of settlement, however, and filed a new, substantially identical, class action complaint against Comcast in the Eastern District of Pennsylvania.

Comcast moved to dismiss the Pennsylvania action, arguing, among other things, that because Comcast had already offered complete relief to the named plaintiffs before the plaintiffs filed the Pennsylvania suit, there was no longer a case or controversy. Comcast argued that by mooted the named plaintiffs' claims before any class was certified and, indeed, before the case in Pennsylvania was filed, it had mooted the entire case. Plaintiffs responded that because the Illinois action was voluntarily dismissed without prejudice, the plaintiffs were in the same position as if the Illi-

nois lawsuit had never been filed, and that the offer of settlement in that case therefore had no legal effect. Plaintiffs also argued that the Illinois offer of relief was incomplete because it did not address the potential class claims.

The court rejected the plaintiffs' arguments because the offer of complete relief in Illinois prevented the named plaintiffs from representing any of the proposed class members. In order to be a class member, a named plaintiff must have standing at the time the complaint is filed, and, because of the offer of complete relief, these named plaintiffs had no personal stake in the outcome. The court therefore lacked subject matter jurisdiction over their claims. The court held that it was not necessary for a defendant to address potential class claims in its offer in order to moot the case. On this point, the District Court relied on the U.S. Supreme Court's recent decision in *Genesis Healthcare Corp. v. Symczyk*, 133 S. Ct. 1523 (2013). In *Genesis*, the Court considered a collective action under the Fair Labor Standards Act and held that because the defendants' Rule 68 offer of judgment (which the plaintiff did not accept) had mooted the named plaintiff's claims, and no other claimants had opted into the collective action, the district court lacked subject matter jurisdiction to decide the alleged dispute. In particular, the Court held that the presence of collective allegations in a complaint cannot save a suit from mootness once the individual claim is satisfied.

Before the *Datascope* decision, a decision by the Third Circuit, *Weiss v. Regal Collections*, sought to protect against the mooted of class claims by a defendant's Rule 68 offer to the named plaintiffs by holding that a certification motion relates back to the filing of the complaint and therefore keeps class members' claims alive even if the named plaintiff settles. The Supreme Court's decision in *Genesis* expressed doubts about that procedure, but left the question open. *Datascope* suggests that even if the *Weiss* rule remains viable, there is a narrow exception for cases in which a defendant offers complete relief to the named plaintiffs

(continued on page 2)

(continued from page 1)

before suit is filed. In that situation, the pre-complaint offer of settlement will moot the case in its entirety, regardless of the class allegations. *Datascope* thus provides one way for potential defendants to head off a class action by acting quickly to settle claims after receiving a pre-complaint demand from an unhappy consumer or customer. ♦

This summary of legal issues is published for informational purposes only. It does not dispense legal advice or create an attorney-client relationship with those who read it. Readers should obtain professional legal advice before taking any legal action.

For more information about Schnader's Financial Services Litigation Practice Group and Class Action Practice Group or to speak with a member of the Firm, please contact:

*John K. Gisleson
412-577-5216
jgisleson@schnader.com*

*Monica C. Platt
215-751-2334
mplatt@schnader.com*

*Christopher H. Hart, Co-Chair
Financial Services Litigation Practice Group
415-364-6707
chart@schnader.com*

*Stephen J. Shapiro, Co-Chair
Financial Services Litigation Practice Group
215-751-2259
sshapiro@schnader.com*

*Samuel W. Silver, Co-Chair
Class Action Practice Group
215-751-2309
ssilver@schnader.com*

*Nancy Winkelman, Co-Chair
Class Action Practice Group
215-751-2342
nwinkelman@schnader.com*

www.schnader.com
©2013 Schnader Harrison Segal & Lewis LLP