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ARTICLES

D.C. Circuit Sharpens the Edges of Post–Class Action Settlement Ancillary Jurisdiction

By Joshua S. Levy – July 19, 2016

In 1928, the U.S. Supreme Court quoted a jury charge given by a Kansas trial judge: "You are instructed that the law favors a compromise and settlement of disputes, and, when parties in good faith enter into an agreement based on good consideration, neither is afterwards permitted to deny it." *Mellon v. Goodyear*, 277 U.S. 335, 338 (1928). Eighty years later, a lot has changed, but the preference for settlement has not.

In particular, as Senior District Judge Jack Weinstein explained, "[c]lass action suits readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation." *In re Luxottica Grp. S.p.A. Sec. Litig.*, 233 F.R.D. 306, 310 (E.D.N.Y. 2006). "There is," Judge Weinstein wrote, "a strong public interest in quieting any litigation."

It's common sense: Adversaries get together, trade dueling briefs for drafting pencils, and hammer out a deal that's good enough to convince all sides to descend the courthouse steps. Settlements provide a good night's sleep through finality that avoids the mess of further litigation. No more motions. No more appeals.

The End.

Most of the time, that is, because there *is* a procedural (or, rather, jurisdictional) mechanism that can pull post-settlement litigants back into the same court they thought they had left for good. That mechanism recently dragged one particularly thorny settlement agreement back into the federal courts of the District of Columbia.

The *Keepseagle v. Vilsack* litigation—a class action brought against the U.S. Department of Agriculture (USDA) on behalf of Native American farmers and ranchers alleging discriminatory treatment—ran into trouble from the start. *See* *Keepseagle v. Vilsack*, 118 F. Supp. 3d 98 (D.D.C. 2015). The district court called the road to settlement "hard fought," "contentious," and a "nearly decade-long battle." The result was "a five-year-old bargain that nobody likes." Indeed, the claims implementation process concluded in 2015 with $380 million undistributed. In the words of the district court, "[t]he scope of [that] failure [was] monumental."

In any event, the claims process set forth in the *Keepseagle* agreement included a so-called Track B path to recovery. *See* *Keepseagle v. Vilsack*, 815 F.3d 28 (D.C. Cir. 2016). To establish a Track B claim, a claimant needed to prove "that the treatment the claimant received from the USDA was 'less favorable than that accorded a specifically identified, similarly situated white

farmer(s)'"—a showing that could be made in a sworn statement by a third party premised on personal knowledge.

More broadly, the merits of a Track B claim were to be reviewed by nonjudicial neutrals whose determinations were "not reviewable . . . by . . . the District Court." As explained in the D.C. Circuit's recent decision, the *Keepseagle* agreement "specified the precise—and limited—contours of the District Court's jurisdiction over the Agreement going forward" and repeatedly "stated that '[t]he Court shall retain jurisdiction over this action beyond the date of final approval of this Agreement *only* . . . to supervise the distribution of the Fund.'"

In December 2011, Timothy LaBatte attempted to bring a Track B claim before the nonjudicial administrator. To prove the "less favorable treatment" element of his claim, Mr. LaBatte found two witnesses—both of whom worked for the Bureau of Indian Affairs—who he believed could testify that he was given relatively unfavorable treatment by the USDA, but he was unable to obtain their signatures on the required declaration. According to Mr. LaBatte, "the Government prohibited [the witnesses] from signing."

Mr. LaBatte argued before the claims administrators that, given his allegations about the government's interference with his claim, he should be exempt from the declaration requirement. But this argument failed, and when he took his case to federal court, the court declined to address the merits of Mr. LaBatte's assertions. Instead, the court held that it did not have jurisdiction over the matter, given the dismissal with prejudice and the limited scope of judicial review delineated in the settlement agreement. In short, the district court determined that it lacked even "ancillary jurisdiction" over LaBatte's motion. Undeterred, Mr. LaBatte appealed to a higher power: the U.S. Court of Appeals for the D.C. Circuit.

The D.C. Circuit panel began its analysis by defining ancillary jurisdiction through the leading Supreme Court decision of *Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375 (1994). Under *Kokkonen*, the doctrine of ancillary jurisdiction "recognizes federal courts' jurisdiction over some matters (otherwise beyond their competence) that are incidental to other matters properly before them." More specifically, ancillary jurisdiction allows a court to hear disputes for one of two reasons: "(1) to permit disposition by a single court of claims that are, in varying respects and degrees, factually interdependent; and (2) to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees."

Before *Keepseagle*, the D.C. Circuit had "interpret[ed] *Kokkonen* as it pertains to settlement agreements." Under that line of cases, "district courts enjoy no free-ranging 'ancillary' jurisdiction to enforce consent decrees, but are instead constrained by the terms of the decree and related order." Nevertheless, invoking *Kokkonen*, Mr. LaBatte argued that his allegations vis-à-vis the Track B claim were "interdependent" with the scope of the court's jurisdiction because

his allegations concerned the *settlement* agreement and its administration. But the D.C. Circuit emphasized that "[h]is argument misapplies *Kokkonen*'s first prong."

Universalizing *Keepseagle*, here's the key: "Whether [a movant's] claim is factually interdependent with the [settlement] Agreement that stemmed from [the underlying] class action is *irrelevant* to *Kokkonen*'s first prong. What matters is that [the movant's] claim is not factually interdependent with the underlying . . . class action [itself]." As the D.C. Circuit put it, "LaBatte's claim that the Government interfered with his ability to file properly a claim pursuant to the *Keepseagle* Agreement has nothing to do with the facts underlying the *Keepseagle* class action, which involved discrimination in providing loans to Native American farmers." Practically, "there would be no advantage to or logic in adjudicating the two disputes together."

Mr. LaBatte also pressed for ancillary jurisdiction under the second prong of the *Kokkonen* test, arguing that "hearing [his] motion would enable [the] court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees." But here too he failed: The D.C. Circuit explained that "courts retain jurisdiction over a settlement such as the one at issue here only if the parties' agreement or the court order dismissing the action reserves jurisdiction to enforce compliance." The district court's jurisdiction over "the distribution of the Fund" under the settlement agreement made no difference. To the D.C. Circuit, "the notion of 'distribution' concerns only processes that take place after the claims determination process." Moreover, Mr. "LaBatte's argument fails to account for the Agreement's strong finality language declaring all claim determinations final and unreviewable." Said differently, "[f]ollowing LaBatte's argument to its logical conclusion would write the finality provision out of the Agreement almost entirely."

Thus, the D.C. Circuit ultimately held that "[t]he District Court correctly applied *Kokkonen* and determined that it did not have jurisdiction to hear LaBatte's claim. LaBatte's claim is not 'factually interdependent' with the *Keepseagle* class action itself, nor would the District Court's consideration of LaBatte's claim enable the Court to 'effectuate its decrees.'"

As the *Keepseagle* decisions demonstrate, in a post-*Kokkonen* world, ancillary jurisdiction is strictly drawn. *See generally* *RE/MAX Int'l, Inc. v. Realty One, Inc.*, 271 F.3d 633, 643 (6th Cir. 2001) ("[T]his Court has joined other circuits in strictly applying *Kokkonen*'s relatively narrow interpretation of a district court's ancillary jurisdiction to enforce settlement agreements terminating litigation.") (internal quotation marks omitted). Strikingly, this is so even when"[e]ach of the parties and the district court likely intended for the district court to retain ancillary jurisdiction to enforce the terms of the settlement agreement." *SmallBizPros, Inc. v. MacDonald*, 618 F.3d 458, 464 (5th Cir. 2010).

Indeed, *Keepseagle* aside, post-settlement disputes involving ancillary jurisdiction often relate to the whether the court itself retained jurisdiction in its order of dismissal. *See, e.g.*, *W. Thrift & Loan Corp. v. Rucci*, 812 F.3d 722 (8th Cir. 2015) (discussing "the well-established rule that a

district court may retain ancillary jurisdiction to enforce a settlement agreement when its order dismissing the case reserves such jurisdiction"). Only "if the district court explicitly retains jurisdiction over [a] settlement agreement, or incorporates the terms of the agreement in its dismissal order (as is common in class action settlements), then a breach of the agreement would be a violation of the order, and ancillary jurisdiction to enforce the agreement would therefore exist." *McCormick v. Am. Equity Inv. Life Ins. Co.*, No. 05-cv-6735, 2016 U.S. Dist. LEXIS 26272, at *14 (C.D. Cal. Feb. 29, 2016) (quotation omitted).

As the Fifth Circuit wrote in *SmallBizPros*—and as the Second Circuit recently echoed in *Hendrickson v. United States*, 791 F.3d 354 (2d Cir. 2015)—"jurisdiction is a strict master and inexact compliance is no compliance."

Long story short: The preference for settlement and the desire for finality are alive and well in American jurisprudence—but litigants should keep ancillary jurisdiction in mind when drafting settlement agreements. Had certain provisions in the *Keepseagle* settlement agreement been written a little more broadly, things could have turned out differently for Mr. LaBatte.

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