



Class certification denied to putative class alleging Quest Diagnostics engaged in consumer fraud by routinely overbilling patients

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The Third Circuit recently affirmed denial of certification of a class of patients who alleged that the medical testing company, Quest Diagnostics, Inc., routinely overbilled patients. See *Grandalski, et al. v. Quest Diagnostics, Inc., et al.*, No. 13-4329 (September 11, 2014). Quest Diagnostics is the country's largest provider of medical testing. Quest generally bills its patients' insurance companies for services, and in turn, bills the patients for amounts owed (if any) over and above what the insurance company paid. If the patients don't pay, Quest turns them over to a collection agency.

Several named plaintiffs sought to represent two nationwide classes of patients alleging state law consumer fraud claims^[1] alleging that Quest purposefully charged them more than they were obligated to pay under their various insurance policies. The Third Circuit upheld the District Court's denial of the proposed nationwide fraud classes, and in so doing, made several significant rulings.

First, the Third Circuit held it was appropriate to engage in a choice of law analysis at the class certification stage because in multi-state class actions variations in state law may "swamp" any common issues and defeat predominance. *Id.* Accordingly, it was not an abuse of discretion for the District Court to determine what law would govern the proposed state consumer fraud claims.

Second, the Third Circuit held the District Court properly concluded that the laws of the putative class members' home states controlled the state law claims. The District Court properly applied the choice of law rules of the forum state, New Jersey, to determine the governing law. New Jersey applies the "most significant relationship" test of the Restatement (Second) of Conflict of Laws. Since the parties agreed that an actual dispute existed between New Jersey's consumer fraud laws and the consumer protection laws of other states, the District Court had to determine which state has the most significant relationship to the case and parties under the Restatement. The Third Circuit ultimately found that the six factor test contained in § 148(2) of the Restatement was the appropriate standard because the misrepresentations were not made and received in the same state, which would compel application of § 148(1). The Third Circuit found that the District Court correctly found the following factors weighed in favor of using the law of the individual class members' states: class members each paid money in their home states; they received the bill in their home states; they obtained lab services in their home states; and Quest was expected to render performance in their home states. Another factor, the residence of all parties, was found to be neutral. Finally, the fact that Quest made the representations in New Jersey did not overcome the other factors' favoring the use of class members' home state consumer fraud law.

Finally, the Third Circuit held the District Court properly rejected the plaintiffs assertion that even though the law of the state of each individual class member had to be applied, the case could still be certified as a workable class action because the various state law consumer fraud statutes could be grouped into one of two broad groups: (i) those which prohibit unfair or deceptive conduct; and (ii) those that prohibit false or misleading conduct. The District Court held the plaintiffs did not meet their burden of proving that the proposed grouping was warranted or workable because they did not prove how this grouping would apply to the facts and circumstances of this case or how the jury could be charged in a coherent matter. The Third Circuit, while acknowledging that grouping may in general be a permissible approach to nationwide class action litigation, the plaintiff's in this case did not provide enough information or analysis to justify certification of the classes they proposed. Accordingly, the District Court's denial of class certification was affirmed.

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[1]The plaintiffs also alleged an unjust enrichment claim, but this note focuses only on the consumer fraud claim.