Aggregation Doctrine Continues to Limit Class Actions

Clark S. Willingbam

NOTES

Aggregation Doctrine Continues To Limit Class Actions

Mrs. Margaret Snyder, a shareholder in a Missouri life insurance company, brought suit in federal district court against members of the company's board of directors. She contended that under Missouri law certain payments received by directors for the sale of their stock properly should be distributed among all of the shareholders. Although diversity of citizenship was alleged as the basis for federal jurisdiction, Mrs. Snyder's personal claim was for only $8,740. She contended that under the 1966 amendment to rule 23 of the Federal Rules of Civil Procedure[1] the $10,000 jurisdictional amount[2] could be reached by aggregating the potential claims of other shareholders in her class.[3]

The federal district court, following a similar decision by the Fifth Circuit,[4] held that the amounts could not be aggregated; thus, the action was dismissed for lack of jurisdiction.[5] Because of a conflicting decision rendered by the Tenth Circuit,[6] the United States Supreme Court granted certiorari.[7] *Held, affirmed*: The 1966 amendment to rule 23 of the Federal Rules of Civil Procedure leaves unchanged the settled doctrine that in class actions involving several and separate claims, individual amounts may not be aggregated to reach the jurisdictional amount required.[8] *Snyder v. Harris*, 394 U.S. 332 (1969).

I. Class Actions and Rule 23

A class action has been described as nothing more than a convenient procedural device allowing an action without the necessity of all parties appearing.[9] Compulsory joinder cases have required inclusion of all interested parties, even in impractical situations.[10] The class action was created by the English equity courts to bypass this rule of joinder.[11] Although the class action was originally used to avoid compulsory joinder, it was extended

---

[1] Fed. R. Civ. P. 23.

[2] 28 U.S.C. § 1331 (1964).

[3] If such claims were aggregated, the amount in controversy would be approximately $1,200,000.

[4] Alvarez v. Pan Am. Life Ins. Co., 375 F.2d 992 (5th Cir.), *cert. denied*, 389 U.S. 827 (1967).

[5] Snyder v. Harris, 390 F.2d 204 (8th Cir. 1968).

[6] Gas Serv. Co. v. Coburn, 389 F.2d 831 (10th Cir. 1968). Coburn sued the Gas Service Company for illegally collecting city franchise taxes from himself and others living outside the city limits. Coburn alleged damages of $7.81, and in order to reach the federal jurisdictional amount he claimed that he represented approximately 18,000 other gas customers in the class action. The Court of Appeals for the Tenth Circuit affirmed the lower court judgment for Coburn, concluding that the 1966 amendment to rule 23 changed the aggregation principle.

[7] *Snyder v. Harris* and *Gas Serv. Co. v. Coburn* were taken together for certiorari. 393 U.S. 911 (1968). Only *Snyder v. Harris* is considered in this Note.

[8] Gas Serv. Co. v. Coburn, 394 U.S. 332 (1969), was reversed, consistent with the Supreme Court's interpretation of new rule 23.

[9] 3B J. Moore, Federal Practice ¶ 23.02(1), at 71 (2d ed. 1969) [hereinafter cited as Moore].

[10] *See* 3B Moore ¶ 23.02(1), at 72. Compulsory joinder arises whenever there is a common question of law or fact and the right to relief arises out of a single transaction or occurrence.

[11] *Id.*

to apply in permissive joinder[12] situations. When the Federal Rules of Civil Procedure were promulgated in 1937, rule 23 recognized the different types of joinder which had fostered the class action device. It provided for three types of class actions which came to be known as true, hybrid, and spurious.[13] True class actions corresponded to compulsory joinder. Hybrid and spurious class actions were the offspring of permissive joinder.

Common to all three types of class action were two basic requirements: (1) the persons involved had to be too numerous to make joinder practical, and (2) the person or persons representing the class had to insure adequate representation of the entire class.[14] True class actions could be maintained only where a joint or common interest or claim was involved, and a judgment in a true class action was binding on the entire class. Hybrid class actions were suits where the interests involved were neither joint nor common, but several. In addition, this mutuality of interest had to concern a fund or property common to all the parties. Judgment in a hybrid class action was binding only as to the right in this *res*. Spurious class actions were those suits involving interests which were several, but with no common fund or property in question. Such actions could be maintained when a large number of persons were interested in a common question of law or sought common relief. Because there was no jural relationship among the members of a spurious class, the action was merely an invitation to joinder,[15] and judgments in these actions were binding only on those parties joined in the action.[16]

The difference between the class actions is best illustrated by examples. In *Boesenberg v. Chicago Title & Trust Co.*[17] a suit to restore diverted trust funds to the trust estate by a trust beneficiary representing all beneficiaries was held to be a true class action. The trust beneficiaries were considered to have a joint interest in the funds of the trust estate because any action concerning the trust would affect each beneficiary. In *Lucking v. Delano*[18] a group of creditors sought to have their debtor declared insolvent and a fund established for their benefit. There was no joint interest because each creditor had to prove different facts. Although the claims were separate and distinct, all the claims involved the common fund to be set up for the creditors' benefit. This was held to be a hybrid class action. A situation involving a spurious class action was found in *Kainz v. Anheuser-Busch, Inc.*,[19] where numerous retail merchants sued a brewing

[12] Permissive joinder involves situations where there is only a common question of law or fact, whereas compulsory joinder also involves a joint or common interest or claim. *See* 3B MOORE ¶ 23.02(1), at 77.

[13] Professor Moore originally advanced this now accepted terminology. 2 J. MOORE, FEDERAL PRACTICE ¶ 23.04, at 2235-45 (1938). The actual rule labelled the actions joint, common, and several. FED. R. CIV. P. 23.

[14] 2 W. BARRON & A. HOLTZOFF, FEDERAL PRACTICE AND PROCEDURE § 562, at 260 (C. Wright ed. 1961).

[15] 3B MOORE ¶ 23.10(1), at 2603.

[16] For a more detailed discussion of true, hybrid, and spurious class actions, see 3B MOORE ¶¶ 23.08-.10(1), and 2 W. BARRON & A. HOLTZOFF, *supra* note 14, §§ 562-62.3, at 260-85.

[17] 128 F.2d 245 (7th Cir. 1942).

[18] 117 F.2d 159 (6th Cir. 1941).

[19] 194 F.2d 737 (7th Cir.), *cert. denied*, 344 U.S. 820 (1952).

company for price discrimination. Clearly the claims were not joint, because each merchant had a separate cause of action. The claims were brought together only by a common question of fact concerning the brewing company's violation of antitrust law.

In practice, the three types of class action did not fall into place so easily, and the courts encountered considerable difficulty in interpreting and applying the abstract terms of rule 23.[20] In order to combat the existing confusion, and to streamline class action procedures, the Judicial Conference amended rule 23 in 1966.[21] To qualify as a class action under the amended rule 23 parties must still be too numerous to make joinder practical and they must insure adequate representation for all members of the class. The new rule further requires that the action fall within one of its three enumerated types. Subsection (b)(1) provides for a class action where separate actions would create a risk of varying adjudications.[22] Subsection (b)(2) applies where injunctive or declarative relief on behalf of the class is appropriate.[23] Finally, subsection (b)(3) covers situations where common questions of law or fact exist.[24] The "accursed

[20] For example, in one notable case, Deckert v. Independence Shares Corp., 27 F. Supp. 763 (E.D. Pa.), *rev'd and remanded*, 108 F.2d 51 (3d Cir. 1939), *rev'd and remanded*, 311 U.S. 282 (1940), *on remand*, 39 F. Supp. 592 (E.D. Pa.), *rev'd and remanded sub nom.* Pennsylvania Co. v. Deckert, 123 F.2d 979 (3d Cir. 1941), plaintiffs (shareholders in the defendant company) claimed that the defendant company was insolvent and that their suit on behalf of all defrauded shareholders was a "hybrid" class action. Defendant claimed that the action was "spurious" because there was not a specific fund to which plaintiffs' claim applied. The district court avoided the problem of nomenclature and said merely that the action was "a class bill." 27 F. Supp. at 769. The court of appeals classed the action as "spurious," admitting that there was a common question of fraud but finding judgment for different amounts for each individual. 108 F.2d at 55. The Supreme Court decided that the action could be maintained, but gave it no name. 311 U.S. 282 (1940). The case was returned to the district court, which labelled the action "hybrid" because of the alleged insolvency of the company. That court found the defendant's assets to constitute a fund for creditors. 39 F. Supp. at 595. The case came again to the court of appeals, which determined that "names are not important." 123 F.2d at 983. The court of appeals did state, however, that such an action against a company would be "spurious" unless the corporation became insolvent. At that point the action would involve a special fund and the class action would change to "hybrid."

[21] The amended rule has been said to reflect a more pragmatic approach to the class action problem. Alvarez v. Pan Am. Life Ins. Co., 375 F.2d 992 (5th Cir.), *cert. denied*, 389 U.S. 827 (1967).

[22] FED. R. CIV. P. 23(b)(1) provides that a class action may be maintained if:

> [T]he prosecution of separate actions by or against individual members of the class would create a risk of
>
> (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or
>
> (B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

[23] FED. R. CIV. P. 23(b)(2) provides that a class action may be maintained if: "[T]he party opposing the class had acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole."

[24] FED. R. CIV. P. 23(b)(3) provides that a class action may be maintained if:

> The court finds that the question of law or fact common to the members of the class predominates over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:
>
> (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;
>
> (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

labels"[25] of true, hybrid and spurious are eliminated. However, the (b)(3) class action seems to be a modern spurious action.[26] Rather than extend an invitation to joinder, as did its predecessor, subsection (b)(3) gives the privilege to withdraw. A judgment under the amended rule is res judicata as to all parties who have not chosen to withdraw. Also, the court is given more discretion under the amended rule to determine whether or not a class action is superior to other available methods of litigation.

II. The Aggregation Principle

Federal jurisdiction in diversity cases has always been dependent upon a matter in controversy of a specified amount.[27] The Judiciary Act of 1789 initially set this jurisdictional amount at $500.[28] The amount was successively increased in 1887 to $2,000,[29] in 1911 to $3,000,[30] and to the present $10,000[31] in 1958. The phrase "matter in controversy" has been interpreted by the courts to permit combination of certain claims in order to satisfy the prerequisite jurisdictional amount.[32] This judicial interpretation is often referred to as the aggregation principle. Basically, that principle is that separate and distinct claims must each be of the requisite jurisdictional amount, while joint or common claims may be combined to equal the jurisdictional amount.[33]

Judicial decisions considering aggregation of claims can be traced back as early as 1832 when the Supreme Court held that the congressional phrase "matter in controversy" did not permit the aggregation of separate and distinct claims.[34] In 1891 the Court held that a claim in a separate appeal from a lower court could not be aggregated with a claim in a similar appeal from the same court action to reach the jurisdictional amount.[35] Such appeal was thought to be separate and distinct and was required to "stand or fall by itself."[36] In *Pinel v. Pinel*[37] two children omitted from their father's will joined in a complaint against the estate. One child claimed a two-fifths interest in the estate and the other child claimed a one-fifth interest. It was alleged that the combined three-fifths interest satisfied the jurisdictional amount. The Supreme Court, however, found that each child would have to prove separate facts in order to collect from the estate, and that the

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;
(D) the difficulties likely to be encountered in the management of a class action.

[25] Klaven & Rosenfield, *The Contemporary Function of the Class Suit*, 8 U. Chi. L. Rev. 684, 707 n.73 (1941).
[26] 3B Moore ¶ 23.02-1, at 124.
[27] Healy v. Ratta, 292 U.S. 263, 270 (1934).
[28] Judiciary Act of 1789, ch. 20, § 11, 1 Stat. 78.
[29] Act of March 3, 1887, ch. 373, § 1, 24 Stat. 552.
[30] Act of March 3, 1911, ch. 231, § 24, 36 Stat. 1091.
[31] 28 U.S.C. § 1331 (1964).
[32] *See* notes 33-39 *infra*.
[33] Troy Bank v. Whitehead & Co., 222 U.S. 39, 41 (1911).
[34] Oliver v. Alexander, 31 U.S. (6 Pet.) 143 (1832).
[35] Clay v. Field, 138 U.S. 464 (1891).
[36] *Id.*
[37] 240 U.S. 594 (1916).

"settled rule" did not allow aggregation of such separate and distinct claims to reach the jurisdictional amount.

Although *Pinel* and preceding cases were concerned merely with joinder, the aggregation doctrine was applied to class actions under rule 23 soon after the Federal Rules of Civil Procedure became effective. In 1939 the Court raised the question of class action jurisdiction itself and described the aggregation principle as a "familiar rule."[38] It thus developed that aggregation of claims in class actions fell under the same rule applicable in joinder. Aggregation was allowed in true class actions where the claims were joint, but was not allowed in hybrid and spurious class actions where the claims or interests were separate and distinct.[39] Congress has re-enacted the same "matter in controversy" language with each change in jurisdictional amount. This re-enactment, in the light of consistent judicial interpretation given to "matter in controversy" has added substantial weight to the aggregation doctrine.

III. SNYDER v. HARRIS

Mrs. Snyder contended that the 1966 amendment to rule 23 abolished, both in name and effect, the distinctions between true, hybrid, and spurious class actions. Accordingly, she argued that because a judgment would be binding on all members of her class who had not asked to be excluded, the "matter in controversy" was the claim of the entire class. She further argued that continued adherence to the distinction between joint and separate claims for the purpose of applying the aggregation doctrine would undercut the attempt of the Judicial Conference to promulgate efficient and modernized class action procedures.

The Supreme Court acknowledged that the 1966 amendment to rule 23 abolished the former categories of class action, but did not find this fact controlling. It found the aggregation doctrine to be based upon the judicial interpretation of the phrase, "matter in controversy," and not dependent upon the class action categories of old rule 23. Moreover, the Court rejected the argument that the binding effect of a class judgment under amended rule 23 would cause the "matter in controversy" to encompass claims of the entire class. It reasoned that parties joined under rule 20 of the Federal Rules also are bound by the judgment, but aggregation of distinct claims in such cases never has been permitted.

In declaring itself without authority to construe amended rule 23 to permit aggregation, the Court relied upon its decision in *Sibbach v. Wilson*,[40] and rule 82 of the Federal Rules of Civil Procedure.[41] In *Sibbach* the Court held that jurisdiction conferred by statute may not be extended or restricted by court-made rules. Similarly, rule 82 provides the clear man-

[38] Clark v. Paul Gray, Inc., 306 U.S. 583, 589 (1939).

[39] *See generally* Lion Bonding & Sur. Co. v. Karatz, 262 U.S. 77 (1923); Stratton v. Jarvis & Brown, 33 U.S. (8 Pet.) 4 (1834); Alfonso v. Hillsborough County Aviation Authority, 308 F.2d 724 (5th Cir. 1962); Knowles v. War Damage Corp., 171 F.2d 15 (D.C. Cir. 1948); Matlaw Corp. v. War Damage Corp., 164 F.2d 281 (7th Cir. 1947).

[40] 312 U.S. 1 (1941).

[41] FED. R. CIV. P. 82.

date that the Federal Rules "shall not be construed to extend or limit the jurisdiction of the United States district courts . . . ."[42]

The Court admitted that if it interpreted the statutory phrase, "matter in controversy," to encompass aggregation of claims, there would be no conflict with the decision in *Sibbach* or the provisions of rule 82. However, the Court reasoned that the interpretation of "matter in controversy" to exclude aggregation of separate and distinct claims is more than a mere "judge-made formula." The Court found it significant that Congress reenacted the phrase "matter in controversy" against a background of settled judicial interpretation of that language.[43] The Court concluded that complying with the congressional purpose in setting jurisdictional amounts was more important than complying with the Judicial Conference's attempt to modernize class action procedures.

IV. Conclusion

The decision in *Snyder v. Harris* is well justified. The majority opinion carefully detailed the impressive judicial consistency in interpreting both the aggregation doctrine and the courts' lack of power to extend jurisdiction. However, the decision is disappointing.

The way to reform was apparent—re-interpretation of the phrase "matter in controversy." As pointed out by Justice Fortas in his dissenting opinion, interpretation of "matter in controversy" has always been a judicial function. Now that amended rule 23 makes a class action binding on all parties, the Supreme Court should interpret "matter in controversy" to be the amount of the claims of all parties bound by the judgment.[44] The majority's reasoning, that these previous interpretations effectively were ratified by Congress' failure to change the statutory language when increasing the jurisdictional amount, is dangerous. Though this rationale is a useful judicial tool, the dissenting opinion observed that it is treacherous to find adoption of a controlling rule of laws in congressional silence alone.[45]

Procedural progress has been made in many areas concerning class actions, but in the jurisdictional area the previously abstract determination of whether a claim is joint or not still remains. The net result is replacing the terms "hybrid" and "spurious" with "(b)(2)" and "(b)(3)." The Supreme Court seems to have turned a deaf ear to this progressive revision of the Federal Rules. The only hope for reform in this area now seems to rest with direct congressional action.

Clark S. Willingham

---

[42] *Id.*

[43] Snyder v. Harris, 394 U.S. 332, 339 (1969); *see* cases cited in notes 34-39 *supra*, and accompanying text.

[44] 394 U.S. at 353.

[45] *Id.* at 348, citing Girouard v. United States, 328 U.S. 61, 69-70 (1946).