

Louisiana Appeals Court Affirms Class Certification in Lingering Litigation Against Department of Insurance

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A Louisiana appeals court recently affirmed class certification in consolidated lawsuits, pending since 1991, against Louisiana's Department of Insurance, other related state entities, and the state's excess insurance carriers. In *Abshire v. State Through Department of Insurance*, life insurance and annuity policy owners and corporate noteholders from three Louisiana life insurance companies sued alleging that the state assented to the insurers' fraudulent transfer of funds out of the companies in which plaintiffs had invested to support failing affiliated companies in which plaintiffs had no interest. The state allegedly approved of these plans in order to protect the Louisiana Insurance Guaranty Association, which served as guarantor for the three insurers that benefited from the transactions. When the three insurers later collapsed, plaintiffs' losses were not protected by the guaranty association.

Following class certification, plaintiffs appealed. The appellate court, however, affirmed, finding the "numerosity, commonality, typicality, adequate representation, and an objectively definable class" requirements for certification in Louisiana, which mirror the federal rule, were met. It likewise found plaintiffs satisfied the requirements of predominance and superiority necessary to certify the class.

In particular, with regard to commonality, the court rejected defendants' arguments that individual issues of reliance prevented certification in light of plaintiffs' fraud claim. The court acknowledged that "plaintiffs may have had different reasons for investing, invested in various financial instruments, and suffered varying types and degrees of damages." Yet, despite these differences, it still found a common issue suitable for class treatment: "the common issue is that all suffered loss as a result of the alleged actions or inactions of the defendants in perpetration of the fraudulent scheme." Therefore, the court did not consider individual issues of reliance an impediment to class treatment.

The court similarly found no error in the lower court's determination that plaintiffs had met the other certification requirements, which it explained were not demanding. Because it found the class satisfied numerosity on a prior appeal, it noted this decision was the law of the case. The court disposed of defendants' argument that there was no typicality due to the different damages, legal theories, and insurance policies involved, affirming the trial court's holding that all of plaintiffs' claims arose from the same conduct, namely, the state's acquiescence to the insurers' fraudulent transfer of funds out of the companies in which the plaintiffs had invested to support failing affiliate companies. The court also affirmed the lower court's finding as to adequate representation, finding no conflicts existed between the interest of class members and representatives, and determined the class could be defined in terms of ascertainable criteria.

Regarding the additional predominance and superiority requirements needed to certify the class, the court looked at numerous relevant factors, including the individuals' interest in controlling the litigation, the difficulties in managing a class action, and the ability of class members to otherwise pursue their claims. The appellate court noted that the trial court had undertaken a full analysis of relevant factors and found no manifest error in the trial court's conclusions that a class action was the superior procedural device to prosecute this case. Thus, it affirmed certification of the class.

