

MASSACHUSETTS SUPREME JUDICIAL COURT

Weld v. Glaxo Wellcome Inc.

434 Mass. 81 (2001) · Decided May 1, 2001

SUMMARY

The Massachusetts Supreme Judicial Court affirmed an order certifying a class of Massachusetts CVS pharmacy customers who received mailings generated through CVS’s patient compliance program. The court held that the named plaintiff satisfied typicality despite receiving a letter sponsored by only one pharmaceutical manufacturer because the defendants were sufficiently linked through their participation in the program. It also concluded that common issues predominated and that a class action was superior for resolving alleged privacy violations and related consumer-protection claims.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Spina, J.
JURISDICTION	Massachusetts
DECIDED	May 1, 2001
DISPOSITION	affirmed
PROCEDURAL POSTURE	Interlocutory appeal from an order of the Superior Court certifying a plaintiff class under Mass. R. Civ. P. 23. A single justice of the Appeals Court denied the defendants' petition for review but granted leave to appeal from that denial to the full court; the Supreme Judicial Court transferred the case on its own motion.
STANDARD OF REVIEW	Class-certification decisions under Mass. R. Civ. P. 23 are reviewed for abuse of discretion. An abuse of discretion occurs when the decision is arbitrary, unreasonable, or capricious, including when certification is based on speculation or generalization or when the court imposes the ultimate trial burden of proof at the certification stage.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Glaxo Wellcome Inc., Hoffmann-La Roche, Inc., Warner-Lambert Company v. John Weld, Jr., Jeffrey A. Kelley

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Superior Court abused its discretion by certifying the Massachusetts class without holding an evidentiary hearing.
2. Whether Kelley satisfied Mass. R. Civ. P. 23(a)'s typicality requirement despite receiving a mailing sponsored by only one defendant and asserting claims against multiple pharmaceutical manufacturers.
3. Whether the defendants' juridical links through CVS and the common patient compliance program were sufficient to permit the class action to proceed against defendants who did not directly contact Kelley.
4. Whether common questions predominated under Mass. R. Civ. P. 23(b) despite potentially individualized questions concerning letter content, medical conditions, emotional reactions, and damages.
5. Whether a class action was superior to other methods of adjudication and whether the possibility that certification would pressure defendants to settle defeated superiority.

HOLDINGS

1. Mass. R. Civ. P. 23 does not require an evidentiary hearing before a judge rules on class certification. Reviewing pleadings, affidavits, briefs, and other relevant materials may be sufficient when those materials permit a reasoned decision.
2. A representative's claims are typical when they have a sufficient relationship to the injury and conduct affecting the class and are based on the same legal theory. Kelley satisfied typicality because his injury and the class members' injuries arose from CVS's single course of conduct, and the pharmaceutical defendants were linked through substantially similar contracts and participation in the same program.
3. In this State court class action, the court analyzed Kelley's ability to represent the class under Rule 23's procedural requirements rather than treating the issue as a federal constitutional standing question.
4. Common questions predominated because liability could be determined largely through common questions concerning CVS's duty to its customers and the defendants' conduct in implementing the single program, even if damages later required individualized inquiries.
5. The class action was superior because it efficiently aggregated numerous small claims and promoted access to court and consistency of result. The possibility that certification might pressure defendants to settle, standing alone, was not a sufficient reason to deny certification.

KEY QUOTATIONS

"We therefore analyze Kelley's ability to represent the class as a matter of civil procedure under rule 23 rather than as a matter of standing." (89)

“The juridical links doctrine under rule 23, like joinder under rule 20 (a), is a procedural device that permits collective adjudication of related claims, not a substantive rule that results in joint or several liability.” (90)

“A judge deciding a motion for class certification may consider the fact that denial of class status may effectively terminate a proceeding, or the fact that the grant of class status may, in the defendants’ view, pressure them to settle.” (95)

FACTUAL BACKGROUND

CVS operated a patient compliance program under which pharmaceutical manufacturers supplied selection criteria and letter content, and CVS scanned prescription databases to identify customers for targeted mailings. The program used customers' prescription histories and medical conditions to send letters promoting drugs, encouraging refills, or recommending discussions with physicians. Kelley received a Merck-sponsored letter after CVS identified him through his prescription profile, while Weld received no letter. The plaintiffs alleged that the program disclosed and commercially misappropriated confidential medical information and violated Massachusetts privacy and consumer-protection law.

PROCEDURAL HISTORY

John Weld, Jr., and Jeffrey A. Kelley brought claims arising from CVS's patient compliance program, alleging improper disclosure and commercial misappropriation of confidential medical information, privacy violations, consumer-protection violations, and related conspiracy theories. The Superior Court denied certification of a nationwide class, ruled that Weld lacked standing because he had not received a mailing, and certified a class of Massachusetts CVS customers who had received program mailings, with Kelley as representative. The defendants sought interlocutory review of the certification order, and the Supreme Judicial Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Kurker v. Hill, 44 Mass. App. Ct. 184, 189 (1998)
- Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 811 (1985)
- Doe v. The Governor, 381 Mass. 702, 705 (1980)
- Brophy v. School Comm. of Worcester, 6 Mass. App. Ct. 731, 735 (1978)
- Coggins v. New England Patriots Football Club, Inc., 397 Mass. 525, 537 (1986), S.C., 406 Mass. 666 (1990)
- Bucchiere v. New England Tel. & Tel. Co., 396 Mass. 639, 641 (1986)
- Blackie v. Barrack, 524 F.2d 891, 901 & n.17 (9th Cir. 1975), cert. denied, 429 U.S. 816 (1976)
- Waste Mgt. Holdings, Inc. v. Mowbray, 208 F.3d 288, 294-297 (1st Cir. 2000)
- Massachusetts Gen. Hosp. v. Rate Setting Comm’n, 371 Mass. 705, 713 (1977)
- Baldassari v. Public Fin. Trust, 369 Mass. 33, 39-40 (1975); 394 Mass. 33 (1975)
- Fletcher v. Cape Cod Gas Co., 394 Mass. 595, 597, 601, 603, 606 (1985)

- Makuc v. American Honda Motor Co., 835 F.2d 389, 394 (1st Cir. 1987)
- Carpenter v. Suffolk Franklin Sav. Bank, 370 Mass. 314, 317-320 (1976)
- Spear v. H.V. Greene Co., 246 Mass. 259, 266 (1923)
- Warth v. Seldin, 422 U.S. 490, 501 (1975)
- Cedar Crest Funeral Home, Inc. v. Lashley, 889 S.W.2d 325, 329 (Tex. Ct. App. 1993)
- School Comm. of Brockton v. Massachusetts Comm'n Against Discrimination, 423 Mass. 7, 14-15 (1996)
- Baltimore Football Club, Inc. v. Superior Court, 171 Cal. App. 3d 352, 359 & n.3 (1985)
- Monaco v. Stone, 187 F.R.D. 50, 53-54 (E.D.N.Y. 1999)
- Emig v. American Tobacco Co., 184 F.R.D. 379, 386-387 (D. Kan. 1998)
- La Mar v. H & B Novelty & Loan Co., 489 F.2d 461, 466 (9th Cir. 1973)
- Kabatchnick v. Hanover-Elm Bldg. Corp., 331 Mass. 366, 369 (1954)
- Baughman v. State Farm Mut. Auto. Ins. Co., 88 Ohio St. 3d 480, 486 (2000)
- Duhaime v. John Hancock Mut. Life Ins. Co., 177 F.R.D. 54, 64 (D. Mass. 1997)
- In re One Bancorp Sec. Litig., 136 F.R.D. 526, 533 (D. Me. 1991)
- Amchem Prods. v. Windsor, 521 U.S. 591 (1997)
- Castano v. American Tobacco Co., 84 F.3d 734, 746 (5th Cir. 1996)
- Matter of Rhone-Poulenc Rorer Inc., 51 F.3d 1293, 1298 (7th Cir. 1995)
- Payton v. Abbott Labs., 83 F.R.D. 382, 390 (D. Mass. 1979), vacated on other grounds, 100 F.R.D. 336 (D. Mass. 1983)