

# UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

## Sam Hargrove v. Sleepys LLC

No. No. 19-2809, United States Court of Appeals for the Third Circuit (September 9, 2020)

### SUMMARY

The Third Circuit held that renewed motions for class certification under Rule 23(c)(1)(C) must be treated as initial motions, not subject to the heightened motion-for-reconsideration standard. The court also clarified that the ascertainability requirement does not demand identification of all class members at certification; affidavits combined with records can suffice, and where an employer fails to keep legally required records, employees may prove ascertainability through "just and reasonable inference" under *\*Tyson Foods\** and *\*Mt. Clemens\**. The district court erred by focusing on gaps in Sleepy's records and requiring too much specificity, so the denial of class certification was reversed and remanded.

### CASE DETAILS

|                       |                                                                                                                                           |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the Third Circuit                                                                                      |
| WRITING FOR THE COURT | Ambro; Hardiman; Restrepo                                                                                                                 |
| JURISDICTION          | Federal                                                                                                                                   |
| DECIDED               | September 9, 2020                                                                                                                         |
| DOCKET                | No. 19-2809                                                                                                                               |
| DISPOSITION           | reversed_and_remanded                                                                                                                     |
| PROCEDURAL POSTURE    | Appeal from an order of the United States District Court for the District of New Jersey denying a renewed motion for class certification. |
| STANDARD OF REVIEW    | Abuse of discretion for class certification order; de novo for legal standard applied.                                                    |
| PRECEDENTIAL VALUE    | Published                                                                                                                                 |
| PARTIES               | Sam Hargrove, Andre Hall, Marco Eusebio, individually and on behalf of all others similarly situated v. Sleepy's LLC                      |

### TOPICS

[class actions](#)[civil procedure](#)[employment law](#)[wage and hour](#)[standard of review](#)

## PRACTICE AREAS

Class Action

Employment Law

Wage and Hour

## QUESTIONS PRESENTED

1. Whether the district court erred in treating the renewed motion for class certification as a motion for reconsideration.
2. Whether the district court misapplied the ascertainability standard.
3. Whether the court should extend *Tyson Foods* and *Mt. Clemens* to the ascertainability determination.

## HOLDINGS

1. District courts should treat renewed motions for class certification as they would initial motions under Rule 23, not as motions for reconsideration.
2. The district court misapplied the ascertainability standard by requiring Appellants to identify class members at the certification stage; plaintiffs need only show that class members can be identified.
3. Where an employer has failed to keep records it was required to keep by law, employees can prove ascertainability by producing sufficient evidence to define their proposed class as a matter of just and reasonable inference.

## KEY QUOTATIONS

*“An order that grants or denies class certification may be altered or amended before final judgment.”* (at 4)

*“Affidavits, in combination with records or other reliable and administratively feasible means, can meet the ascertainability standard.”* (at 5)

*“produc[ing] sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference.”* (at 6)

*“where an employer has failed to keep records it was required to keep by law, employees can prove ascertainability by producing ‘sufficient evidence’ to define their proposed class as ‘a matter of just and reasonable inference.’”* (at 6)

## FACTUAL BACKGROUND

Sleepy's, a mattress retailer, used drivers to make deliveries. Drivers signed Independent Driver Agreements requiring them to work exclusively for Sleepy's while on duty. Sleepy's maintained driver rosters, gate logs, and pay statements. The proposed class consisted of drivers who operated one truck full-time for Sleepy's. Appellants sought to identify class members by cross-referencing these records.

## PROCEDURAL HISTORY

Appellants filed a class action complaint in March 2010. After discovery, the District Court granted summary judgment for Sleepy's, holding drivers were independent contractors. The Third Circuit vacated and remanded after the New Jersey Supreme Court answered a certified question. On remand, the District Court granted partial

summary judgment for Appellants on employee status. Appellants then moved for class certification; the District Court denied without prejudice. Appellants filed a renewed motion for certification of a narrower class, which the District Court denied. Appellants appealed.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion, including consideration of other Rule 23 requirements and possible reopening of discovery.

## CASES CITED

- Marcus v. BMW of N. Am. LLC, 687 F.3d 583 (3d Cir. 2012)
- Byrd v. Aaron's Inc., 784 F.3d 154 (3d Cir. 2015)
- Carrera v. Bayer Corp., 727 F.3d 300 (3d Cir. 2013)
- City Select Auto Sales Inc. v. BMW of N. Am. Inc., 867 F.3d 434 (3d Cir. 2017)
- Tyson Foods, Inc. v. Bouaphakeo, 136 S. Ct. 1036 (2016)
- Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946)
- Max's Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669 (3d Cir. 1999)
- In re Cmty. Bank of N. Va., 622 F.3d 275 (3d Cir. 2010)
- Hayes v. Wal-Mart Stores, Inc., 725 F.3d 349 (3d Cir. 2013)
- Carrow v. FedEx Ground Package Sys., Inc., No. 16-cv-3026, 2019 WL 7184548 (D.N.J. 2019)
- In re Initial Pub. Offering Sec. Litig., 483 F.3d 70 (2d Cir. 2007)
- Vaquero v. Ashley Furniture Indus., Inc., 824 F.3d 1150 (9th Cir. 2016)
- Young v. Nationwide Mut. Ins. Co., 693 F.3d 532 (6th Cir. 2012)
- Briseno v. ConAgra Foods, Inc., 844 F.3d 1121 (9th Cir. 2016)
- Hargrove v. Sleepy's, LLC, 106 A.3d 449 (N.J. 2015)