Alberta court rejects “boilerplate” release language in proposed class action settlement

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In *Walter v WHL*, the Alberta Court of Queen’s Bench refused to approve the settlement of three related class actions where the proposed release contained what is often considered “standard” or “boilerplate” language pertaining to claims that “could have been raised or advanced in the Class Actions, whether known or unknown, or by reason of any cause, matter or thing whatsoever.”

Background

The class actions concerned whether major junior hockey players in the Ontario Hockey League, the Western Hockey League and the Québec Major Junior Hockey League should be treated as employees and, thus, entitled to minimum wages prescribed by employment standards legislation in the applicable province.

All three class actions were certified and a global settlement was negotiated at mediation. Class counsel sought approval of the terms of the settlement, which was supported by the defendants. A joint hearing was conducted amongst the Superior Courts of Alberta, Ontario and Québec, pursuant to the Canadian Judicial Protocol for the Management of Multi-Jurisdictional Class Actions and the Provision of Class Action Notice.

Relying in part on Justice Perell’s analysis of the settlement in the Ontario action (*Berg v CHL*), Justice Hall was prepared to approve the Alberta action settlement in terms of the proposed amount, distribution protocol, honoraria for the named plaintiffs and proposed fee for class counsel.

The decisions

Like Justice Perell, however, Justice Hall concluded that the “Released Matters” provision of the release was overly broad. Specifically, and further to concerns raised by two objectors in the Ontario action, the Court acknowledged that the provision might potentially impact the standing of class members in a number of other existing class actions against the same defendants, and others not yet commenced.

Justice Hall indicated that “were I to approve those words in the description of Released Matters, I would be venturing outside this certified class action and approving more than I have certified.” Although the wording was described by defendants’ counsel as “standard” and “boilerplate,” Justice Hall did not accept such language as being appropriate in the settlement of a certified class action. Class counsel was invited to reapply for approval with a reworded release.

Takeaway

The decisions of both Justices Perrell and Hall serve as general reminders that settlement approval is not a rubber stamp and that seemingly standard provisions taken from outside of the class action context may raise concerns in the circumstances of a class proceeding.

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