

Dr. Oz Class Settlement Shows How Liability Can Diminish

By **Michael Zbiegien** (October 4, 2022)

There is a public perception that class actions result in multimillion-dollar liability for the defendants. The **recent settlement** of Veda Woodard v. Lee Labrada in the U.S. District Court for the Central District of California — a case in which TV's Dr. Mehmet Oz was originally named as a defendant — shows that is not always the case.



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The suit, which was filed in 2016, alleged misrepresentations regarding certain weight loss supplements manufactured by Labrada Bodybuilding Nutrition Inc., which the plaintiffs claimed Dr. Oz received compensation for promoting on his TV show.

In 2018, the court denied a motion for preliminary approval of a \$5.25 million settlement. After six years of litigation, Labrada — the only remaining defendant, since the plaintiffs dismissed the allegations against Dr. Oz and other media defendants — agreed to a settlement that requires the payment of just \$625,000.

The Woodard suit shows issues that can arise in a class action that can reduce the amount a defendant must pay out of pocket.

Nationwide Classes Are Difficult

The original proposed settlement of \$5.25 million would have covered a nationwide class, but the ultimate settlement applies to a class of only California residents. It is difficult to certify a nationwide class, especially in consumer class actions.

As stated by the U.S. Court of Appeals for the Sixth Circuit in *Pilgrim v. Universal Health Card LLC* in 2011, the consumer protection laws of different states often "vary in material ways," leading courts to conclude that "no common legal issues favor a class-action approach to resolving [the] dispute."

Even when common law claims are at issue, courts have recognized that "variations in state law may swamp any common issues and defeat predominance," according to the 1996 *Castano v. American Tobacco Co.* decision by the U.S. Court of Appeals for the Fifth Circuit.

These issues usually don't impede a nationwide settlement class. But after the court rejected the proposed settlement in *Woodard v. Lee*, the case proceeded through discovery and then a motion for class certification. The plaintiffs could not overcome these issues in their class certification motion.

The court held that, for the proposed nationwide class, the plaintiffs failed to satisfy the commonality requirement because of material variations in state law that demand distinct evidence from class members residing in different states.

So the court rejected the plaintiffs' attempt to certify a nationwide class in August 2021 — and a smaller class generally means lower potential liability, which results in a smaller ultimate settlement amount.

Merit Issues Often Arise

During the course of litigation, court rulings can narrow the claims at issue, or it can become apparent that the plaintiffs face substantial obstacles to proving their claims.

In Woodard, two of the named plaintiffs in the case asserted New York state law claims. Labrada filed a motion for summary judgment showing that the two New York plaintiffs had not actually relied on any of Labrada's allegedly false statements, so the court dismissed their claims.

When it came to class certification, the court concluded that, because of the dismissal of the New York claims, certification of any proposed class of New York plaintiffs was unwarranted. This ruling further reduced the size of the class and thus, reduced the potential settlement amount.

In addition, as in all cases, uncertainty in being able to prove their claims can lead class-action plaintiffs to agree to a lower settlement amount.

While the California-named plaintiff in Woodard was able to survive summary judgment on her misrepresentation claims regarding the efficacy of the Labrada products at issue, those claims would eventually come down to a battle of the experts.

In that regard, the preliminary approval order notes that the plaintiff "acknowledges the hurdles she would need to overcome to succeed on the merits of her case," such as "determining whether the products at issue were actually ineffective."

Dismissal of Defendants

Class action plaintiffs sometimes name multiple defendants in an attempt to draw in multiple sources from which they hope to extract damages or settlement funds.

In Woodard, Dr. Oz and the other media defendants were parties to the initially proposed settlement. After that settlement was rejected in September 2018, however, those defendants moved for summary judgment arguing that all the plaintiffs' claims against them were barred by the applicable statutes of limitations.

They further argued that the plaintiffs could not establish that there was a promotional agreement between the media defendants and Labrada, which was the premise underlying the plaintiffs' claims against the media defendants.

The media defendants then upped the ante by filing an anti-SLAPP motion seeking to have the claims against them stricken from the complaint and an award of attorney fees. A week later, the plaintiffs had agreed to dismiss their individual claims against the media defendants with prejudice in exchange for an agreement that plaintiffs brought their claims in good faith and that attorney fees were not warranted.

The dismissal of Dr. Oz and the other media defendants not only narrowed the scope of the litigation, it also removed additional independent sources of potential settlement funds.

Inclusion of Nonmonetary Relief in the Settlement

Finally, when the dollar amount of a settlement may seem low, including an agreement that the defendant will change its practices or some other form of non-monetary relief can result

in court approval despite the lower monetary settlement amount.

In fact, in situations when it may be difficult to identify potential class members — such as consumer misrepresentation claims involving products purchased through a retailer — a modification of the defendant's practices may provide more effective relief than a monetary payment.

In Woodard, along with the monetary payment, the current proposed settlement also requires Labrada to cease selling the Labrada Green Coffee Bean Extract Product and Labrada Garcinia Cambogia Product.

Conclusion

The filing of a class action does not always mean the defendants will end up paying multiple millions of dollars. Developments during the litigation can reduce the size of the potential class, demonstrate weaknesses in the merits of the case, eliminate defendants — and sources of potential settlement funds — or justify nonmonetary relief that warrants a lower settlement amount.

Attorneys and litigants should be on the lookout for these developments so they can use them to position their cases for an acceptable resolution.

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