CHAPTER 48

ILLINOIS

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I. Introduction[1]

The Illinois Code of Civil Procedure contains four prerequisites for a class action:

1. The class is so numerous that joinder of all members is impracticable;
2. There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members;
3. The representative parties will fairly and adequately protect the interest of the class; and
4. The class action is an appropriate method for the fair and efficient adjudication of the controversy.[2]

The proponent of the class action bears the burden of establishing these four prerequisites.[3]

"Section 2-801 is patterned after Rule 23 of the Federal Rules of Civil Procedure, and because of this close relationship between the state and federal provisions, 'federal decisions interpreting Rule 23 are persuasive authority with regard to questions of class certification in Illinois.'"[4] As discussed below, however, there are differences in the two rules. Thus, in certain instances, federal case law may be either inapplicable or distinguishable.

Even if a motion for class certification is unopposed, the trial court nonetheless has an independent obligation to ensure that a class action is

indeed appropriate and to protect absent class members. This includes a continuing obligation to adjust to changing factual circumstances that may require modification of class certification rulings.[5]

In determining whether a class action is appropriate, the trial court may conduct any factual inquiry necessary to resolve the issue of class certification. But the inquiry is limited to whether the plaintiff will satisfy the requirements of section 2-801, rather than a determination at that stage of the merits of the claims. On appeal regarding questions of class certification, however, the reviewing court is to assess the discretion exercised by the trial court and may not instead assess the facts and determine in its own view whether the case is well-suited for a class action.[6]

If certain individual questions exist, they may be handled within subclasses, as long as the common issues predominate.[7] This is true even where conflicting or differing state laws might apply. If at a later point a subclassification becomes unmanageable, the court may set aside the class certification or a portion of it. Unlike Federal Rule 23(b), however, the Illinois statute does not distinguish between different types of class actions. While Rule 23 allows class actions even where common issues do not predominate (pursuant to either Rule 23(b)(1) or (b)(2)), the Illinois statute requires common issues to predominate for all forms of class actions.[8]

Illinois law requires that a class action be an "appropriate" method for the fair and efficient adjudication of the controversy. This is a less stringent standard than Rule 23's requirement that a class action be "superior" to other available methods. However, the Illinois Supreme Court has held that Illinois courts should still consider federal rulings on superiority to decide appropriateness.[9]

Moreover, unlike Rule 23's requirement that the class representative's claim be typical of those of the class, Illinois has adopted a more liberal approach. Illinois only requires that the class representative "fairly and adequately" protect the interests of the class. Thus, "a class representative may not be disqualified merely because his claim is not exactly the same as the claims of other potential class members."[10] Instead, Illinois courts have found that "[i]t is only necessary that the representative not seek relief antagonistic to the interest of other potential class members."[11]

II. Notice to Class Members

In terms of notice, the Illinois Code of Civil Procedure provides little guidance. It simply states that "the court in its discretion may order such notice that it deems necessary to protect the interests of the class and the parties."[12] Additionally, an order certifying the class may be conditioned upon "the giving of such notice as the court deems appropriate."[13] Generally, the trial court is afforded discretion as to whether notice can be excused, as well as to the form and content of any such notice.[14] In damages class actions that include nonresident class members, due process requires notice to all readily identifiable nonresident members.[15] Notice may also be required if class members have differing interests or opinions on the desirability of relief requested in the complaint.[16]

Under Federal Rule 23, classes certified under either 23(b)(1) or 23(b)(2) are mandatory classes, and individual class members cannot opt out of the judgment. "Unlike the federal statute, the Illinois statute does not provide for a mandatory class in which class members cannot seek exclusion."[17] As a result, persons may opt out of any form of class action such that a class action judgment would not affect their substantive rights.[18]

III. Amendment/Decertification

Under the Illinois statute, the trial court's power to amend a class certification order is more circumscribed than under the Federal Rule. The Illinois Code of Civil Procedure allows a trial court to amend a certification order until a "decision on the merits."[19] By contrast, the Federal Rule allows amendments or decertification until "final judgment."[20] Thus, a decision under the Illinois statute "does not have to be 'final' to have a limiting effect on the power of the trial court."[21]

The Illinois Supreme Court has provided additional guidance regarding the "decision on the merits" language in section 2-802(a) of the Illinois statute.[22] It held that a "decision on the merits" was "a complete determination of liability on a claim based on the facts disclosed by the evidence, and which establishes a right to recover in at least one class member, but which is something short of a final judgment."[23]

IV. Statute of Limitations Tolling

Many jurisdictions provide that the statute of limitations is tolled for all

purported class members upon the filing of a class action complaint—regardless of the jurisdiction in which the case was filed. The U.S. Supreme Court rationalized that without such a rule, unnamed class members "would feel compelled to file motions to intervene in the action before the expiration of the limitations period in order to prevent loss of their claims in the event class status was ultimately denied after the limitation deadline."[24]

The Illinois Supreme Court, however, refused to adopt such a broad rule. It reasoned that "[u]nless all states simultaneously adopt the rule of cross-jurisdictional class action tolling," tolling a state statute of limitations "may actually increase the burden on that state's court system, because plaintiffs from across the country may elect to file a subsequent suit in that state solely to take advantage of the generous tolling rule."[25] Accordingly, the court refused "to expose the Illinois court system to such forum shopping" and held that an Illinois statute of limitations was not tolled during the pendency of a class action in federal court.[26] Illinois courts do, however, toll the statute of limitations for class actions pending in Illinois courts.[27]

V. Appeals

Appeals of class certification rulings are permissive, as they are under federal law.[28] This avenue applies to both the grant and denial of a class certification motion. Illinois courts have rejected the "death knell" doctrine recognized in some other jurisdictions, which permits the immediate appeal from a court order denying the certification of class claims, yet preserving individual claims.[29]

VI. Attorneys' Fees

If no statutory right to attorneys' fees is available, attorneys' fees in Illinois class actions, as in some federal class actions, may be awarded under the common fund doctrine.[30]

VII. "Pick Off" of Class Representatives

An issue of significant legal activity over recent years has been whether class action defendants should be able to "moot" class actions by offering full judgment to the named plaintiffs—the so-called "pick off" move. As discussed in Chapter 22 of this Guide, in January 2016, the U.S. Supreme

Court considered the issue in *Campbell-Ewald v. Gomez*, a Telephone Consumer Protection Act (TCPA) case.[31] Although the Court largely foreclosed the pick-off move through a mere offer of judgment, it declined to decide whether a defendant could moot the plaintiff's case by depositing the full amount of the plaintiff's individual claim in an account payable to the plaintiff and having the trial court enter judgment for the plaintiff.[32] Thus, the resolution of such a situation reverts to the controlling law of each circuit, absent future guidance from the Supreme Court.

As of this writing, the Seventh Circuit has not fully addressed the window left open by *Campbell-Ewald*. In *Chapman v. First Index, Inc.*,[33] also a TCPA case, decided while *Campbell-Ewald* was pending before the U.S. Supreme Court, the Seventh Circuit held that an "offer of full compensation [does not] moot[] the litigation or otherwise end[] the Article III case or controversy." The offer in *Chapman* had been made to expire 14 days after the district court ruled on the motion for class certification (the Seventh Circuit having previously held in *Wrightsell v. Cook County*[34] that an individual settlement offer to a class representative does not moot the class action when the class representative has already moved for class certification).

The Illinois Supreme Court, conversely, has left open a greater possibility for defendants to "pick off" class representatives through a tender of full relief. In *Barber v. American Airlines,*[35] the court ruled that a defendant's tender of all relief available to the class representative before the filing of a motion for class certification moots the case and, thus, mandates dismissal. Notably, the court flatly rejected the "pick off" exception to mootness, which had developed to prevent defendants in small individual recovery class action cases—such as TCPA claims or consumer class actions for small overcharges—from simply paying off each class representative's claim, as a tactical matter, to prevent a class action from proceeding. The court reasoned that "[p]resumably, the remaining class members can either pursue class litigation or bring their claims individually. Indeed, this class action could have survived if one of the remaining class members had substituted himself as the named representative."[36]

The Illinois Supreme Court then revisited this issue in 2015, in *Ballard RN Center, Inc. v. Kohll's Pharmacy & Homecare, Inc.*[37] The plaintiff in *Ballard* filed a motion for class certification pursuant to section 2-801

concurrent with the filing of the complaint.[38] The defendant later moved for summary judgment, arguing that defendant had made unconditional offers of payment for full judgment to plaintiff, which were rejected, and that the motion for certification filed concurrently with the complaint was neither appropriate nor complete.[39] The trial court disagreed with defendant's contention that plaintiff's motion for class certification was merely a "shell" motion and held that plaintiff's claim was not moot under *Barber*.[40] The court subsequently granted plaintiff's amended motion for class certification.[41]

On interlocutory appeal, the appellate court reversed this aspect of the lower court's decision and held that plaintiff's initial motion was not sufficient under *Barber* because it lacked sufficient factual allegations in support of class certification and "evidentiary materials adduced through discovery."[42] On further appeal from that decision, the Illinois Supreme Court agreed "in principle with the appellate court's suggestion that a 'contentless "shell" motion,' or otherwise frivolous pleading, would be insufficient to preclude a mootness finding under *Barber*," but held that the class certification motion at issue—which "contain[ed] a general outline of plaintiff's class membership, class action allegations, and effectively communicate[d] the fundamental nature of the putative class action"—was sufficient.[43]

Obviously, the *Ballard* decision limits the effect of *Barber* to the extent that knowledgeable class counsel files the requisite motion for certification concurrently with the complaint or shortly afterward. However, *Ballard* leaves open a window for defendants to the extent that class counsel (possibly, out-of-state practitioners) may be unaware of this line of cases or files an arguably frivolous motion for class certification that is less detailed than the one at issue in *Ballard*. Another wrinkle to note in this line of authority is that imposing a time limitation in which to accept a tender offer may render the offer conditional rather than unconditional, making it insufficient to moot a class representative's claim.[44] At present, the courts have not addressed this possibility.

VIII. Need to Allege Concrete Injury

As discussed more extensively in Chapter 13 of this Guide, on May 16, 2016, the U.S. Supreme Court decided *Spokeo, Inc. v. Robins*,[45] in which it held

that the injury-in-fact requirement for Article III standing requires a plaintiff to allege an injury that is *both* concrete (i.e., real, and not abstract) and particularized. It was insufficient to merely allege a statutory violation—in this case, a violation of the Fair Credit Reporting Act (FCRA)—that resulted in an individualized harm.[46] The Supreme Court sent the case back to the district court to determine whether the alleged violations of the FCRA created a "degree of risk sufficient to meet the concreteness requirement."[47] *Spokeo* will therefore be important in cases brought under statutes allowing for statutory damages, such as the TCPA, FCRA, and the Cable Communications Policy Act.

In the wake of *Spokeo*, it is likely that this concrete injury requirement will be a subject of rapidly evolving interpretation by the Illinois federal courts. At present, very little case law from the Illinois federal courts addresses whether the mere violation of a law with a statutory damages provision—without other, more clearly defined injury—will be sufficient to allege Article III standing. At the time of writing, the most informative case is *Meyers v. Nicolet Restaurant of De Pere, LLC*,[48] a putative class action under the Fair and Accurate Credit Transactions Act (FACTA). There, undisputed facts established that the defendant provided the plaintiff with a credit card receipt that failed to truncate the credit card's expiration date, in violation of FACTA. The plaintiff noticed the violation, pocketed the receipt, and filed the lawsuit. Citing *Spokeo*, the Seventh Circuit held that the plaintiff had not suffered "any potential real world harm" and, thus, he lacked an injury in fact sufficient to establish Article III standing. A handful of other cases in the Illinois federal courts have attempted to flesh out this question of whether a plaintiff may pursue a claim for a statutory violation divorced from an injury to the plaintiff. In *Aranda v. Caribbean Cruise Line, Inc.*,[49] a putative class action case alleging TCPA violations, the Northern District of Illinois addressed whether the plaintiff had satisfied the concrete injury requirement. The court found that the TCPA established "substantive, not procedural, rights to be free from telemarketing calls consumers have not consented to receive."[50] The court stated that "Congress enacted the TCPA to protect consumers from the annoyance, irritation, and unwanted nuisance of telemarketing phone calls, granting protection to consumers' identifiable concrete interests in preserving their rights to privacy and seclusion."[51] As a result, the violation of the substantive right conferred by the TCPA was itself

sufficient to constitute a concrete injury.[52]

The Central District of Illinois likewise addressed whether the plaintiff and putative class representative, who had allegedly received a misleading debt collection letter in violation of the Fair Debt Collection Practices Act (FDCPA), had alleged a sufficiently concrete injury under *Spokeo*.[53] The defendant argued that plaintiff did not suffer a concrete injury because "[s]he missed no time from work, incurred no out-of-pocket expenses, and paid no monies to Defendants."[54] The court disagreed, holding that the sending of misleading debt collection letters "present[s] a material risk of harm—the risk that the consumer would be misled into believing that the debt is legally enforceable."[55] In addition, a "letter that misleads the consumer as to the legal status of the debt is exactly the harm that Congress identified and sought to curb by creating a statutory right to accurate information under the FDCPA."[56]

Conversely, the Northern District of Illinois has held that the plaintiff—who asserted a violation of the FCRA arising out of a credit-check disclosure form that allegedly contained "extraneous information" and was not a stand-alone document—had not pled the requisite concrete injury.[57] The court noted that "[a] technical violation of this section, such as including too much information on the Disclosure Form as alleged by plaintiff, may result in a prospective employee authorizing the use of a credit report when he or she did not intend to do so, but it may just as easily fail to cause any harm, because the prospective employee understood exactly what was being authorized."[58] As a result, "a bare allegation of a violation of this section, without more, does not allege a concrete injury."[59] The court also noted that the plaintiff did not plead that he signed the document by mistake, or that he did not understand what he was signing, or that he was otherwise misled by the information provided.[60] Thus, as of this writing, the question of whether a statutory violation, by itself, establishes concrete harm remains unresolved in the Illinois federal courts.

Another noteworthy approach to this situation can be found in *In re Barnes & Noble Pin Pad Litigation*.[61] In that case, the court analyzed whether the plaintiffs—who were allegedly victimized by the unauthorized "skimming" of their credit and debit card data held by Barnes & Noble—pled an injury that was adequate to confer standing. The court held that "allegations that unreimbursed fraudulent charges and identity theft may

occur in the future were sufficient to establish injury in fact," in addition to claims that the plaintiffs had lost time and money protecting themselves against identity theft.[62] Although the court found that the plaintiffs had adequately alleged a concrete injury for the purposes standing, it also held that plaintiffs had not adequately pleaded any economic or out-of-pocket damages caused by the data breach and that the other damages alleged were too remote or conjectural. Thus, it dismissed under Federal Rule 12(b)(6) for failure to state claims.[63]

IX. Increased Scrutiny by the Seventh Circuit

The judges of the Seventh Circuit have shown an increasing willingness to view putative class actions—and, in particular, putative class counsel—under a harsh light. While the trend is arguably national, two specific decisions in the Seventh Circuit deserve attention.

The first case, *Thorogood v. Sears, Roebuck & Co.*,[64] requires an understanding of the state of the law at the time the Seventh Circuit issued its decision. Until the U.S. Supreme Court's decision in *Smith v. Bayer Corp.*,[65] a circuit split existed on whether the federal Anti-Injunction Act barred a federal court from enjoining a state court class action that was similar to a previous federal class action by a different class representative, but where class was not certified.[66] In *Smith*, the Supreme Court held that the Anti-Injunction Act prevents a federal court that heard but did not certify a class action from enjoining a putative class member from filing a later, nearly identical class action in state court. The Seventh Circuit decided *Thorogood* prior to *Smith* and while circuits remained split on the question.

In *Thorogood*, the federal trial court had certified a consumer fraud class action. On appeal, the Seventh Circuit remanded with orders that class be decertified.[67] After decertifying the class, the trial judge refused the defendant's request to enter an injunction against copycat state court actions brought on behalf of a putative class member other than the original class representative. The same counsel appeared for the plaintiffs in both the federal and state cases. On the defendant's appeal, the Seventh Circuit reversed the trial court, holding that it should have enjoined all copycat state court actions. The Supreme Court subsequently vacated the Seventh Circuit's decision in light of its holding in *Smith*.[68] The Seventh Circuit's opinion is especially notable for the unusually direct language the court used to criticize

putative class counsel's purported handling of the cases. Despite its recognition of the existence of a circuit split on a key issue and the possibility the Supreme Court would disagree, the Seventh Circuit nonetheless called the class action lawsuit before it "a nuisance" and "near-frivolous," and it referred to a settlement demand by plaintiff's counsel as "settlement extortion."[69] The court even took the unusual action of directly referring to the plaintiff's counsel as "pugnacious" and "pertinacious to a fault" and questioning his motivations in pursuing class action cases.[70]

A second recent opinion is also demonstrative of the apparent trend toward close review of putative class counsel. In *Creative Montessori Learning Centers v. Ashford Gear LLC*,[71] the Seventh Circuit explained that "[c]lass counsel owe a fiduciary obligation of particular significance to their clients when the class members are consumers, who ordinarily lack both the monetary stake and the sophistication in legal and commercial matters that would motivate and enable them to monitor the efforts of class counsel on their behalf."[72] Thus, "[a] class may be certified only if 'the trial court is satisfied, *after a rigorous analysis*, that the prerequisites of Rule 23(a) have been satisfied.'"[73] The court in *Creative Montessori* vacated a class certification based on its finding that class counsel "demonstrated a lack of integrity that casts serious doubt on their trustworthiness as representatives of the class."[74]

In June 2014, the Seventh Circuit issued yet another decision, *Eubank v. Pella*,[75] that was highly critical of the class action device, and specifically, the economic motivation for class counsel to negotiate settlements that are "modest in overall amount but heavily tilted toward attorneys' fees."[76] The Seventh Circuit held that "despite the presence of objectors, the district court approved a class action settlement that is inequitable—even scandalous" and emphasized the need for "intense judicial scrutiny of proposed class action settlements."[77] The initial class representative in that case was the father-in-law of the lead counsel (his daughter was also a partner in her husband's firm).[78] Although other class representatives were later added—most of whom eventually objected to the settlement at issue—the court described the familial relationship between class counsel and the class representative as a "grave conflict of interest."[79] Furthermore, the lead class counsel was embroiled in an ethical dispute resulting in a 30-month suspension, further diminishing the adequacy of his representation.[80]

Finally, the settlement itself provided for the payment of $11 million in attorneys' fees, but required class members to engage in a complicated and confusing claims process (including, potentially, arbitration) in order to receive any recovery.[81] Other class members were limited to just coupons or an extension of their warranties.[82] Although the settlement was presented as being worth $90 million, the defendant estimated the actual value to the class was just $22.5 million and that figure assumed all claimants would receive the maximum possible benefits under the settlement.[83] The Seventh Circuit concluded that although "almost every danger sign in a class action settlement that our court and other courts have warned district judges to be on the lookout for was present in this case," the district court failed in its obligation to rigorously examine and verify the suitability of the class settlement.[84] The judgment approving the settlement was reversed, class counsel and the class representative were removed, and the case was remanded for further proceedings.[85]

Illinois state courts are generally perceived as applying a lower degree of scrutiny in the class action context. However, a recent insurance coverage dispute involving a TCPA class action settlement suggests that they, too, are applying greater scrutiny to class settlements. In *First Mercury Insurance Co. v. Nationwide Security Services, Inc.*,[86] the Illinois Court of Appeals for the First District expressed concern with the proliferation of TCPA class actions. The court remarked that the cases "are not about … compensating members of the class. Rather they have everything to do with compensating the lawyers of the class."[87] In particular, the court criticized settlements in which a fund is established to support the class counsel's fee petition without taking into consideration the low likelihood that class members will pursue a successful claim.[88] The court proposed that, "[t]o avoid this charade," courts in the underlying class actions should hold off on determining the fee to which class counsel is entitled until after the claims deadline has passed and the real benefit of the settlement is ascertained.[89] This decision may well be a harbinger of increased scrutiny of class settlements in the Illinois state courts.

1. For a general reference on Illinois class actions, *see* Ill. Inst. of Continuing Legal Educ., Class Actions (2015 ed.).

2. 735 Ill. Comp. Stat. 5/2-801.

3. *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 838 N.E.2d 801, 819 (2005); *Cruz v. Unilock Chi., Inc.*, 383 Ill. App. 3d 752, 761, 892 N.E.2d 78, 89 (2d Dist. 2008).

4. *Id.*

5. *Cohen v. Blockbuster Entm't, Inc.*, 376 Ill. App. 3d 588, 595, 878 N.E.2d 132, 138 (1st Dist. 2007).

6. *Cruz*, 383 Ill. App. 3d at 761, 892 N.E.2d at 89.

7. *Purcell & Wardrope Chtd. v. Hertz Corp.*, 175 Ill. App. 3d 1069, 1074–75, 530 N.E.2d 994, 998 (1st Dist. 1988).

8. *Mele v. Howmedica, Inc.*, 348 Ill. App. 3d 1, 23, 808 N.E.2d 1026, 1044 (1st Dist. 2004) ("Unlike the Illinois statute, the federal rule does not have a predominance requirement applicable to all class actions."), *overruled on other grounds*, *Calles v. Scripto-Tokai Corp.*, 224 Ill. 2d 247, 864 N.E.2d 249 (2007).

9. *McCabe v. Burgess*, 75 Ill. 2d 457, 389 N.E.2d 565, 570 (1979).

10. *Carrao v. Health Care Serv. Corp.*, 118 Ill. App. 3d 417, 428, 454 N.E.2d 781, 790 (1st Dist. 1983).

11. *Purcell & Wardrope Chtd.*, 175 Ill. App. 3d at 1078, 530 N.E.2d at 1000.

12. 735 Ill. Comp. Stat. 5/2-803.

13. *Id.*

14. *Currie v. Wis. Cent., Ltd.*, 2011 IL App (1st) 103095 ¶ 53 (2011).

15. *Miner v. Gillette*, 87 Ill. 2d 7, 428 N.E.2d 478, 482 (1981).

16. *Frank v. Teachers Ins. & Annuity Assoc. of Am.*, 71 Ill. 2d 583, 376 N.E.2d 1377, 1381 (1978).

17. *In re Chi. Flood Litig.*, 289 Ill. App. 3d 937, 944, 682 N.E.2d 421, 427 (1st Dist. 1997); *see also* 735 Ill. Comp. Stat. 5/2-804(b) ("Any class member seeking to be excluded from a class action may request such exclusion and any judgment entered in the action shall not apply to persons who properly request to be excluded.").

18. *In re Chi. Flood*, 289 Ill. App. 3d at 944, 682 N.E.2d at 427.

19. 735 Ill. Comp. Stat. 5/2-803(a).

20. Fed. R. Civ. P. 23(c)(1)(C).

21. *Rosolowski v. Clark Ref. & Mktg.*, 383 Ill. App. 3d 420, 426, 890 N.E.2d 1011, 1016 (1st Dist. 2008).

22. *Mashal v. City of Chicago*, 2012 IL 112341 (2012).

23. *Id.* ¶ 44; *see also id.* ¶¶ 53, 57–58 & 61 (holding that orders (1)

granting partial summary judgment with respect to a legal theory, but leaving the liability issue for trial due to the existence of genuine issues of material fact; (2) denying summary judgment on a party's affirmative defenses; and (3) granting partial summary judgment on the application of the statute of limitations, did not constitute "decision[s] on the merits").

24. *Portwood v. Ford Motor Co.*, 183 Ill. 2d 459, 464, 701 N.E.2d 1102, 1104 (1998) (citing *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974)).

25. *Portwood*, 183 Ill. 2d at 465, 701 N.E.2d 1104.

26. *Id.*, 183 Ill. 2d at 567, 801 N.E.2d at 1105.

27. *Marby w. Village of Glenwood*, 2015 IL App (1st) 140356 ¶¶ 26, 28–29 (applying class action tolling and rejecting argument that tolling only applied if class representative moved for certification "as soon as practicable").

28. *Compare* FED R. CIV. P. 23(f) *with* ILL. SUP. CT. R. 306(a)(8).

29. *Levy v. Metro. Sanitary Dist.*, 92 Ill. 2d 80, 83 (1982); *Mancada v. Ill. Commerce Comm'n*, 164 Ill. App. 3d 867, 871 (1st Dist. 1987).

30. *Scholtens v. Schneider*, 173 Ill. 2d 375, 671 N.E.2d 657, 662–63 (1996); *Brundidge v. Glendale Fed. Bank*, 168 Ill. 2d 235, 659 N.E.2d 909, 911 (1995).

31. 136 S. Ct. 663 (2016).

32. *Campbell-Ewald v. Gomez* involved a putative class action involving alleged violations of the TCPA. Prior to the deadline for class certification, the defendant in *Campbell-Ewald* proposed to settle the named plaintiff's individual claim, and served an offer of judgment pursuant to Federal Rule 68. 136 S. Ct. at 667. The plaintiff did not accept the offer, allowing it to lapse on the expiration of the 14-day window under Rule 68. *Id.* at 668. The defendant then moved to dismiss the case under Federal Rule 12(b)(1) for lack of subject matter jurisdiction. *Id.* The Court held that "an unaccepted settlement offer has no force" and "does not moot a plaintiff's case." *Id.* at 666, 667. The Court withheld judgment, however, on the issue of "whether the result would be different if a defendant deposits the full amount of the plaintiff's individual claim in an account payable to the plaintiff, and the court then enters judgment for the plaintiff in that amount." *Id.* at 672.

33. 796 F.3d 783, 787 (7th Cir. 2015).

34. 599 F.3d 781, 783 (7th Cir. 2010).

35. 241 Ill. 2d 450 (2011).

36. *Id.* at 459.

37. 2015 IL 118644 (2015).
38. *Id.* ¶ 8.
39. *Id.* ¶¶ 10–14.
40. *Id.* ¶ 17.
41. *Id.* ¶ 19.
42. *Id.* ¶ 21.
43. *Id.* ¶ 38.
44. *G.M. Sign, Inc. v. Swiderski Elecs., Inc.*, 2014 IL App (2d) 130711 ¶ 33 (2014).
45. 136 S. Ct. 1540, 1548–49 (2016).
46. 136 S. Ct. at 1548–49.
47. *Id.* at 1550.
48. No. 16-2075 (7th Cir. Dec. 13, 2016); *accord Gubala v. Time Warner Cable, Inc.*, No. 15-2613 (7th Cir. Jan 20, 2017) (no standing under Cable Communication Policy Act)
49. No. 12-C-4069, 2016 U.S. Dist. LEXIS 111828 (N.D. Ill. Aug. 23, 2016).
50. *Id.* at *19–20.
51. *Id.* at *20.
52. *Id.*; *see also Dolemba v. Ill. Farmers Ins. Co.*, No. 15-C-463, 2016 U.S. Dist. LEXIS 135085 (N.D. Ill. Sept. 30, 2016) (similar).
53. *Hayes v. Convergent Healthcare Recoveries, Inc.*, No. 14-1467, 2016 U.S. Dist. LEXIS 139743, at *9 (C.D. Ill. Oct. 7, 2016).
54. *Id.* at *10.
55. *Id.* at *12.
56. *Id.*; *see also Bowse v. Portfolio Recovery Assocs., LLC*, No. 15-C-4037, 2016 U.S. Dist. LEXIS 151740, at *5 (N.D. Ill. Nov. 2, 2016) ("[T]he harm that results when a debt collector fails to report relevant information about a consumer debt to a third party … remains a concrete harm.").
57. *Hopkins v. Staffing Network Holdings, LLC*, No. 16-C-7907, 2016 U.S. Dist. LEXIS 146485, at *2–3 (N.D. Ill. Oct. 18, 2016).
58. *Id.* at *7.
59. *Id.* at *8.
60. *Id.* at *9.
61. No. 12-CV-8617, 2016 U.S. Dist. LEXIS 137078 (N.D. Ill. Oct. 3, 2016).
62. *Id.* at *6–7.

63. *Id.* at *10–16.
64. 627 F.3d 289 (7th Cir. 2010).
65. 131 S. Ct. 2368 (2011).
66. *Id.* at 2380.
67. *Thorogood v. Sears, Roebuck & Co.*, 547 F.3d 742, 748 (7th Cir. 2008).
68. *See Thorogood v. Sears, Roebuck & Co.*, 131 S. Ct. 3060 (2011).
69. *Thorogood v. Sears, Roebuck & Co.*, 624 F.3d 842, 843, 847 & 848 (7th Cir. 2010), *vacated by* 131 S. Ct. 3060 (2011).
70. *Id.* at 842, 847 & 853.
71. 662 F.3d 913 (7th Cir. 2011).
72. *Id.* at 917.
73. *Id.* at 916 (emphasis in original).
74. *Id.* at 917. Of note, the trial court ultimately found that the alleged misconduct was "not so significant as to cast serious doubt on counsel's ability to represent the class loyally." *Creative Montessori*, 09 C 3963, 2012 WL 3961307, at *3 (N.D. Ill. Sept. 10, 2012).
75. 753 F.3d 718 (7th Cir. 2014).
76. *Id.* at 720.
77. *Id.* at 721.
78. *Id.* at 721–22.
79. *Id.* at 722, 724.
80. *Id.*
81. *Id.* at 723–26.
82. *Id.* at 725.
83. *Id.* at 726.
84. *Id.* at 728–29.
85. *Id.* at 729; *see also In re Walgreen Co. Stockholder Litig.*, 832 F.3d 718, 721 (7th Cir. 2016) (with respect to class action settlements in which class counsel receive fees and the shareholders receive additional disclosures concerning the proposed transaction, holding that if the disclosures are largely worthless, even a modest award of attorneys' fees is excessive and should be disapproved); *id.* at 725–26 (stating that courts have "a continuing duty in a class action case to scrutinize the class attorney to see that he or she is adequately protecting the interests of the class, and if at any time the trial court realizes that class counsel should be disqualified, the court is required to take appropriate action") (quoting *In re Revlon, Inc. S'holders Litig.*, 990

A.2d 940, 955 (Del. Ch. 2010)).

86. 2016 IL App (1st) 143924 (2016)).

87. *Id.* ¶ 44.

88. *Id.* ¶ 45.

89. *Id.* ¶ 46.