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Dilworth Successfully Staves Off Class Certification in Commercial Equipment Leasing Defaults

Dilworth Paxson secured an important victory for their client, an international commercial leasing company, when a federal judge denied a motion to certify a class action against it as part of a claim exceeding \$37,000,000.

The underlying case involved a bundled package of equipment and public access services developed by a telecommunications company under the moniker “the Power of \$Zero” program (POZ) and sold to businesses by independent sales agents throughout the country. Dilworth’s client financed the telephone equipment and leased that same equipment to those businesses. When the telecommunications company went bankrupt and stopped providing public access services, many of the businesses stopped making their lease payments. The businesses claimed that the bundled nature of the program was misrepresented to them in their contracts with the program vendor and through oral representations from the independent sales agents.

Dilworth attorneys engaged in extensive discovery to establish that the facts in each claim varied in several key respects. Using these facts, as well as those introduced during a two-day hearing, Dilworth successfully demonstrated that the claims needed to be addressed on a case-by-case basis. The Court agreed with this position writing: “given the overwhelming evidence of the individualized nature of each specific POZ sale, the Court finds that granting class certification would be inappropriate here, as questions of law or fact common to the members of the class do not predominate over any questions affecting only individual members making a class action unworkable.” The Court also found that plaintiffs had failed to meet their burden of showing that they could adequately represent class members and that a class action was a the best method for resolving the disputes. The Court finally noted that “there was absolutely no evidence of wrongdoing” by Dilworth’s client.

This decision will be a powerful tool for companies in the financial services industry to argue



SUCCESSFUL DEFENSE OF CLASS CERTIFICATION

against class certification in cases arising out of programmatic failure. The decision establishes that individual negotiations between program vendors, sales agents and lessees likely precludes class treatment of claims or counterclaims based upon the allegation that lessees were fraudulently persuaded to enter their individual lease agreements.