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U.S. Supreme Court dismisses grant of certiorari to address impact of uninjured class members

by C. Allen Garrett Jr.

After numerous posts regarding the different approaches the Courts of Appeals have taken when addressing certification of a class that includes uninjured class members, we recently discussed the U.S. Supreme Court's decision to resolve the issue. *Supreme Court grants certiorari to address circuit split regarding uninjured class members* (Mar. 13, 2025). But on June 5, 2025, the Court dismissed certiorari as improvidently granted over the dissent of Justice Brett Kavanaugh. *Laboratory Corp. of Am. Holdings v. Davis*, 145 S. Ct. 1608 (2025).

Our recent post regarding the grant of certiorari discussed the approaches across the Circuits, including the view of some Circuits that all class members must have suffered Article III injury. Justice Kavanaugh's dissent agreed with this view, holding that a "damages class consisting of both injured and uninjured class members" does not satisfy Rule 23's requirement that "common questions of law and fact predominate." *Davis*, 145 S. Ct. at 1611 (Kavanaugh, J., dissenting). Justice Kavanaugh agreed with the Government's position at oral argument that "if there are members of a class that aren't even injured, they can't share the same injury with the other class members." *Id.* (citations omitted).

In Justice Kavanaugh's view, the Ninth Circuit's contrary rulings—allowing class certification "even when the class 'potentially includes more than a de minimis number of uninjured class members'"—violates "Rule 23 and this Court's precedents, and it will generate serious real-world consequences." *Id.* at 1611-12 (citations omitted). Specifically, because "[o]verbroad and incorrectly certified classes threaten massive liability" (in *Davis*, about "$500 million per year"), businesses will be coerced into "costly settlements that they swallow rather than betting the company on the uncertainties of trial." *Id.* at 1612. As Justice Kavanaugh noted, one of the stated reasons for authorizing interlocutory appeals under Rule 23(f) was specifically to address the risk that a class defendant would be forced to "settle rather than incur the costs of defending a class action and run the risk of potentially ruinous liability." *Id.* (quoting Advisory Committee Notes on 1998 Amendments to Fed. R. Civ. P. 23).

The penultimate paragraph of Justice Kavanaugh's dissent noted the "real-world consequences" of "coerced settlements" that "substantially raise the costs of doing business," including "higher prices" for consumers, "lower returns" to retirement account holders, and "lower salaries and lesser benefits" for workers. *Id.* Because of these "widespread and significant" consequences, Justice Kavanaugh would have resolved the question presented and held that "federal courts may not certify a damages class pursuant to Rule 23 when the class includes both injured and uninjured class members." *Id.*