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# Oklahoma federal judge stays class notice but declines to stay summary judgment briefing based on defendant's Rule 23(f) petition to appeal a class certification order

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A federal judge in Oklahoma recently stayed class proceedings, including the distribution of class notice, but declined to stay summary judgment briefing pending a ruling on the defendant's petition to the Tenth Circuit for leave to appeal a class certification order under Rule 23(f). *In re: Broiler Chicken Grower Antitrust Litigation (No. II)*, MDL No. 6:20-md-2977-RJS-CMR (E.D. Ok. June 7, 2024).

In this MDL proceeding, the plaintiffs – representing a class of boiler-chicken growers – alleged that Pilgrim's Pride Corporation ("PPC") engaged in a conspiracy with other poultry companies to suppress grower compensation. *Id.* at 1.

In May 2024, the district court granted the plaintiffs' motion for class certification, certified a nationwide antitrust class, and set a briefing schedule for summary judgment. PPC filed a petition for leave to appeal to the Tenth Circuit under Rule 23(f) and filed a motion to stay the district court proceedings until the Rule 23(f) petition was adjudicated. The Tenth Circuit has yet to rule on whether it will accept the Rule 23(f) appeal.

The district court granted in part and denied in part the motion to stay, relying on the four-factor test established in *Nken v. Holder*, 556 U.S. 418, 433 (2009): "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether the issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id.* at 3 (citing *KSTU, LLC v. Aereo, Inc.*, No. 14-4020, 2014 WL 1687749 (10th Cir. 2014) (quoting *Nken*, 556 U.S. at 434)).

After weighing these factors, the Oklahoma federal court granted the motion to stay future class proceedings pending PPC's Rule 23(f) petition, but it denied a stay of summary judgment briefing and other trial preparation deadlines.

***Irreparable injury*.** The district court first held that because litigation expenses and settlement pressure do not constitute irreparable injury, the costs PPC would incur during summary judgment briefing and trial preparation did not justify a stay of those phases of the case. *Id.* at 4, 6. Moreover, the plaintiffs claimed that they would proceed individually even if class certification were reversed, so the district court found that proceeding with summary judgment would not be duplicative or wasteful. *Id.* at 5. Because class-related proceedings could

potentially be duplicative or wasteful if the class certification order is reversed on appeal, however, the court granted the stay as to class-wide issues. *Id.* at 5-6.

***Comparison of harm to other parties*.** The district court found that while the harm to Plaintiffs arising from a delay of summary judgment briefing outweighed the harm to PPC, the potential harm of class member confusion weighed in favor of staying class proceedings. *Id.* at 9-12.

***Public interest*.** The district court found that the public interest was best served by continuing to move the litigation, which had already been pending for seven years, towards resolution. *Id.* at 12.

***Substantial likelihood of success on the merits*.** The court considered two factors: (1) whether PPC was likely to obtain permission to appeal; and (2) whether PPC was likely to prevail on the merits of its appeal. While the court found it premature to evaluate PPC's likelihood of success on the merits of its appeal, it found the plaintiffs raised "compelling arguments rebutting PPC's grounds for interlocutory review." *Id.* at 17. In light of the "statistically low probability of success on a Rule 23(f) petition," the district court found this factor did not support a stay of merits-related proceedings. *Id.*

**Takeaways:** The Oklahoma federal court's decision places a heavy burden on defendants seeking to stay a class action pending a Rule 23(f) petition of a class certification order, at least where the appellate court has not yet accepted the interlocutory appeal.