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Sixth Circuit solidifies circuit split by rejecting "juridical link" exception to class action standing

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Takeaway: Federal Rule 23 authorizes representative litigation in the form of class actions that satisfy its various requirements. The policy underlying the rule is efficiency. For example, the numerosity element (Rule 23(a)(1)) requires that a class be "so numerous that joinder of all members is impractical." The "juridical link" doctrine extends Rule 23's efficiency principles to class action standing, relying on the supposed standing of a certified class. Recently, in *Fox v. Saginaw County, Michigan*, 67 F.4th 284 (6th Cir. 2023), the Sixth Circuit refused to follow Seventh Circuit caselaw applying the doctrine and joined the Second Circuit in rejecting it altogether.

The juridical link doctrine is best described as an efficiency exception to standing. The doctrine grew out of dicta in a 1973 Ninth Circuit decision, "a time at which the Supreme Court had yet to clearly identify standing's constitutional floor." *Fox*, 67 F.4th at 295-96 (discussing *La Mar v. H & B Novelty & Loan Co.*, 489 F.2d 461 (9th Cir. 1973)). In *La Mar*, the class representative brought suit against the pawn broker he used as well as all other pawn brokers in the state of Oregon, alleging that they had all violated the same statute. The Ninth Circuit panel ruled that a plaintiff potentially could bring suit against defendants who did not harm that particular plaintiff if the defendants were "juridically related in a manner that suggests a single resolution of the dispute would be expeditious." *See id*. at 296 (quoting *La Mar*, 489 F.2d at 466).

A circuit split has developed regarding the application of this doctrine. In *Payton v. County of Kane*, 308 F.3d 673, 678–82 (7th Cir. 2002), the Seventh Circuit held that class plaintiffs "may bring a class action against some defendants who did not injure them if the class members would have standing and if the named plaintiff can meet Rule 23's requirements." *Fox*, 67 F.4th at 293. On the other side of this split, the Second Circuit has held that a plaintiff must have Article III standing at the time the complaint is filed, even if the complaint alleges a putative class action. *Id*. (citing *Mahon v. Ticor Title Ins. Co.*, 683 F.3d 59, 62–63, 65–66 (2d Cir. 2012)).

In *Fox*, the plaintiff-taxpayer brought suit against all counties in the state of Michigan, claiming they engaged in unconstitutional takings by foreclosing on properties, selling them, and recovering more than was due for unpaid property taxes. The Eastern District of Michigan, relying on the juridical link doctrine, granted the plaintiff's motion to certify a class against the county that injured him as well as all other counties in the state of Michigan. The district court "reasoned that Fox could sue all 27 Counties because they had all kept surplus proceeds pursuant to the [Michigan General Property Tax] Act and because the class members had all suffered the same type of injury." 67 F.4th at 291. The Sixth Circuit granted the defendants' Rule 23(f) petition to appeal the district court's certification ruling. Siding with the Second Circuit, the panel vacated the class certification order.

The panel articulated three reasons for rejecting the juridical link doctrine. First, Supreme Court

precedent dictates that the three-part test for Article III standing – including the requirement that a plaintiff's injury be traceable to each defendant – "applies with full force in the class-action context." *Fox*, 67 F.4th at 294. Second, a plaintiff must have standing when the complaint is filed. In other words, because a district court lacks subject matter jurisdiction (and thus is without power to act in a case) unless a plaintiff has Article III standing, the question of standing cannot be deferred until the time a class is certified and the absent class members purportedly acquire their own standing. *Id.* at 294-95. Third, standing "is a key component of the Constitution's separation of powers designed to protect defendants from that portion of the federal government's coercive power vested in the judiciary." *Id*. at 295. Accordingly, there is no "efficiency" exception to standing. *Id*. at 296.

In addition to rejecting the doctrine as inconsistent with Supreme Court precedent, the panel examined historical "bills of peace" and other examples of representative litigation and found no historical support for the doctrine. *Fox*, 67 F.4th at 298-300.

Finally, the panel ruled that the district court's certification order, which was entered before any class discovery had been initiated and was based primarily on the allegations of the complaint, did not reflect the "rigorous analysis" required for Rule 23 certification. *Fox*, 67 F.4th at 300-01. Accordingly, in light of the possibility that the plaintiff could, on remand, recruit taxpayer plaintiffs from other Michigan counties, the panel "offer[ed] a few observations to help guide any renewed certification proceedings," including the need to show a plausible method for establishing damages on a class-wide basis, a process for addressing the counties' individual defenses, and the possibility the landowners may have liens on their property from sources other than the government (such as mortgages). *Id*. at *300, 301-02.