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Fourth Circuit endorses early motion to strike class allegations where pleadings preclude predominance

by C. Allen Garrett Jr.

Takeaway: Class allegations transform the risk profile of consumer disputes. Even if a class defendant has a strong merits defense, the grant of class certification can result in a substantial settlement to avoid the risk—however small—of massive liability. Given these practical concerns, defendants often consider raising an early challenge to class allegations. In *Oliver v. Navy Fed. Credit Union*, 167 F.4th 106 (4th Cir. 2026), a Fourth Circuit panel endorsed a motion to strike class allegations where the complaint's allegations precluded a showing of predominance, although the judges disagreed on the basis for and scope of appropriate relief. Both opinions illustrate the type of considerations that factor into whether a class defendant should file an early motion to strike class allegations.

In *Oliver*, nine minority applicants for residential mortgage products sued Navy Federal Credit Union, individually and on behalf of a putative class, alleging that Navy Federal's "semi-automated underwriting process" systematically discriminated against racial minorities. *Id.* at 109. The named plaintiffs resided in different states, applied for different loan products (conventional mortgages, VA-backed loans, refinances), had varying financial situations, and experienced different outcomes (denials, higher interest rates). *Id.* The proposed class encompassed all minority residential loan applicants from 2018 to present whose applications were denied, approved at higher rates, or processed more slowly than those of similarly situated non-minority applicants. *Id.* The plaintiffs sought both injunctive and declaratory relief under Rule 23(b)(2) as well as damages under Rule 23(b)(3). *Id.*

In addition to granting in part Navy Federal's motion to dismiss, the district court also struck all class allegations, citing both Rules 12(f)(2) and 23(d)(1)(D). *Id.* The two-judge majority (Heyton and Moon) affirmed the ruling striking the class claims for damages under Rule 23(b)(3) but found the complaint sufficiently alleged a basis of declaratory and injunctive relief under Rule 23(b)(2), while Judge Richardson would have affirmed the district court's decision to strike all the class allegations.

The majority first held that Rule 23(c)(1)(A)—which instructs courts to determine whether to certify a class "at an early practicable time"—provides the sole source of authority for making class certification decisions at any stage, including the pleadings stage. *Id.* at 110-12. The majority rejected Rule 12(f) as a basis for striking class allegations, reasoning that terms like "redundant, immaterial, impertinent, or scandalous" have nothing to do with Rule 23's requirements. *Id.* at 111. And it characterized Rule 23(d)(1)(D) as merely "an optional housekeeping provision" that comes into play only after a court has already denied class certification under Rule 23(c)(1)(A). *Id.*

On the merits, the majority held that a district court may deny class certification before discovery only if the complaint's class allegations show "non-compliance with Rule 23 as a matter of law." *Id.* at 112. Reaffirming *Goodman v. Schlesinger*, 584 F.2d 1325 (4th Cir. 1978), the court emphasized that the standard for denying certification at the pleading stage narrowly requires the court to consider only the face of the complaint. *Id.* at 112-14.

The majority concluded that *Oliver* constituted "the unusual case" in which the face of the complaint showed that "any request to certify a (b)(3) class fails as a matter of law." *Id.* at 115. The majority found the predominance requirement facially unsatisfied because the complaint revealed extraordinary variability among the named plaintiffs and proposed class members. The nine named plaintiffs alone resided in five different states and applied for at least four different loan products—conventional first mortgages, VA first mortgages, cash-out refinances, and VA cash-out refinances—with distinct underwriting criteria. *Id.* They experienced different adverse results from Navy Federal (outright denials versus approvals at higher interest rates), meaning individual inquiries would be needed to establish harm for each class member. *Id.* The district court had characterized the proposed class as "apples, oranges, grapefruits and bananas" given the many "different categories of applicants" with "so many different variables," and the majority agreed these concerns "most naturally address" predominance. *Id.* at 114. The majority also found that the district court's stated concerns about "too many moving parts," the time class actions take "to get moving," and the need "to promote the efficient use of resources" showed the alleged class did not meet the superiority requirement. *Id.*

But the majority disagreed with the district court's early denial of certification under Rule 23(b)(2), which—unlike Rule 23(b)(3)—does not require predominance or superiority. *Id.* at 115-17. The complaint alleged that Navy Federal uses a single underwriting algorithm applied to all applicants, which produces racially disparate results. *Id.* at 115. These allegations raised common questions capable of classwide resolution—such as whether Navy Federal uses a uniform algorithm, whether that algorithm causes disparate impacts, and whether its use is justified—sufficient to make a prima facie showing of commonality. *Id.* at 115-16. While discovery might eventually disprove these allegations, the face of the complaint did not preclude a finding of commonality. *Id.* at 116-17.

In his separate opinion, Judge Richardson disagreed with the majority as to the procedural basis for striking class allegations and dissented from the from the majority's decision to reinstate the Rule 23(b)(2) class. *Id.* at 117 (Richardson, J., concurring in part and dissenting in part).

First, Judge Richardson argued that Rule 23(d)(1)(D) independently empowers district courts to strike class allegations and noted that the Supreme Court described such orders as "functionally equivalent" to denying class certification—a characterization that would make little sense if striking the allegations was a mere procedural formality. *Id.* at 121-24. He contended the majority's characterization of Rule 23(d)(1)(D) as a "housekeeping" provision renders it "all but meaningless" by relegating it to an afterthought that follows a separate certification denial. *Id.* at 123-24.

Second, Judge Richardson would have applied an abuse-of-discretion standard, holding that a district court should have discretion to strike class allegations under Rule 23(d)(1)(D) when the proposed class fails Rule 23 given the record and pleadings before it. *Id.* at 124-25. He argued that *Goodman*'s "as a matter of law" standard applies only to certification decisions under Rule 23(c)(1)(A), not to motions to strike under Rule 23(d)(1)(D). *Id.* at 125 (citing *Goodman*, 584 F.2d at 1331). He also questioned whether *Goodman* remains good law in light of the intervening plausibility standard of *Twombly* and the revisions to Rule 23(c)(1). *Id.*

On the merits, Judge Richardson concluded the proposed class lacked Rule 23(a)(2) commonality. *Id*. at 125-31. He viewed the complaint's allegations about a "proprietary underwriting algorithm" as too vague and nebulous to establish a uniform practice applicable to all class members. *Id.* at 127-28. And he identified three different dimensions on which the referenced "statistical data" varied "markedly": (1) mortgage products (where the approval rate for Black applicants varied from 48% to 72% depending on whether the VA backed the mortgage); (2) minority groups (where Asian borrowers had been offered rates lower than White borrowers for certain types of mortgages); and (3) adverse effects (where Asian borrowers faced a lower likelihood of securing a conventional cash-out refinance but then received a lower interest rate than White applicants if approved). *Id.* at 128-30. The nine named plaintiffs themselves illustrated the lack of commonality—they applied for different products, belonged to different racial groups, alleged different harms, had different financial profiles, and provided different information to Navy Federal. *Id.* at 130-31. Judge Richardson characterized the proposed class as "a bewildering lineup of permutations and combinations" lacking any common thread. *Id.* (quoting *Kremens v. Bartley*, 431 U.S. 119, 130 (1977)).