

LEGAL UPDATES

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Wisconsin Supreme Court: Individual Remedy Offer Can Bar WCA Damages Class Action

On March 4, the Wisconsin Supreme Court held that a consumer is precluded from filing a putative class action for damages under the Wisconsin Consumer Act (WCA) if the creditor offers an appropriate remedy to the named plaintiff.

In *Gudex v. Franklin Collection Service, Inc.*, the court ruled that Wisconsin Statute § 426.110(4)(c) precludes a damages class action if the creditor gives an appropriate offer to the named plaintiff to remedy the claims under the WCA. In a nearly unanimous 6 to 1 decision, the Supreme Court rejected the ruling of the courts below, which held that the remedy must be offered to all similarly situated customers. Instead, the Supreme Court held that subsection (4)(c) requires an appropriate remedy to be given or agreed to be given to the individual party bringing suit, not to the putative class. As part of this process, § 426.110(4)(a) requires a customer to provide written notice at least 30 days prior to filing a class action for damages under the WCA that notifies the defendant of the alleged claim or violation and demands that it correct or otherwise remedy the basis for the claim.

Since the WCA was adopted in the 1970s, creditors have followed this procedure by offering a remedy to the individual party plaintiff. This allows cases to be resolved early, without extensive litigation and class action proceedings. In *Gudex*, the circuit court eliminated this option, instead requiring the subsection (4)(c) offer to be made to the whole putative class. The court reasoned that because a class-wide offer was not made, the damages class action could proceed, and certified the class. The court of appeals affirmed, agreeing with this analysis.

The Supreme Court granted review in *Gudex* to decide these questions of statutory construction and reversed the decision of the court of appeals.

Applying the plain language of the statute, the court held that subsection (4)(c) “means that a class action for damages may be stopped before it even begins, provided an appropriate remedy has been given or will be given to the party plaintiff.”

The court further explained that the WCA’s “text does not contain an unrestrained endorsement of class actions. A better view of the statutory policy choice is that the legislature chose to incentivize making an affected customer whole as quickly as possible, while still preserving access to the class action lawsuit if the customer does not receive an appropriate remedy.”

Accordingly, the circuit court’s class certification was reversed because it was based on an incorrect interpretation of the WCA. The case was remanded to the circuit court for further proceedings including class certification proceedings.

Husch Blackwell played a role in *Gudex*, filing an amicus brief on behalf of the Wisconsin Credit Union League, the Wisconsin Bankers Association, and the Wisconsin Financial Services Association. The amicus brief provided background and history of the WCA, discussed § 426.110 and its practical effect, addressed the WCA’s statutory treatment of individual actions versus class actions, and explained the negative impact that would flow from interpreting § 426.110(4)(c) to require a class remedy rather than an individual remedy.

The *Gudex* case applies the WCA according to its plain language, and the court refrained from rewriting the statute to require a class-action remedy. This is consistent with the long-held understanding of the statute to require an individual remedy to the customer.

What this means to you

Gudex confirms the long-standing understanding of the notice and remedy procedure for WCA class actions for damages under Wis. Stat. § 426.110. Section 426.110’s notice and remedy procedure provides a process for early resolution of claims on an individual basis, to avoid class action proceedings. A creditor may attempt to head off such an action filed in Wisconsin state court by offering an appropriate remedy to the customer of the asserted claims.

Contact us

If you have questions regarding this Wisconsin Supreme Court class action, please contact Marci Kawski, Lisa Lawless, Becky Bavlsik, or your Husch Blackwell attorney.