

5 Most Notable Class Action Standing Cases Of 2023

By Erin Bosman, Penelope Prevolos and Brittany Scheinok (December 21, 2023, 4:50 PM EST)

Key class action decisions this past year continued the trend of a more demanding approach to the threshold issue of standing following the U.S. Supreme Court's 2021 decision in *TransUnion LLC v. Ramirez*.^[1]

The U.S. Court of Appeals for the Eleventh Circuit sua sponte vacated a class settlement solely on the ground that the named plaintiffs lacked standing to support the injunctive relief aspect of the settlement.

The U.S. Court of Appeals for the Sixth Circuit joined other circuits in rejecting the "juridical link" doctrine as a basis for suing defendants who allegedly injured absent class members but not the named plaintiff, and in another case, ordered dismissal of litigation against ten defendants for failure to show injury traceable to each defendant.

Here are the year's most notable developments in class action standing.

Standing for Class Action Settlements

In *Williams v. Reckitt Benckiser LLC*, an Eleventh Circuit panel sua sponte vacated the U.S. District Court for the Southern District of Florida's approval of an \$8 million class settlement in April, holding that the named plaintiffs lacked Article III standing as to the settlement's injunctive relief component.^[2]

The plaintiffs in *Williams* brought false advertising claims under Florida, California and New York consumer protection laws, alleging a variety of misrepresentations in the defendant's "brain performance supplement" advertisements.

In addition to monetary relief, the settlement included injunctive relief in the form of required changes to the product's labeling and marketing. The appellant, an attorney and frequent objector, objected to the settlement and subsequently appealed the district court's approval on grounds unrelated to standing.

Rather than address the objector's arguments, the Eleventh Circuit held that it was first required to ensure that the named plaintiffs had standing, and that under the Supreme Court's decision in *TransUnion*, the plaintiffs must demonstrate standing separately for each form of relief sought.



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The court further emphasized that a plaintiff must demonstrate standing throughout all stages of the litigation, including in seeking class settlement approval.

The court held that none of the named plaintiffs could assert injunctive relief claims because they had failed to allege continuing or imminent harm as required to establish standing.

Although the named plaintiffs had purchased the products at issue in the past and alleged that they would like to do so in the future, the court concluded that these allegations were conjectural, hypothetical and insufficient because the plaintiffs also alleged that they were unable to rely on the defendants' representations regarding the effectiveness of the products in deciding whether to purchase them.

The Eleventh Circuit held that the district court thus lacked the power to grant injunctive relief; as a result, its settlement approval was premised on legal error and had to be set aside as an abuse of discretion.

The Williams case highlights the importance — for both plaintiffs and defendants — of considering whether named plaintiffs have standing to support all aspects of the settlement relief before agreeing to a class settlement.

Juridical Link Doctrine Rejected

The juridical link doctrine allows named plaintiffs to bring a class action against additional defendants who did not injure them, where those defendants injured absent class members in a similar manner to the named plaintiffs' alleged injuries. A circuit split exists with respect to this doctrine.

The U.S. Court of Appeals for the Seventh Circuit has approved the juridical link doctrine in circumstances in which the absent class members would have standing and the named plaintiff can meet Federal Rules of Civil Procedure, Rule 23's requirements.[3] The U.S. Courts of Appeals for the Second and Eighth Circuits, however, have rejected the doctrine as a basis for standing to sue.[4]

In *Fox v. Saginaw County, Michigan*, the Sixth Circuit joined the Second and Eighth Circuits, in April, in rejecting the juridical link doctrine.[5] The plaintiff alleged that a foreclosure sale of his property amounted to an unconstitutional taking, where a Michigan county took ownership of the property and sold it for more than the taxes due but did not disburse any of the surplus to the plaintiff.

In addition to the county that foreclosed on his property, the plaintiff also sued 26 other counties, arguing that they engaged in the same conduct against other putative class members.

The U.S. District Court for the Eastern District of Michigan relied on the juridical link doctrine to hold that the plaintiff had standing to sue the other counties, reasoning that the absent class members had all experienced the same type of injury, and certified a class that included persons and entities that owned property in the 27 counties.

On appeal, the Sixth Circuit addressed the named plaintiff's standing and noted that, if he had brought a traditional suit, he would only be able to show that his injury was "fairly traceable" to one county, and would therefore lack standing to sue the other 26. The court considered the juridical link doctrine and concluded that it was based on remarks in a 1973 opinion that the doctrine permitted "expeditious resolution of disputes." [6]

But the Sixth Circuit reasoned that "expediency concerns cannot supplant Article III's separation-of-powers protections." The court held that the plaintiff in Fox did not allege a "case or controversy" with any of the counties except the one that had foreclosed on his property and lacked standing to challenge the conduct of the 26 other counties because that conduct did not affect him.

The Sixth Circuit emphasized that the juridical link doctrine conflicts with a number of Supreme Court precedents, including that Rule 23 does not expand standing[7] and that standing must be decided at the outset of the action.[8]

The court therefore found that the plaintiff lacked standing to sue any county other than the one that foreclosed on his property and vacated the certified class.

Plaintiff Must Have Standing as to Each Defendant

A Sixth Circuit decision issued in November, *In re: E. I. du Pont de Nemours & Co. C-8 Personal Injury Litigation*, also considered the requirement that a named plaintiff establish standing as to each defendant sued, but in the context of the plaintiff's ability to trace his alleged injuries to exposure to the defendants' products.[9]

The plaintiff, Kevin Hardwick, sued 10 defendants who manufacture per- and polyfluoroalkyl chemicals, or PFAS. Hardwick was a firefighter who used foams that contained PFAS over the course of his career.

In connection with the litigation, Hardwick submitted to a blood draw that showed the presence of five PFAS compounds in his blood; however, he did not know whether those compounds were present in the foams he used or what companies manufactured those foams.

The U.S. District Court for the Southern District of Ohio certified a Rule 23(b)(2) class that included every person "subject to the laws of Ohio" who has "0.05 parts per trillion (ppt) of PFOA (C-8) and at least 0.05 ppt of any other PFAS in their blood serum."

The Sixth Circuit noted that a Rule 23(b)(2) class does not allow absent class members to opt out, and that the parties agreed that those trace amounts are present in the blood of every person in the U.S.

On interlocutory appeal, the Sixth Circuit addressed the threshold question of standing, noting that the plaintiff must show the existence of his own case or controversy as to every defendant.

The court did not decide whether standing should be resolved based on the pleadings alone, as the plaintiff argued, or the record as a whole, as defendants argued, because the pleadings and undisputed facts were sufficient to decide the issue.

The Sixth Circuit concluded that the plaintiff lacked standing because he failed to demonstrate that his injury was traceable to each of the 10 defendants. The plaintiff had treated the defendants as a collective in his pleadings.

But the court held that a plaintiff cannot lump all defendants together in his allegations and must instead tie his alleged injury to each defendant.

Further, the court held that the plaintiff's allegations were conclusory and failed to satisfy Rule 8(a) —

the plaintiff had failed to allege that any of the defendants manufactured the five specific compounds that were found in his blood, nor did he allege a plausible pathway by which any of the defendants could have delivered those PFAS compounds to his bloodstream.

His conclusory allegations that the defendants manufactured and distributed one or more PFAS materials in such a way that allegedly caused contamination of the plaintiff's and the putative class members' blood were inadequate to confer standing.

The Sixth Circuit vacated the district court's class certification order and remanded the case with instructions to dismiss for lack of jurisdiction.

Standing Requirements for Class Certification

Two courts this year addressed an ongoing circuit split regarding the standard for determining standing at the class certification stage.

In *Angell v. GEICO Advantage Insurance Co.*,^[10] the U.S. Court of Appeals for the Fifth Circuit **described** the circuit split in May as between the more forgiving class certification approach, which assesses only the named plaintiff's individual standing, and the more intensive standing approach, which compares the named plaintiff's injuries and interests with those of the putative class.^[11]

Under the latter approach, the named plaintiff lacks standing for the class claims if the named plaintiff's injuries are "not sufficiently analogous to those suffered by the rest of the class."

The court in *Angell* noted that while it had previously affirmed usage of the class certification approach, it did so before the Supreme Court issued three cases often cited to support the standing approach.^[12]

Ultimately, the *Angell* court concluded that the plaintiffs had established standing under either approach, and declined to decide which of the tests should apply in the Fifth Circuit.

In *Green-Cooper v. Brinker International Inc.*, the Eleventh Circuit in July applied the class certification approach and started "from the basic principle that at the class certification stage only the named plaintiffs need have standing." ^[13]

The court went on to conclude, however, not only that two of the three named plaintiffs lacked standing, but that standing issues as to the absent class members potentially defeated predominance.

The case involved claims that a data breach at a restaurant resulted in theft of customer card data and personally identifiable information, and posting of customers' payment data on the dark web.

The U.S. District Court for the Middle District of Florida certified nationwide and California classes of persons who made credit or debit card purchases at the affected restaurants during the specified period, had their data accessed by cybercriminals, and incurred time or expense to mitigate the consequences of the data breach. The defendant appealed the class certification order pursuant to Rule 23(f).

The Eleventh Circuit held that, although only the named plaintiffs are required to establish standing at the class certification stage, the proof required to do so varies depending on the stage of litigation.

Here, discovery established that two of the three named plaintiffs had not dined at the restaurant during the relevant time period and, therefore, could not trace their alleged injury to the defendant.

Because the facts developed during discovery contradicted the allegations of the complaint, standing could not be based on the allegations of the complaint and only one plaintiff had standing.

Further, the remaining plaintiff was not a California resident; without a named plaintiff with standing to bring the California claims, the California class could not survive.

Green-Cooper also addressed standing issues as to absent class members in the context of the class definitions, noting that Rule 23(b)(3)'s predominance analysis implicates standing because every class member must have Article III standing in order to recover individual damages.

A district court must "weed out plaintiffs who do not have Article III standing" before any damages are awarded to a class.

The Eleventh Circuit concluded that the class definitions potentially included individuals whose data was "accessed by cybercriminals," but who had not had their data "misused" by fraudulent charges or by posting on the dark web, and who thus could not meet the Eleventh Circuit's injury and standing requirements.

Because the class might include uninjured individuals, the case was remanded to provide the district court the opportunity to clarify the class definitions and its predominance finding.

Under either the class certification or standing approach, the named plaintiff's lack of standing, whether apparent at the pleading stage or established later through evidence developed in discovery, increasingly has become a potential obstacle for class actions.

Similarly, even where, as in Green-Cooper, the "more forgiving class certification approach" described in Angell is applied, the Article III standing of unnamed class members can pose significant issues under Rule 23(b)(3)'s predominance inquiry.

Conclusion

Class action decisions in 2023 continued to apply a more demanding approach to standing during each phase of litigation.

Federal appellate courts reversed or vacated lower court decisions regarding named plaintiffs' standing based on the pleadings alone, based on evidence developed during discovery prior to class certification, and even in reversing and remanding a class settlement.

Appellate courts also reversed or vacated lower court opinions because named plaintiffs lacked standing to assert injunctive relief claims or as to multiple defendants, and because the standing of absent class members raised issues as to the class certification analysis of predominance and manageability.

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[1] 141 S. Ct. 2190 (2021).

[2] 65 F.4th 1243 (11th Cir. 2023).

[3] See *Payton v. Cnty of Kane*, 308 F.3d 673, 678–82 (7th Cir. 2002).

[4] See *Mahon v. Ticor Title Ins. Co.*, 683 F.3d 59, 63–66 (2d Cir. 2012); *Wong v. Wells Fargo Bank N.A.*, 789 F.3d 889, 896 (8th Cir. 2015).

[5] 67 F.4th 284 (6th Cir. 2023).

[6] *La Mar v. H & B Novelty & Loan Co.*, 489 F.2d 461, 466 (9th Cir. 1973).

[7] *Simon v. E. Kentucky Welfare Rts. Org.*, 426 U.S. 26, 40 n.20 (1976).

[8] *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 180 (2000).

[9] No. 22-3765, 2023 WL 8183812 (6th Cir. Nov. 27, 2023).

[10] 67 F.4th 727 (5th Cir. 2023).

[11] Remaining issues as to the standing of absent class members are addressed as part of the class certification analysis under Rule 23, including whether the named plaintiffs are "typical" of the class and whether individual standing issues as to the absent class members defeats predominance.

[12] See *Blum v. Yaretsky*, 457 U.S. 991 (1982); *Lewis v. Casey*, 518 U.S. 343 (1996); *Gratz v. Bollinger*, 539 U.S. 244 (2003).

[13] 73 F.4th 883 (11th Cir. 2023).