

Nurses denied wage-fixing class action

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A US district court yesterday denied class certification in a lawsuit alleging that several Chicago hospitals had conspired to keep wages paid to registered nurses down.

The nurses accused University of Chicago Hospitals, Advocate Healthcare, North Shore University Health System, Children's Memorial Hospital and Resurrection Health Care of sharing pay information to suppress nurses' pay despite a national shortage of registered nurses.

Senior Judge John Grady at the District Court for the Northern District of Illinois said the expert economic evidence against the hospitals was insufficient.

According to court documents, Grady applied the standard on expert opinion marked out in this year's Hydrogen Peroxide Antitrust Litigation, which requires a "rigorous assessment of the available evidence and the method or methods by which plaintiffs propose to use the evidence to prove impact at trial."

David Hanselman at McDermott Will & Emery LLP in Chicago, who represents Resurrection Health Care says Judge Grady's decision is significant because it shows that courts outside the Third Circuit are taking the approach in Hydrogen Peroxide that require judges to take a close look at competing expert opinion.

"In this case the judge was critical of the plaintiffs' expert's use of averages to determine class-wide antitrust impact," he says. "In this case the expert had used an econometric model that had used a single average percentage of wage suppression. The judge was highly critical of the use of averages because it does not show whether each class member had suffered an antitrust injury."

Five wage-fixing class actions brought by nurses are pending in US district courts. The case is the third to be denied class certification. The previous two cases were in Albany and Memphis.

Robert Leibenluft at Hogan & Hartson LLP in Washington, DC, who represented one of the defendants in the Memphis action, says the decision is important as it comes after extensive briefing and addresses the plaintiffs' argument that there is a viable method for showing class-wide injury with common proof.

"The court found otherwise, pointing to among other things that the plaintiffs' approach fatally relies on average wages, but that this fails to address the wide differences across nurses and cannot be used to show that each putative class member suffered harm from the alleged conspiracy," Leibenluft says. "This was the same defect that caused the court in the Albany nurse wage to also deny class certification with respect to impact."

Thomas Isaacson at Howrey LLP in Washington, DC, says lawyers are interested to know how many courts are going to apply the Hydrogen Peroxide approach. "There is already a lot of forum shopping in the states, and the adoption of the Hydrogen Peroxide decision, as the Chicago nurses cases did, among the various district courts is now a major factor for plaintiffs' lawyers in deciding where to file."

NEWS

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