

## Nurses lose class action bid

BY LYNNE MAREK

Nurses in Illinois who sued hospitals alleging that the institutions conspired to depress their wages suffered a legal setback Sept. 28 when they lost a bid in federal court in Chicago for class certification.

The decision could impact similar motions for class certification in cases pending in other federal districts.

While the nurse plaintiffs proved that they had a common cause and represent the class, they fell short on another test, U.S. District Court Judge John Grady said in his ruling.

"Plaintiffs have failed to demonstrate that common questions of law or fact predominate over questions affecting only individual members and that the class action is the best method for fairly and efficiently adjudicating this controversy," said Grady, who sits in the Northern District of Illinois.

The Chicago case is one of five similar cases pending in federal courts across the country, including in San Antonio, Memphis, Detroit, and Albany, New York. Plaintiffs in all the cases are represented by lawyers at Cohen, Milstein, Sellers & Toll who are



MCDERMOTT WILL & EMERY'S  
DAVID L. HANSELMAN, JR.

led by Washington-based attorney Daniel Small. Small declined to comment on Grady's decision. Plaintiffs earlier estimated that the case could be worth as much as \$1.22 billion in lost wages claims.

"I can't say that this effectively ends the case, but it is a significant victory for the defendants because often in class actions the denial of class certification sounds the death knell of the litigation," said David Hanselman, a McDermott, Will & Emery attorney representing Resurrection Health Care in Chicago and defendants in three more of the cases.

"We are hopeful that Judge Grady's well-reasoned opinion has persuasive impact on those two courts," Hanselman said.

In Albany, a judge last year gave partial certification to the class. In Memphis, a judge denied certification on the basis that the named plaintiffs weren't representative of the class, but the decision was put under seal, said attorneys involved in the case.

"The issues that Judge Grady addressed in that case, they could ultimately be dispositive in the Memphis case as well if somehow the case stayed alive," said David Jaqua, an attorney at Butler Snow O'Mara Stevens & Canada in Memphis representing Methodist Healthcare.

Attorneys at Jones Day and Hogan & Hartson are also representing defendants in the Memphis case. Lawyers at those firms couldn't immediately be reached for comment.

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