

BLOGS
Antitrust

Illinois Federal Court Excludes Plaintiffs' Expert Testimony on Certification Motion in Anti-Poaching Class Action

A federal court in Illinois granted Jimmy John's motion to exclude expert testimony of a putative class seeking certification, while denying the class's motion to exclude Jimmy John's expert testimony. *Conrad v. Jimmy John's Franchise, LLC*, 2021 WL 718320 (S.D. Ill. Feb. 24, 2021). The case against Jimmy John's is the most procedurally advanced of the class actions filed against various franchisors alleging that employee anti-poaching provisions formerly contained in many franchise agreements constitute an unlawful conspiracy in restraint of trade in violation of Section 1 of the Sherman Antitrust Act. After extensive discovery, the plaintiff franchisee employees and former employees filed for class certification, and both parties submitted expert testimony with respect to whether damages in the form of allegedly suppressed wages could be proven on a class-wide basis. In connection with the class certification motion, both sides sought to exclude the opposing side's expert testimony.

The plaintiffs' expert undertook a multivariate regression analysis that purported to show that wages were substantially suppressed class wide. In part, the expert relied upon a comparison of wage structures before and after the anti-poaching provision was removed from the franchise agreement in 2018. However, the court excluded this testimony, finding that the expert's methodology suffered from several flaws, including the fact that it treated all wages as hourly, even though many managers were compensated on a per-shift basis. Jimmy John's experts contended, and the court agreed, that this flaw caused inflated estimates of impact. In contrast, the court denied the plaintiffs' motion to exclude the testimony of Jimmy John's two expert witnesses, one of whom identified flaws in the analysis conducted by the plaintiffs' expert, while the other explained, from an economic perspective, the pro-competitive benefits of intra-brand vertical restraints in a franchise system. While the question of certification has not yet been decided, the exclusion of critical expert testimony creates a substantial impediment to the pursuit of the case on a class-wide basis. The plaintiffs recently moved for reconsideration of the court's decision to exclude their expert's testimony.

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