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Insights

Prohibition of Class Action Lawsuits Against Postsecondary Educational Institutions Survives Constitutional Challenge

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The Indiana Supreme Court provided some good news for Indiana colleges and universities when it confirmed that statutory limitations on COVID-19 class actions were constitutional. While parties who feel they have suffered losses still have the ability to pursue individual claims to recover from a school who changed the educational experience in response to COVID-19 mandates, the specters of significant exposures that arise from class actions have been put to rest.

On November 21, 2023, the Indiana Supreme Court issued its decision in *Mellowitz v. Ball State University*[1], affirming the trial court's order that Public Law No. 166-2021 is constitutional. This law prohibits class action lawsuits against postsecondary educational institutions brought in the narrow window from after February 29, 2020 and before April 1, 2022. Through this decision, the Supreme Court vacated the Court of Appeals opinion in this matter, in which the Court of Appeals found that the law's restriction of class action suits of this nature was unconstitutional. The *Mellowitz* decision by the Indiana Supreme Court effectively shields postsecondary educational institutions from class action suits filed by aggrieved students seeking to recover losses stemming from the effects of the COVID-19 pandemic while recognizing that those students can still pursue claims based on their personal losses.

The *Mellowitz* Decision

Keller J. Mellowitz, a student at Ball State University during 2020, sued Ball State University and its board of trustees, for breach of contract and unjust enrichment. After Mellowitz filed suit, the General Assembly passed and Governor Holcomb signed Public Law No. 166-2021, which is codified in part as Ind. Code § 34-12-5-7 ("Section 7"). Section 7 prohibits class actions against covered entities for breach of contract or unjust enrichment claims for losses from the pandemic. For these purposes, "covered entities" means postsecondary educational institutions such as Ball State University.

Like other members of his cohort, Mellowitz paid tuition and mandatory fees for student services, student recreation, student health, and other in-person resources. About halfway through the spring semester, Ball State University followed governmental mandates issued in response to the COVID-19 pandemic when it suspended in person offerings. Distance learning became the only form of instruction, and students were required to remain at home due to the COVID-19 pandemic. Mellowitz claimed Ball State breached their contract to provide in-person education, and, if the contract was not breached, Ball State was unjustly enriched through the collected tuition and additional fees and resources no longer provided due to the transfer to distance learning.

Mellowitz presented three arguments: First, Section 7 contravenes the principles of constitutional separation of powers because the legislature does not possess the authority to restrict class actions, which is a power that rests squarely within the province of the judiciary. Second, the retroactive application of Section 7 constitutes a taking of his property without just compensation in violation of state and federal constitutions because Section 7 destroys his cause of action. Third, Section 7 impedes his contract with Ball State in violation of state and federal constitutions.

The Court did not find any of Mellowitz's arguments persuasive. First, the Court determined that in passing Public Law No. 166-2021, the General Assembly appropriately narrowed the law's scope and furthered a public policy objective. For those reasons, the law does not run afoul of constitutional separation of powers, as the legislature may adopt statutes that impact procedural judicial matters as long as the statutes primarily promote public policy objectives, not judicial administrative objectives.

Second, the Court found the trial court properly rejected Mellowitz's second argument, finding that the retroactive application of Section 7 did not constitute an unconstitutional taking. The Court stated that Section 7's elimination of class actions for claims of this nature does not preclude Mellowitz's personal cause of action, as other avenues remain. The Court determined that Mellowitz did not suffer an unlawful taking with respect to the elimination of a right to pursue class actions as he has no property right to a class action suit.

Third, the Court established that Mellowitz's Contract Clause argument also fails because Section 7 does not interfere with his contract with Ball State. Mellowitz may pursue his breach of contract claim against the university but not on behalf of others. The Court highlighted that Mellowitz offered no evidence of any agreement he had with Ball State that provided he could seek vindication of the rights of other students.

In sum, the Indiana Supreme Court agreed that postsecondary educational institutions are not to be exposed to class actions seeking to recover losses arising from COVID-19 but that Mellowitz retained his own rights to seek recovery of his personal losses.

Key Takeaways

For institutions of higher education, the *Mellowitz* decision means that students cannot bring class action lawsuits concerning breach of contract or unjust enrichment claims for losses arising from the COVID-19 pandemic. However, students can bring individual lawsuits to recover their own damages suffered because of the pandemic. This could mean that institutions of higher education may see an uptick in the filing of litigation seeking to recover pandemic losses, specifically from those individuals who planned to join this class action. But given the cost, effort, and time associated with filing a lawsuit, it is likely that many of the students that may have joined the class action will do nothing.

Additionally, institutions of higher education should continue to draft their tuition and mandatory fee agreements in a way that students understand that the payment of tuition does not guarantee in-person events or education. This will help prevent future litigation in the event an institution has to switch to virtual learning. Careful drafting could help avoid disappointment and complaints from students that could lead to litigation and possible recoveries that could have been avoided.

Our attorneys will continue to monitor developments in laws surrounding higher education. Should you have any questions about how the decision may affect your institution, please reach out to **Robert A. Greising, Elizabeth M. Roberson, Chloe N. Craft** or a member of our **Higher Education Service Group.**

[1] No. 23S-PL-60, 2023 WL 8060870 (Ind. Nov. 21, 2023).

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