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Strippers Want Out of Class Settlement With Clubs

KEVIN KOENINGER October 17, 2018

CINCINNATI (CN) – A group of strippers argued Wednesday morning before a Sixth Circuit panel to undo the approval of a class-action settlement with their employers for wage violations.

The exotic dancers sued Déjà Vu Services Inc., among others, in 2016, claiming the nightclub operators had violated the Fair Labor Standards Act when they intentionally misclassified strippers as independent contractors.

A settlement was reached in February 2017 which required the dancers to release their FLSA claims in exchange for between $443 and $6,000 per year of employment in damages.

Additionally, the settlement would provide injunctive relief and require the nightclub owners to "accurately categorize each dancer as an independent contractor or employee based on the economic realities test."

Six dancers objected and claimed the settlement provided far too little in the way of damages, but U.S. District Judge Stephen Murphy III in Michigan disagreed, approved the settlement and wrote that "the objectors have underestimated the risks of litigation and overestimated the likelihood of success on the merits."

"More importantly, however," Judge Murphy continued, "plaintiffs' damages may very well be limited to a reduced minimum wage, as tipped employees, or offset by other payments made to class members and recorded by IRS Form 1099s."

Judge Murphy also took exception to the objectors' characterization of the injunctive relief as a "sham."

“The injunctive relief,” he wrote, “mandates long-term, structural changes to defendants’ business practices: an improved screening system to accurately classify workers, an enhanced offer of employment, and increased benefits and protections for employees and independent contractors alike.”

Attorney Harold Lichten argued on behalf of the objectors Wednesday in the Sixth Circuit, and told the panel of judges he wouldn’t have enough time to explain all of the reasons the lower court erred when it approved the settlement.

Lichten called the claims “extremely valuable,” and said the district court failed to properly analyze the claims and compare their value to the proposed settlement.

The attorney gave a “very conservative” estimate of $141 million for the claims of the class, and compared that number with the $920,000 cash portion of the settlement to illustrate his point.

He told the panel that some exotic dancers were paid nothing by the clubs, and that the minimum wages they should have received would be doubled under the FLSA.

Chief U.S. Circuit Judge R. Guy Cole Jr. asked if there was evidence in the record to support the valuation.

“That’s the problem with the settlement,” Lichten answered, going on to explain that the district court’s methodology of calculating damages based on one or two dancers was inadequate.

The attorney also explained that thousands of dancers are unsure of whether to file a claim because the number of class members is undetermined, which means there is no defined cash payment.

“How could anyone make an informed decision ... when you have absolutely no idea how much [money] you’re going to get?” Lichten asked.

U.S. Circuit Judge John Nalbandian asked if the claims should head to arbitration and whether that has an impact on the value of any settlement.

Lichten argued that because the parent company and primary defendant in the case is not a signatory on the dancers’ employment agreements, it cannot compel arbitration.

“[But even] if it had been enforced,” the attorney said, “that doesn’t mean the claims are worthless.”

Attorney Jason Thompson argued on behalf of the class members who accepted the settlement and disputed Lichten’s valuation of the claims, calling his $141 million estimate an “astronomical number.”

U.S. Circuit Judge Helene White asked how the parties could justify the $920,000 cash payment.

Thompson cited statistics that over half of strippers do not “last a month,” and 76 percent of them do not work 90 days, which he said supports the average cash payout of just over $200 per dancer.

Judge White seemed hung up on the methodology used to calculate the damages, and asked how the data from only one or two dancers could support a calculation for a class of over 28,000.

Thompson said interviews were conducted with numerous dancers from clubs in several states, and told White, “This isn’t the vacuum I think you’re conceding that this was done in.”

The attorney also stressed that the “hallmark of the settlement” is a court order that requires Déjà Vu to follow all federal and state wage laws moving forward, and that this is the “first time this has ever happened” in a case involving strippers.

Attorney Bradley Shafer argued on behalf of the strip club owners, calling his opposing counsel’s claim that dancers were unpaid “blatantly false.”

He cited labor laws in California that require strippers to be paid, and said that all of his client’s employees are “1099’d.”

Shafer attacked the credibility of the objectors, and told the court that “two of the objectors performed less than one day” at the clubs.

He said those dancers “do not want to be employees, but will sue when it benefits them.”

No timetable has been set for the court’s opinion.