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## BLOGS

### Class Actions

# Seventh Circuit Reverses Class Certification and Settlement Related to Subway's "Footlongs"

The United States Court of Appeals for the Seventh Circuit has reversed a district court's decision to certify a class and approve a settlement related to Subway's "Footlong" sandwiches. *In re Subway Footlong Sandwich Mktg. & Sales Practices Litig.*, 2017 WL 3666635 (7th Cir. Aug. 25, 2017). In 2013, a teenager's photo revealing his 11-inch Subway Footlong sandwich alongside a tape measure went viral. Plaintiffs' lawyers across the nation sued Subway under state consumer protection laws, and the cases were consolidated. Initial discovery indicated that the majority of Subway Footlong sandwiches are indeed at least 12 inches long, that the few that do not measure up fall short due to unpreventable vagaries in the baking process, and that the length of the bread has no bearing on the quantity of food a customer receives. Their clients having suffered no compensable injury, the plaintiffs' lawyers sought class certification for injunctive relief. They then negotiated a settlement whereby Subway agreed to institute certain quality control measures and to pay the class's attorneys \$520,000 in fees. After the district court approved the settlement, Theodore Frank, a professional objector to hollow class-action settlements, appealed the decision arguing that the settlement only enriched the class's attorneys and provided no meaningful benefits to the class.

The court of appeals agreed with Frank and reversed the district court's holdings. Under federal law, class representatives must "fairly and adequately protect the interests of the class," and a class action settlement may not be approved unless it is "fair, reasonable, and adequate." The appellate court explained that, in this case, the settlement itself acknowledged that ensuring uniformity in bread length was impossible even with the newly instituted control measures. Thus, the court found the injunctive relief approved by the district judge to be "utterly worthless," and held that because the settlement's principal effect was to induce Subway to pay the class's attorneys enough to go away, the class representatives had failed in their duty to protect the interests of the class.

## Related People

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