



**BLOGS**  
Antitrust

## Two Illinois Federal Courts Deny Class Certification in Anti-Poaching Class Actions Against Franchisors

Two federal courts in Illinois have rejected motions to certify classes of employees who worked in franchised McDonald's and Jimmy John's restaurants.

Two federal courts in Illinois have rejected motions to certify classes of employees who worked in franchised McDonald's and Jimmy John's restaurants. These employees claimed that they suffered antitrust injury attributable to anti-poaching provisions formerly contained in the franchise agreements for those systems. *Deslandes v. McDonald's USA, LLC*, 2021 WL 3187668 (N.D. Ill. July 28, 2021); *Conrad v. Jimmy John's Franchise, LLC*, 2021 WL 3268339 (S.D. Ill. July 30, 2021). The decisions, which follow years of discovery, represent the likely end to attempts to claim system-wide monetary damages for the periods in which these provisions were in effect.

The decision in the Jimmy John's case in the Southern District of Illinois was unsurprising because, as reported in Issues [263](#) and [266](#) of The Franchise Memorandum, the court had excluded the expert that the plaintiff class sought to rely upon with respect to critical issues. More generally, however, the court found numerous flaws in the plaintiffs' theory of the case and attempt to meet the Rule 23 requirements for class certification. Among other issues, the putative class representative admitted that he had never sought employment at another Jimmy John's restaurant; thus, he was never prevented from changing jobs by the provision at issue. The terms of the anti-poaching provision also changed over time, and enforcement was spotty at best and varied locally. For these and other reasons, the court could not conclude that class-wide issues would predominate over issues requiring individualized determinations. Finally, although the court had left open the possibility of applying per se illegality or the quick-look doctrine in denying a motion to dismiss, the court ultimately determined that a full rule of reason analysis would be required, leading to additional issues that could not be determined on a class-wide basis. In this regard, the court noted that the plaintiffs' attempt to define a single-system labor market was refuted by evidence that Jimmy John's restaurants competed for labor with other QSR restaurants as well as other local employers.

The court in the McDonald's case in the Northern District of Illinois reached the same result, for somewhat different reasons. The court first concluded that a full rule of reason analysis would be required, notwithstanding its prior decision holding out the possibility of a quick-look analysis. The court noted that, in the context of a franchise system, anti-poaching provisions could serve pro-competitive purposes and should not be condemned without full examination.

### Related People

#### Maisa Frank

Partner

Washington, D.C.

202.295.2209

[maisa.frank@lathropgpm.com](mailto:maisa.frank@lathropgpm.com)

#### Richard C. Landon

Partner

Minneapolis

612.632.3429

[richard.landon@lathropgpm.com](mailto:richard.landon@lathropgpm.com)

### Related Services

[Franchise & Distribution](#)



The court also focused on the fact that labor markets, particularly for QSR restaurants, are inherently localized. Thus, there were hundreds or potentially thousands of relevant markets in which the effects, if any, of the anti-poaching provision would need to be evaluated. In markets where there were other competitors for labor, a single-system restraint could have little effect. Thus, the plaintiffs' \$2.74 billion damages calculation, which had been premised on alleged nationwide suppression of wages, could not be sustained. In view of its analysis, the court criticized as "self-interested" the decision by plaintiffs' counsel to present the case only as a nationwide class action with no rule of reason claim.