Lathrop GPM

BLOGS
Retrospective

What Has Followed From *Collins v. IDQ*?

This is the fourth in our year-long series of articles reviewing the recent progeny of what we identified in our December 2007 ten-year anniversary edition as the most significant franchise case decisions summarized in Issues 1 through 100 of *The GPMemorandum*, which covered the period from late 1997 through 2007. The fourth of those key cases was actually a series of decisions in a class action named Collins v. International Dairy Queen et al., which was venued in federal court in Macon, Georgia, from 1994 through 2000. Our firm represented IDQ and its subsidiary, franchisor American Dairy Queen Corporation, throughout the case and in various proceedings that have followed from it. In the end, the original Collins class-action case settled, but not before the Middle District of Georgia issued various important decisions. Those decisions covered topics ranging from antitrust to class action certification to arbitration, and more.

As we noted in our special anniversary issue in 2007, the antitrust aspects of *Collins* largely have been relegated to the footnotes of other cases and in legal writings. Particularly after the Third Circuit issued its seminal opinion in *Queen City*, and then the Eleventh Circuit (where Collins was on appeal when it settled) decided *Maris Distributing*, it seems that the Middle District of Georgia's opinion on the "relevant market" in franchising was an outlier. The district court had appeared to rule that a franchisee could proceed with antitrust tying and monopolization claims on the theory that a franchise system itself could be a relevant market, or at least that there could be a market limited to "soft-serve ice cream" franchises, specifically. Over the past five years, however, we have reported only around a dozen cases in which antitrust tying claims against franchisors have even been brought by franchisees, and in those all but four franchisee plaintiffs have had their claims dismissed.

But *Collins v. IDQ* went far beyond antitrust; it was in the arbitration field that the case may have had the most practical effect, as the district court eliminated thousands of franchisees (roughly half the proposed "class" of claimants) from participating in the action because they had agreed to arbitrate their claims. This led some franchisors to include arbitration clauses in their franchise agreements if for no other reason than to defeat class-wide treatment.