

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

SHELDON LANGER, RONALD M.)
YERMACK, LANCE R. GOLDBERG,)
ROBERT PROSI, GERALD PETROW, CRAIG)
RHEINGRUBER, STANTON MILLER, RAY)
LARSEN, DANIEL RYAN, and CAROL)
JORISSEN, individually on behalf of themselves)
and all others similarly situated,)

Plaintiffs,)

v.)

CME GROUP, INC., a Delaware Corporation;)
THE BOARD OF TRADE OF THE CITY OF)
CHICAGO, INC., a Delaware Corporation,)

Defendants.)

No. 2014 CH 00829

Calendar 6

Honorable Celia G. Gamrath
Presiding

JURY TRIAL DEMANDED

**PLAINTIFFS' OPPOSITION TO DEFENDANTS'
MOTION TO DECERTIFY THE CLASS**

FILED DATE: 4/15/2024 1:15 PM 2014CH00829

TABLE OF CONTENTS

INTRODUCTION 1

BACKGROUND 1

LEGAL STANDARD..... 2

ARGUMENT 2

CONCLUSION..... 4

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Barliant v. Follett Corp.</i> , 74 Ill. 2d 226 (1978)	1
<i>Bueker v. Madison County</i> 2016 IL App (5th) 150282, ¶ 36	3
<i>Johnson v. GEICO Cas. Co.</i> , 310 F.R.D. 246 (D. Del. 2015)	4
<i>Johnson v. Yahoo! Inc.</i> , No. 14 CV 2028, 2018 WL 835339 (N.D. Ill. Feb. 13, 2018).....	3
<i>Key v. Jewel Cos.</i> , 176 Ill. App. 3d 91 (1st Dist. 1988)	3
<i>In re NorthShore Univ. HealthSystem Antitrust Litig.</i> , 657 F. Supp. 3d 1077 (N.D. Ill. 2023)	2
<i>In re Sulfuric Acid Antitrust Litig.</i> , 847 F. Supp. 2d 1079 (N.D. Ill. 2011)	3
<i>Wernikoff v. Health Care Serv. Corp.</i> , 376 Ill. App. 3d 228 (2007)	2, 3

INTRODUCTION

CMEG provides one, and only one, argument for why the Court should second-guess its decision to certify the class in this case after 10 years of litigation: CMEG thinks the opinions of Plaintiffs' expert Dr. Jonathan Arnold are not reliable. CMEG is wrong, as Plaintiffs explain in their opposition to exclude Dr. Arnold's opinions, and that is reason enough to deny CMEG's motion. Even if CMEG were right, in Illinois issues regarding the calculation of damages on a class wide basis are insufficient to defeat class certification, providing an independent reason to deny CMEG's motion. The Court should reject CMEG's attempt, a decade in, to avoid a class-wide trial on Plaintiffs' claims. *See Barliant v. Follett Corp.*, 74 Ill. 2d 226, 231 (1978) (denying motion to decertify class three years after certification, because delay between certification and decertification would "foster[] uncertainty in the litigation.").

BACKGROUND

CMEG spills much ink outlining the history behind class certification, little of which is relevant to its motion. Here are the pertinent facts. In support of Plaintiffs' Motion for Class Certification, Dr. Arnold provided a declaration addressing "whether damages sustained by Plaintiffs arising from the misconduct of the Defendants, as alleged, *can be* measured on a class-wide basis." Affidavit of Nicholas Carullo, Exhibit 1 (Arnold Declaration) ¶ 5 (emphasis added). (emphasis added). In determining that they could, Dr. Arnold identified potential ways to measure damages on a class-wide basis and made clear that his "opinions on the appropriate methodologies for assessing damages on a class-wide basis *are likely to be revised, refined and supplemented . . .*" *Id.* ¶ 6; *see* Plaintiffs' Opposition to Defendants' Motion to Exclude the Testimony of Dr. Jonathan Arnold ("Arnold Opp.") at 9–10.

This Court certified the class on December 2, 2021. In doing so, the Court expressly held that "no-full scale damages analysis is required at the certification stage" and that Plaintiffs are not

“required at this stage to prove a classwide method of calculating damages.” Memorandum Opinion and Order on Class Certification at 5. The Court also noted in one of the hearings exploring the issue of class certification that “there has to be some scenario where plaintiffs can have a class certified.” Affidavit of Nicholas Carullo, Exhibit 2 (March 4, 2021 Hearing Transcript) at 106:5-9.

In July 2023, Plaintiffs served Dr. Arnold’s merits stage opinions, which provided the supplementation Dr. Arnold referenced in his class certification declaration and outlined a defensible method for measuring damages on a class-wide basis. Arnold Opp. at 11–14. CMEG now moves to exclude Dr. Arnold’s opinion, *see* Defendants’ Motion to Exclude the Testimony of Dr. Jonathan Arnold (“CMEG Br.”), but identifies no new discovery or information learned from the time of class certification to today that implicates the Court’s decision to certify the class or that creates individualized damages issue.

LEGAL STANDARD

In Illinois, courts will decertify a class only if there are “clearly changed circumstances or [if] more complete discovery warranted it.” *Wernikoff v. Health Care Serv. Corp.*, 376 Ill. App. 3d 228, 232 (2007). “[M]ere feelings of error regarding the original certification order” is not grounds for decertification. *Id.*

ARGUMENT

The only basis CMEG provides to decertify the class is its belief that Dr. Arnold’s expert opinions regarding class-wide damages are not reliable. CMEG’s complaints are classic fodder for cross examination and provide no support for excluding Dr. Arnold’s opinions. *See* Arnold Opp. If the Court rejects CMEG’s attempt to exclude Dr. Arnold’s opinions, CMEG has provided no

other basis to decertify the class, so CMEG’s motion should be denied.¹ *See In re NorthShore Univ. HealthSystem Antitrust Litig.*, 657 F. Supp. 3d 1077, 1103 (N.D. Ill. 2023) (dismissing motion to decertify when expert opinions not stricken).

Even if Dr. Arnold’s opinions are stricken—they should not be—that still does not provide a basis for decertifying the class. As noted by the court in *Bueker v. Madison County*, which CMEG favorably cites in its motion, class certification is appropriate on liability issues even if damages are not measurable on a class-wide basis. 2016 IL App (5th) 150282, ¶ 36 (“[W]e conclude that the calculation of actual damages would be too individualized to be handled as part of the class action . . . [t]hat being said, we conclude that it was not an abuse of the circuit court’s discretion to certify a class for liability purposes only, as we find that common issues predominate over individual concerns involving liability.”)

None of CMEG’s cited cases say any different. Most decertified a class because new information learned after a class certification injected individualized issues into the litigation. *See Key v. Jewel Cos.*, 176 Ill. App. 3d 91, 99–100 (1st Dist. 1988) (decertification required where class treatment was no longer appropriate based on “a full discovery record which did not exist when the preliminary decision to certify the class was made”); *see also Johnson v. Yahoo! Inc.*, No. 14 CV 2028, 2018 WL 835339, at *4 (N.D. Ill. Feb. 13, 2018) (same). But CMEG identifies no new information learned in discovery creating any such issues, which is fatal to their motion. *See Wernikoff v. Health Care Serv. Corp.*, 376 Ill. App. 3d 228, 232 (2007) (overturning

¹ CMEG seemingly brings a new criticism, that Dr. Arnold somehow erred by not calculating damages for all CME and CBOT members. CMEG Br. at 8. That argument makes no sense: as CMEG knows, the class in this case excludes corporate members, along with seat owners associated with CMEG. Dr. Arnold’s damages opinion does not calculate damages for those seat owners, because they are not class members (and it would not be appropriate for Dr. Arnold to calculate damages for non-class members).

decertification when no new circumstances arose after class certification); *In re Sulfuric Acid Antitrust Litig.*, 847 F. Supp. 2d 1079, 1082 (N.D. Ill. 2011) (denying motion to decertify when “the issues of law and fact raised by Defendants in their motion to decertify already existed at the time of Judge Coar’s March 2007 order.”).

CMEG’s other case decertified a class because new individualized damages issues predominated. *See Johnson v. GEICO Cas. Co.*, 310 F.R.D. 246, 254-55 (D. Del. 2015) (“These individualized determinations regarding entitlement to relief and damages owed would predominate over any common questions of law and/or fact”). But CMEG has not identified any new individualized damages issues that did not exist when the class was certified; it simply disagrees with Dr. Arnold’s conclusions. That is no basis to decertify the class. *See Bueker*, 2016 IL App (5th) 150282, ¶ 36.

CONCLUSION

For these reasons, the Court should deny CMEG’s motion to decertify.

Dated: April 12, 2024

Respectfully submitted,

By: 
Stephen E. Morrissey

Suyash Agrawal
Massey & Gail LLP
Cook County Firm No. 56232
50 E. Washington Street, Suite 400
Chicago, Illinois 60602
(312) 283-1590 Main
sagrawal@masseygail.com

Robert S. Safi (admitted under ILL. S. CT. R. 707)
IL ARDC# 6314817
SUSMAN GODFREY L.L.P.
1000 Louisiana Street – Suite 5100
Houston, Texas 77002
(713) 651-9366 main
rsafi@susmangodfrey.com

Parker C. Folse III (admitted under ILL. S. CT. R. 707)
IL ARDC # 6334943
Stephen E. Morrissey (admitted under ILL. S. CT. R. 707)
IL ARDC# 6314877
SUSMAN GODFREY L.L.P.
1201 Third Avenue – Suite 3800
Seattle, WA 98101-3000
(206) 516-3880 main
pfolse@susmangodfrey.com
smorrissey@susmangodfrey.com

Mark Hatch-Miller (admitted under ILL. S. CT. R. 707)
IL ARDC# 6323352
Nicholas C. Carullo (admitted under ILL. S. CT. R. 707)
IL ARDC# 6331667
Morgan McCollum (admitted under ILL. S. CT. R. 707)
SUSMAN GODFREY L.L.P.
One Manhattan West
New York, NY 10001
(212) 336-8330
mhatch-miller@susmangodfrey.com
ncarullo@susmangodfrey.com
mmccollum@susmangodfrey.com

Attorneys for Plaintiffs and the Class

CERTIFICATE OF SERVICE

I certify that on April 15, 2024, I electronically filed the foregoing, and that on April 12, 2024, Morgan McCollum, one of the attorneys for Plaintiffs, served a true and correct copy of the same by electronic mail on the following counsel:

Albert L. Hogan III
Marcella L. Lape
Amanda L. Brown
Elizabeth A. Simon
155 North Wacker Drive
Chicago, Illinois 60606
albert.hogan@skadden.com
marcella.lape@skadden.com
amanda.brown@skadden.com
elizabeth.simon@skadden.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

Dated: April 15, 2024

/s/ Suyash Agrawal
Suyash Agrawal