

THE AMERICAN CONTRACT BRIDGE LEAGUE INC.
IN-HOUSE COUNSEL LITIGATION REPORT

PETER MARCUS, et al v. ACBL

On June 23, 2017, Peter Marcus, a former ACBL Tournament Director, filed suit on behalf of himself and similarly situated plaintiffs against the ACBL seeking overtime pay for full-time Tournament Directors, damages and attorneys' fees, later joined by two other ACBL Tournament Directors. Sixteen additional Tournament Directors opted-into the lawsuit during 2019. Additionally, Marcus for himself alleges that the ACBL constructively discharged him in retaliation for his past complaints relating to Tournament Director pay, seeking reinstatement, promotion, payment of lost wages, damages and costs. The ACBL denies all these allegations and is vigorously defending itself against them, covering the litigation defense expense starting in October 2019. The parties engaged in a mediation of this matter in May 2018, but no agreement was able to be reached. Depositions were taken by both parties during 2018 and 2019 in addition to extensive document discovery by plaintiffs.

During May 2020, the parties filed cross motions for summary judgment, and the ACBL filed a motion to decertify the class. During July and August 2020, the parties responded to the other's motions (including replies to the responses). Oral arguments on those motions were held as scheduled on September 9 in the Massachusetts District Court. Plaintiffs' motion to substitute a party for deceased opt-in plaintiff Kenneth Van Cleve was denied because it was untimely and, accordingly, Van Cleve was dismissed from the lawsuit by the court in early November.

Procedural Posture. On March 24, 2021, the Court issued a pre-trial opinion in this matter, (1) dismissing all claims brought by the named plaintiffs under the Fair Labor Standards Act ("FLSA") and all claims asserted by seven of the 16 additional plaintiffs who opted to join the case and (2) limiting the claims of the remaining nine individuals who had opted-in. The court found that the ACBL had properly classified the positions of National Tournament Director, Associate National Tournament Director, Field Supervisor, Area Manager and Mentor as exempt from overtime under the FLSA (without reaching the question of the proper classification of STaC Coordinator). However, the Court ruled that the ACBL had improperly classified Tournament Directors as exempt from overtime under the FLSA, but that it had not done so willfully and thus only a two-year (rather than three year) statute of limitations would apply to any Tournament Director claims. Similarly, the Court denied a motion by plaintiffs for an award of liquidated (double) damages related to the ACBL's classification decisions. The Court denied ACBL's motion to decertify the class. Finally, the Court agreed with ACBL that any overtime wages due to Tournament Directors should be calculated using the fluctuating workweek method which means that, while non-exempt employees receive time and a half for overtime hours worked (1.5 x regular hourly rate), the salary ACBL had already paid to Tournament Directors covered the regular rate for all overtime hours, limiting any money to be paid now to one-half of their regular rate for each overtime hour worked (0.5 x regular hourly rate).

The Court confirmed its decision that deceased opt-in plaintiff Kenneth Van Cleve was dismissed from the lawsuit.

This Litigation Report was updated following the March 2021 Board meeting.

The Court also granted summary judgment in favor of the ACBL as to the individual retaliation claim that had been asserted by Peter Marcus.

Respectfully submitted,

A handwritten signature in black ink that reads "Linda J. Dunn". The signature is written in a cursive style with a long, sweeping tail on the letter "n".

Linda J. Dunn, Esq.

Dated: March 31, 2021