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Consumer Class Action Certified Against Health Club Chains Over Initiation Fees

Shannon P. Duffy
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A federal judge has certified a consumer class action against two chains of gyms -- Holiday Universal Inc. and Scandinavian Health Spa -- that alleges they violated Pennsylvania's Health Club Act by charging grossly excessive initiation fees to more than 14,000 members since 1998.

In her 63-page opinion in *Allen v. Holiday Universal*, U.S. District Judge Gene E.K. Pratter rejected the argument that the case was not amenable to class treatment due to numerous individual issues.

Instead, Pratter found that a class action would be the superior method for handling the claims because common questions of law predominate and that the differences among the individual members of the class would become relevant only at the damages phase of the litigation.

"Overall, the central issue in this case is the same for each and every member of the proposed class, and the class action device appears to be the most efficient and fair way to resolve class members' claims," Pratter wrote.

The ruling is a victory for a team of four plaintiffs lawyers -- David A. Searles of Donovan Searles in Philadelphia; Daniel S. Blinn of the Consumer Law Group in Rocky Hill, Conn.; John Blim of Blim & Edelson in Chicago; and Joseph Keith Goldberg of Harrisburg, Pa.

The suit alleges that members of the Holiday and Scandinavian gyms -- which are both owned by Bally Total Fitness Holding Corp. -- were forced to pay excessive membership fees that violate Pennsylvania's Health Club Act.

Under the HCA, the suit says, "the amount of any initiation fees imposed by a health club shall be reasonably related to the club's costs for establishing the initial membership."

The plaintiffs lawyers contend in the suit that such fees should never exceed \$100, but that the two lead plaintiffs were charged \$632 by Holiday and \$1,275 by Scandinavian.

The suit was initially filed in the Philadelphia Court of Common Pleas, but defense lawyers removed the case to federal court and successfully defended that move by defeating the plaintiffs' motion for a remand to state court.

But since then, the defense team has suffered two major setbacks.

In September, Pratter refused to dismiss the case, rejecting a defense argument that the HCA is unconstitutionally vague because health clubs would find it impossible to define the statute's requirement that fees be "reasonable."

Pratter found that "although the word 'reasonable' has been considered to be vague in some settings unless it is tied to some measurable standard, here, the measurable standard is 'costs for establishing the initial health club membership.'"

Defense lawyers insisted that the alleged measurable standard was itself vague because it includes all costs of establishing a membership. But the plaintiffs argued that it includes only the costs of getting the customer into the gym membership contract itself.



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Pratter sided with the plaintiffs, finding that "the health clubs are straining to inject doubt as to the meaning of words where no doubt would be felt by the normal reader."

Although the statute does not define what the costs that might be considered are, Pratter found that "the plain language of the statute's reference to 'costs of establishing the initial membership' is decidedly not the same as 'costs of establishing the health club.'"

As a result, Pratter said, "a commonsense reading of the provision suggests reference to the costs of including the person as a member of the club, not reference to the costs of establishing the club itself."

As "sophisticated business enterprises," Pratter said, "the health clubs are hardly adrift in uncharted seas unable to fathom how to go about establishing a schedule of reasonable fees."

Now Pratter has dealt the defense team another setback, rejecting numerous arguments that opposed class certification.

In their brief, the defense team -- Albert G. Bixler and Anita J. Murray of Eckert Seamans Cherin & Mellott in Philadelphia, along with Norman T. Finkel and William R. Klein of Schoenberg Finkel Newman & Rosenberg in Chicago -- argued that the class definition is overly broad because it includes persons who have not been injured.

The defense brief said that, as the class was defined by the plaintiffs, it would include health club members who "not only accepted the benefits of their contracts, but wanted such benefits and thus would not be able to establish liability, as well as current members who do not wish to void their contracts."

And because the health clubs are asserting ratification of the contracts as an affirmative defense, the issue of liability would hinge on the individual circumstances of each class member, the defense team argued.

Pratter disagreed, saying "the class definition does not include persons who have not suffered an injury."

If the initiation fees violate the HCA, Pratter said, "then all persons who paid those fees have been injured, regardless of whether they personally view the fees as excessive or wish to void their contracts."

Pratter also found that the plaintiffs were not seeking to void all of the contracts but instead were asking for a declaration that the contracts are "voidable."

Although the defense team was correct in arguing that some members might choose to ratify their contracts even after they were deemed to be voidable, Pratter found that would not preclude class certification.

"The ratification defense is only relevant if liability is proved, and then only with respect to damages," Pratter wrote.

"Under the circumstances presented here, no legally cognizable ratification can have occurred because at this time the health club members remain unaware of any facts rendering their contracts voidable," Pratter wrote.

"Only if liability is proved, will the class members then have the option to rescind -- and thus the corollary opportunity to ratify -- their contracts. Prior to any such determination on liability, the class members do not have 'full knowledge of all material facts,' as required to ratify a contract," Pratter wrote.

Bixler said Bally Total Fitness declined to comment on the ruling.