M.4 Deceptive Practices Case--Vendor's Single Interest Insurance (Ortiz)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT,
LAW DIVISION

[plaintiff]CARMEN ORTIZ, et al.,
Plaintiffs,
[vs.]
[defendant]GMAC, INC. and MIC, INC.,
Defendants.

PLAINTIFFS' REPLY MEMORANDUM
IN SUPPORT OF CLASS CERTIFICATION

I. INTRODUCTION

Defendants, seeking to prevent class certification, argue two elements of Section 2-801 of the Illinois Code of Civil Procedure are not met. They claim that common questions of fact do not predominate and that Mrs. Ortiz is not an adequate class representative. Defendants' arguments are based on their misstatement of: the class definitions and claims; the applicable legal standards for class certification; and the gist of Mrs. Ortiz' deposition testimony.

II. COMMON QUESTIONS OF FACT OR LAW PREDOMINATE

The class in Count I is made up of all persons who: (a) financed purchases of motor vehicles for their own personal and/or household use through GMAC; (b) purchased the vehicle from an automobile dealer located within the state of Illinois; and (c) had single interest physical damage insurance purchased from them by GMAC through MIC after December 2, 1980. There is also a subclass of plaintiffs who also: (d) had that motor vehicle damaged while the MIC policy was in force and either received no payment or credit from the MIC insurance policy or were required to surrender the automobile to GMAC in order to receive the payment or credit. Compl. Count I, ¶ 3.

In order to support their argument that common questions of fact do not predominate, defendants have misstated the class definition. Defendants claimed the class was composed of persons who "thought single interest would repair their cars" and "were supposedly deceived by the nature of single interest coverage." Defendants' Memorandum In Opposition To Class Certification (p. 2). Their definition is not the one before the court. While Mrs. Ortiz' deposition testimony shows she did believe single interest insurance would repair her car, Count I of the complaint is based on the Illinois Consumer Fraud and Deceptive Business Practices Act, (Consumer Fraud Act) Ill. Rev. Stat. ch. 121-1/2, § 261 et seq., which provides that deceptive acts are unlawful "whether

any person has in fact been misled, deceived or damaged thereby." Ill. Rev. Stat. ch. 121-1/2, § 262. Brooks v. Midas International Corp., 47 Ill. App.3d 266, 361 N.E.2d 815, 819 (1977). It is the intent of the seller and his conduct, and not reliance or belief of the consumer, which is the pivotal point on which an action arises. Id at 819. In Count II the breach of contract claim is based on construction of the insurance policy. The breach of fiduciary duty claim, in Count III, turns on the facts surrounding the relationship between class members and GMAC and the Sales Finance Agency Act (SFA), Ill. Rev. Stat. ch. 17, § 5201 et seq. claims in Count IV raise the issue as to whether defendants' conduct violated the SFA.

Code of Civil Procedure § 2-801(2) requires that common questions of fact or law predominate over any questions affecting only individual members. Ill. Rev. Stat. ch. 110, § 2-801(2). The predominance requirement is to be construed to permit class treatment although some individual differences in proof between class members might be present. Steinberg v. Chicago Medical School, 69 Ill.2d 320, 371 N.E.2d 634, 709-10 (1977) (class of medical school applicants alleging breach of contract regarding school admission policies certified over objection that there would be some differences in proof elements for class members); Miner v. Gillett Co., 87 Ill.2d 7, 428 N.E.2d 478, 891-893 (1981) cert. dismissed 103 S. Ct. 484 (1982) (class certified over defendant's objection that common questions of fact under Consumer Fraud act did not predominate.)

Similarly, in Luster v. Jones, 70 Ill. App.3d 1019, 388 N.E.2d 1029, 1040 (1979), a common law fraud action, a class of condominium purchasers were allowed to proceed as a class action over the defendants' contention that there were individually negotiated transactions which defeated the predominance requirement. In Spirek v. State Farm Mutual Auto Insurance, 65 Ill. App.3d 440, 382 N.E.2d 111, 119 (1978), the court allowed a class action to proceed while rejecting the insurer's claim that individual negotiations prevented class certification.

In the case before the Court defendants subjected all class members to the same GMAC business procedures. They all: received the same documents concerning single interest insurance; had the same policy purchased by GMAC from MIC; were charged for the insurance premium and interest; and were denied coverage if they made claims to have their cars repaired (unless they turned their car over to GMAC to be treated as a repossession). The common question of fact and law for all class members under each count of the complaint are set out in plaintiff's opening class memorandum at pp. 7-10. Although there may have been variations in phone conversations between some class members and employees at GMAC, those conversations do not prevent a finding that common questions of fact or law predominate in this case.[1]

Defendants have cited Goetz v. The Village of Hoffman Estates, 62 Ill. App.3d 233, 378 N.E.2d 1276 (1978) which held that common questions of fact did not predominate in a negligence action. There is no negligence count in plaintiff's complaint. In Goetz the plaintiff filed suit against the defendants for negligently selecting, installing, and inspecting electrical wiring in the home of the named plaintiffs and the proposed class. The court denied class certification stating that proof of negligence in wiring one home would not prove similar negligence in another. Significantly, the Goetz court (378

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1 Carl Grose, Dealer Relations Manager, at GMAC's Lombard Office guessed that about half of the customers who have MIC insurance added to their contract by GMAC are not contacted by phone prior to the purchase by GMAC. Crose Dep. pp. 115-16, 186.

N.E.2d at 1279) distinguished Brooks v. Midas International Corp., 477 Ill. App.3d 266, 361 N.E.2d 815 (1975), a class action suit for violation of the Consumer Fraud Act based on defendants' charging of excess amounts for the installation charge for the replacement of a muffler. One of Mrs. Ortiz' Consumer Fraud Act claims is that defendants charged an excessive rate for the insurance.

Defendants cited one case (Rice v. Snarlin, 131 Ill. App.2d 434, 266 N.E.2d 843 (1970)) which did deny class certification based on a Consumer Fraud Act claim. Rice lies in the graveyard of pre-Illinois class statutory provision cases which the Illinois Supreme Court described as "corpses" regarding their precedential value on the predominance requirement. Steinberg v. Chicago Medical School, supra, 371 N.E.2d at 643.

Defendants also cited three cases decided in other jurisdictions which denied class certification against insurers based on contract claims arising out of the contract of insurance.[2] However, Illinois courts have taken the opposite view in such class cases. Van Vactor v. Blue Cross, 50 Ill. App.3d 709, 365 N.E.2d 638 (1977) (class of all persons whose claims for dental benefits were denied based on the "medically necessary" requirement of contract); Carrao v. Health Care Service Corp., 118 Ill. App.3d 417, 454 N.E.2d 781 (1983) (class of persons whose medical claims were denied as not "medically necessary").

III. MRS. ORTIZ IS AN ADEQUATE CLASS REPRESENTATIVE

The three part test regarding adequacy of representation requires that: (1) there are no antagonistic interests between plaintiff and the class members, (2) the attorneys representing the class be qualified and able to conduct the class litigation and (3) the action not be collusive or friendly. Miner v. Gillett, 87 Ill.2d 7, 428 N.E.2d 484 (1982), cert. denied 103 S. Ct. 484 (1982). These requirements are met in the present case.

Defendants have attacked Mrs. Ortiz personally as an inadequate class representative by citing some snippets of the full day of deposition testimony they took from her. The deposition transcript is 231 pages long.[3] Their characterization of Mrs. Ortiz' lack of knowledge of the lawsuit or her duties as a class representative is wrong. Mrs. Ortiz was able to state in answer to questions that: a class action was a lawsuit for all people with the same problem she had (Ortiz Dep. p. 15); "individually and on behalf of all others similarly situated" meant she was fighting for herself and others (Ortiz Dep. pp. 15-16); she represented a class; her general obligation as a class representative was to help others; and as class representative she had to bear the costs of the lawsuit and that one of those costs was notice to the class. Ortiz Dep. p. 188-9.

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2 Johnson v. Travelers Ins. Co., 515 P.2d 68 (Nev. 1973); Calabria v. Associated Hospital Service, 60 F.R.D. 498 (S.D.N.Y. 1973); Gordon v. Aetna Life Insurance, 467 F.2d 717 (D.C. Cir. 1971).

3 Defendants' attorney, knowing Mrs. Ortiz' education consisted of completing high school (Ortiz Dep. p. 8), sought to make Mrs. Ortiz' deposition difficult for her by often asking questions about "legalese" in the complaint. "What does individually and on behalf of all other similarly situated mean?" Ortiz Dep. p. 15. "Do you understand what the relief requested in the complaint is?" Dep. p. 15. "What do you understand by the term pattern and practice, if anything?" Ortiz Dep. 182. "What leads you to believe that the defendants have engaged in a pattern and practice of deceptively concealing and representing the actual coverage of the physical damage insurance?" Dep. p. 178.

Defendants' attorneys' deposition tactic, in anticipation of making arguments that plaintiff was not an adequate class representative, was to ask plaintiff about her personal knowledge of the underlying facts and theories of the complaint. They have cited portions of the deposition in which Mrs. Ortiz was asked, what led her to believe the complaint's allegations, "Upon information and belief, the premium charged for the insurance was excessive for the actual coverage." was true. Another question was, "Is there anything that leads you to believe that GMAC profited on the insurance by obtaining it from it's subsidiary." Her lack of specific knowledge of all underlying facts and theories of the complaint does not make her an inadequate class representative. Hernandez v. United Fire Insurance, 79 F.R.D. 419, 426-7 (N.D. Ill. 1978). In Surowitz v. Hilton Hotel, 383 U.S. 363 (1966) the court held that the named plaintiff's lack of first hand information of the details of the claims in a securities case did not prevent her from being an adequate class representative. The class representative does not normally do class research and discovery as this is the function of his or her attorneys. In Hernandez v. United Fire Insurance Company, supra, 79 F.R.D. at 425, Judge Bua, finding the class representatives adequate, certified a class of consumer purchasers of fire insurance over objections nearly identical to those of defendants in this case.[4]

Two other cases denying class certification which defendant has cited (In re Hotel Telephone Charges, 500 F.2d 86 (9th Cir. 1974); Cotchett v. Avis Rent-A-Car System, Inc. 56 F.R.D. 549 (S.D.N.Y. 1972)) were ones in which the court concluded the suits were attorney inspired, the potential recoveries for each individual class member was minuscule or nonexistent (while the potential attorneys' fees were enormous), and the classes unmanageable. In both cases the courts pointed out that the named plaintiffs were also the attorneys acting as counsel for the class thereby raising a substantial conflict regarding their representation of the interests of other class members.

The second basis on which defendants argue Mrs. Ortiz is not an adequate class representative is that the facts on which her own case rests are not typical of those of other class members. The historical and practice notes to Code of Civil Procedure § 2-801, Ill. Rev. Stat. ch. 110, § 2-801 point out that the "typicality" requirement of Federal Rule 23(a)(4) is not found in § 2-801 but is replaced by subsections (3) and (4) of the Illinois provision. Ch. 110, S.H.A. § 2-801 p. 92. The duty to represent fairly and adequately will not be confused with a similarity in claims or secondary inquiry about common interests but will focus on the degree the plaintiff, taking all aspects of their case and their situation as individuals into consideration, will be able to adequately represent the class. Id. Even if Illinois had expressly adopted the typicality requirement of Federal Rule 23, Mrs. Ortiz' claims satisfy that requirement.[5]

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4 In Massengill v. Board of Education, 88 F.R.D. 181 (N.D. Ill. 1980), a case cited by defendants, the court held that the statements by the child plaintiff and his mother, in a case where they were challenging the school's disciplinary procedures, showed a lack of concern toward the child's education and a lack of responsibility for the rest of the class. The court also based its decision on issues of commonality and numerosity. In contrast Mrs. Ortiz has shown she is a responsible class representative in her deposition testimony by stating her understanding of the class device, the complaint and her responsibilities as a class representative.

5 In Borowski v. City of Burbank, 101 F.R.D. 59, 62 (N.D. Ill. 1984) Judge Bua stated the typicality requirement is satisfied unless the named plaintiffs present unique claims personal to them which are likely to be the major focus of the litigation. The typicality requirement is met: if the named representative's claims have the same essential claims as the claims of the class at large...; if they arise from the same course of conduct giving rise to the claims of other class members...; even if factual differences between the

IV. A RULING ON CLASS CERTIFICATION SHOULD BE MADE PRIOR TO A RULING ON THE MERITS

Defendants have asked the court to rule on their motion for summary judgment before ruling on class certification. However, a court may not conduct a preliminary inquiry into the merits in order to determine whether a suit should be maintained as a class action. Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 177-78, 94 S. Ct. 2140, 40 L.Ed.2d 732, 748-49 (1974). Eirhart v. Libby-Owens-Ford Co., 89 F.R.D. 424, 429 (N.D. Ill. 1981). The two cases cited by defendants are not to the contrary. In Garcia v. Rush-Presbyterian-St. Lukes Medical Center, 80 F.R.D. 254, 267 (N.D. Ill. 1978), the court recognized the mandate of Eisen but felt that ruling didn't prevent disposition of a summary judgment motion that related to scope of the Title VII race discrimination claim first. Simmons v. Drew, 716 F.2d 1160 (7th Cir. 1983) does not contain a word of discussion on the issue as to whether summary judgment should be ruled on prior to class certification. It would appear that in Simmons no class motion was filed before summary judgment was moved for and rule on.

V. CONCLUSION

Plaintiff has satisfied all the requisites of class certification under Code of Civil Procedure § 2-801. A class action should be certified under all counts of plaintiff's complaint.

Respectfully Submitted,
[Attorney]

M.5 Hospital Collection Case (Albino)

MARIA ALBINO, on her own behalf and on behalf of all others similarly situated,
Plaintiffs,
[vs.]
[defendant]The CITY OF CHICAGO; the BOARD OF HEALTH OF THE CITY OF CHICAGO; HUGO H. MURIEL, M.D., Commissioner of Health; DR. LEROY P. LEVITT, President of the Chicago Board of Health; DR. DONALD DYE, Administrator of Project 502 for the Board of Health of the City of Chicago
Defendants.

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plaintiffs claims and claims of other class members are present. Swanson v. Wabash Inc., 577 F. Supp. 1308, 1323-4 (N.D. Ill. 1983). Typicality does not require that claims or defenses be perfectly co-extensive, substantial similarity is sufficient. Allen v. Isaac, 99 F.R.D. 45, 54 (N.D Ill. 1983). The deposition testimony defendants argue shows that Mrs. Ortiz' facts are not typical of those of other class members is unpersuasive. The complaint alleges that defendants concealed the coverage of the physical damage insurance from Mrs. Ortiz. The deposition testimony cited by defendants (Defendants' Memorandum In Opposition To Class Certification pp. 7-8) merely reinforced that complaint.

PLAINTIFF'S REPLY MEMORANDUM IN SUPPORT OF CLASS CERTIFICATION

Defendants make two principal arguments against class certification in their memorandum.[6] First, defendants argue that persons against whom judgments have not been entered by Cook County Hospital for their delivery services cannot be class members since they have suffered no injury. Exclusion of these individuals, defendants assert, would defeat plaintiffs showing of compliance with the numerosity requirement of Rule 23(a). Second, defendants argue that if the class includes members who have not been sued, it fails to satisfy the "typicality" and "commonality" tests for class certification. Each of these arguments is wrong.

I. THE PROPOSED CLASS IS PROPERLY DEFINED AND CAN CHALLENGE DEFENDANT'S FAILURE TO PAY FOR CARE RENDERED AT COOK COUNTY HOSPITAL

A. DEFENDANTS CONFUSE PLAINTIFF'S CLAIM IN THIS CASE AND THE CLASS SOUGHT

In this case plaintiff and class members seek the benefits to which they are entitled under Title V of the Social Security Act, known as the Maternal and Child Health Act, 42 U.S.C. § 701 et seq., namely payment of the hospital charges for the delivery of their high risk infants. The defendants in their Memorandum in Opposition to Certification of a Plaintiff Class ("Defs. Mem.") admit referring women with high risk pregnancies to participating project hospitals, which defendants then were to pay for the delivery services rendered. Id. at 1-2. Moreover, defendants admit that they referred high risk women to Cook County Hospital for delivery of their babies. Id. at 2; Def. Answer, ¶ 13. The plaintiff and class members seek a declaratory judgment of their rights under Title V and an order requiring the defendants to pay for the delivery services provided under the Title V program operated by the defendants. Because the relief sought takes the form of both an injunction and damages, plaintiff seeks class certification under both Rules 23(b)(2) and 23(b)(3). Certification under Fed. R. Civ. P. Rule 23(b)(2) is appropriate for that portion of the class whose hospital bills have not yet been paid. Branham v. General Electric Co., 63 F.R.D. 667 (M.D. Tenn. 1974) (Class meeting both (b)(2) and (b)(3) requirements certified under Fed. R.Civ.P. 23(b)(2)). In any event, plaintiff has satisfied the requirements for both (b)(2) and (b)(3) certification. See plaintiff's Memorandum in Support of Class Certification at 6-7.

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6 Defendants do make certain other arguments which involve procedural questions and the merits of this case. Defendants seem to make an abstention or collection estoppel argument, Def. Mem. at 9-10, however, they cite no authority to support their position. Also defendants raise as an affirmative defense that certain class members chose to go to Cook County Hospital. These issues are not appropriate to consideration of a class motion. No inquiry into the merits of the suit can be made on a motion for class certification. Hochschuler v. Searle & Co., 82 F.R.D. 339, 343 (N.D. Ill. 1978); Helfand v. Cenco, 80 F.R.B. 1.6 (N.D Ill. 1977).

Plaintiff's proposed class includes all women at Lakeview Clinic who were affected by defendants' policy against reimbursing Cook County Hospital. Specifically, the plaintiff class is defined as:

> All women who, on or after October 1, 1977 and before October 1, 1981, were determined eligible for free hospital services under Project 502, were enrolled at the Lakeview Clinic in that program, were referred by the Chicago Board of Health or its agents to Cook County Hospital, and received pregnancy-related treatment at Cook County Hospital which Project 502 has failed to pay for.

Contrary to defendants' assertion, Def. Mem. at 2, plaintiff never included the term "high risk" in this definition. Plaintiff did drop the term "low income" from the original proposed class definition but only because defendants do not employ income standards in certifying women as eligible for free hospital services. See Deposition of Dr. Donald Dye at 33.

Plaintiff never has contended that all women who receive prenatal care are class members, see Def. Mem. at 2. In fact, plaintiff has already identified the 273 class members who meet the criteria in the proposed definition. If defendants' patient records are accurate, these women, and no others, were assigned to Cook County after certification as high risk. Defendants have not reimbursed any of them for out-of-pocket payments to Cook County Hospital, nor have defendants paid Cook County Hospital for care provided class members who were referred to Cook County Hospital through the defendants' Title V program. Deposition of Dr. Donald Dye at 60, 116.[7]

Thus, the class sought in this case is defined and identified with much greater specificity than other classes which have been upheld by the Seventh Circuit. Alliance to End Repression v. Rochford, 565 F.2d 975 (7th Cir. 1977) (Class certified as all "persons who engage in lawful political, religious, educational or social activities and have been, are now or may be subjected to or threatened by alleged infiltration, physical or verbal coercion, photographic, electronic or physical surveillance, summary punishment, harassment or dossier collection"); Vergara v. Hampton, 581 F.2d 1281 (7th Cir. 1978).

B. THE PLAINTIFF CLASS HAS SUFFERED CONCRETE INJURY AND NOT PROPERLY LIMITED TO JUST THOSE WOMEN AGAINST WHOM JUDGMENTS HAVE BEEN ENTERED

The injury plaintiff and class members have suffered is denial of the benefits under Title V to which they are entitled. The courts of this Circuit have frequently found class actions to be appropriate in cases where benefits under Social Security Act programs were denied. Jimenez v. Weinberger, 523 F.2d 699 (7th Cir. 1975), cert. denied, 427 U.S. 912 (1976); Winter v. Quern, 490 F. Supp. 788 (N.D. Ill. 1980), aff'd 676 F.2d 276 (7th Cir. 1982).

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7 Defendants persist in misreading plaintiff's claim for payment, Def. Mem. at 3. Women who paid their own hospital bills make claim for reimbursement; other women seek payment to Cook County Hospital so that their debt is extinguished. Plaintiff has used the term "received payment" for both groups of women.

Defendants' contention that only women who have had a judgment entered against them for their care at Cook County Hospital can be class members is meritless. The Supreme Court in Schlesinger v. Reservist Committee to Stop the War, 418 U.S. 208, 220 (1974), stated that a person has standing to sue whenever he suffers an injury that is "actual or threatened." Here, the plaintiff class satisfied both types of injury. The women participating in the defendants' Title V program whose Cook County Hospital bills have not been paid suffer actual injury in the denial of the benefits to which they are entitled. In addition they suffer financial injury to the extent that they are wrongfully compelled to make payments to Cook County Hospital for their delivery services, and if they do not make payments, their credit ratings are jeopardized by their large, unpaid hospital bills. Moreover, class members face the real threat of collection actions being filed by Cook County Hospital and having any wages which they earn garnished, as happened to plaintiff Albina. These injuries more than satisfy established standing requirements. As noted in Southern Mutual Help Association, Inc. v. Califano, 574 F.2d 518, 523 (D.C. Cir. 1977):

> While the injury cannot be abstract, (citation omitted), it need not be significant; and identifiable trifle will suffice. United States v. Students Challenging Regulatory Agency Procedures, 412 U.S. 669, 689 n. 14, 93 S. Ct. 2405, 37 L.Ed. 2d 254 (1973).

The injury which plaintiff and class members have suffered and continue to suffer is both actual and significant.[8]

II. THE PLAINTIFF CLASS MEETS THE TYPICALITY AND COMMONALITY REQUIREMENTS OF RULE 23

Defendants assert that Maria Albino's claim is atypical because she, unlike many class members, was subjected to suit for collection of her Cook County Hospital bill. Def. Mem. at 7. Defendants apparently believe that class certification requires that the facts of each class member be similar in every respect. Defendants' argument has been

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8 Defendants have also raised a numerosity argument predicated on the success of their standing argument, i.e. if only women with judgments entered by Cook County Hospital have standing, the class is not sufficiently numerous. As discussed above, the standing argument is frivolous. Moreover, in this district a class of 25 to 50 is sufficient to satisfy the numerosity requirement, Helfand v. Cenco, 80 F.R.D. 1, 6 (N.D. Ill. 1980). Plaintiff has identified 273 class members.

repeatedly rejected by the courts considering this issue.[9] In Edmonson v. Simon, 86 F.R.D. 375, 381 (N.D. Ill. 1980), the court held:

> Typicality refers to the nature of the claim or defense of the class representative and not to the specific facts from which it arose or to the relief sought. Factual differences will not render a claim atypical if the claim arises from the event or practice or course of conduct that gives rise to the claims of the class members...

See also, Penn v. San Jan Hospital, 528 F.2d 1181, 1189 (10th Cir. 1975); Bucha v. Illinois High School Association, 351 F. Supp. 69 (N.D. Ill. 1972).

The commonality test duplicates the typicality requirement. See Plaintiff's Memorandum in Support of Class Certification, at 8. Here the common question of law--whether defendants violated the Social Security Act and implementing regulations by failing to pay for plaintiff's care in Cook County Hospital--is clearly an issue which is amenable to class treatment. See, e.g., Simer v. Rios, 661 F.2d 655 (7th Cir. 1981). The common questions of fact--whether defendants referred plaintiffs to Cook County Hospital for free hospital services and whether defendants have a policy of not furnishing such care in Cook County Hospital--also can be adjudicated for all class members. These common issues predominate over any individual issues.

The defendants seek to raise an affirmative defense which would apply to individual class members, i.e., that some class members chose to receive care at Cook County Hospital knowing that delivery would be costly while care in another hospital would be free.[10] If indeed this is a defense, it can be tried individually later after common questions are adjudicated. Technograph Printed Circuits Limited v. Methode Electronics, 285 F. Supp. 714 (N.D. Ill. 1968) (Patent infringement issues tried separately after determination on merits of class claim). The existence of individual defenses thus does not defeat plaintiff's motion for class certification. Hochshuler v. Searle & Co., 82 F.R.D. 339 (N.D. Ill. 1978) (court in securities fraud class action notes that if individual issues arise "it is empowered at any time subsequent to the initial certification to amend or dissolve the class based on facts which later develop.")

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9 The cases defendants cite for the proposition that Maria Albino's claims are atypical and that common questions do not predominate are far afield from this case. In In re Transit Co. Tire Antitrust Litigation, 57 F.R.D. 59 (W.D. Mo. 1975), the court held that the differences in the products sold, and the marketing practices by different defendants as to different plaintiffs, were so great that common questions did not predominate. In addition, the geographic dispersion of plaintiff class members made consolidated class litigation less desirable than separate individual litigation. In Crawford v. Western Electric Co., 614 F.2d 1300 (5th Cir. 1980), the Fifth Circuit held simply that employees could not represent non-employees unless a similarity in their claims were demonstrated. In Williams v. Page, 60 F.R.D. 29 (N.D. Ill. 1973), the court found that a class was inappropriate because of the imprecise definition of the class which failed to specify who was sought to be included and for what dates. Neither problem exists in this case since plaintiff has identified the 273 individuals included in the class. Finally, in Greenhouse v. Greco, 617 F.2d 408 (5th Cir. 1980), the court does not even discuss the typicality requirement as applied to a plaintiff class.

10 Def. Mem. at 6. This defense, however, is entitled to little credibility since Dr. Dye admitted at his deposition that no written or oral instructions were given to intake staff at clinics about what to tell women about the program. Dye Deposition at 130. Nor are women given any written description of the program. Furthermore, it is implausible that women would choose Cook County Hospital over less crowded, more modern private hospitals knowing the latter care was free and the former costly.

In addition to arguing that Maria Albino's claim is atypical because she was sued and other class members were not, defendants appear to argue that she is a poor class representative precisely because she was sued. Def. Mem. at 10-11. Courts have held, however, that a named plaintiff is an adequate representative if: 1) there is no conflict between the interests of the named plaintiff and the interests of other class members and 2) he will vigorously prosecute the class claims. Hernandez v. United Fire Insurance Co., 79 F.R.D. 419, 425 (N.D. Ill. 1978). Here, defendants have not contended plaintiff or her counsel will be lax in pursuing relief for the class, nor have defendants cited any antagonistic interest which divides class members or renders Maria Albino an inadequate representative. In order to disqualify a class representative, defendants bear the burden of demonstrating a serious conflict of interest which renders Maria Albino unable to adequately represent the class. Ohio Sealy Mattress Mfg. Co. v. Kaplan, 90 F.R.D. 21, 25 (N.D. Ill. 1980).

III. CONCLUSION

The Seventh Circuit has held that "Rule 23 must be liberally interpreted" and read to "favor maintenance of class actions." King v. Kansas City Southern Industries, 519 F.2d 20, 25-26 (7th Cir. 1975). The purpose behind this rule is to aid "small individual claimants who would otherwise be reluctant to bring their claims due to the expense of the litigation." Hawaii v. Standard Oil, 405 U.S. 251, 266 (1972). The class of women sought to be represented here are especially vulnerable since they are poor and have relied upon the defendants for high risk hospital delivery services free of charge only to discover that defendants have left them liable for their hospitalization bills.

Plaintiffs have met their burden of proving the requisites for class certification. Accordingly, plaintiff requests certification of the plaintiff class under Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure.

Respectfully Submitted,

[Attorney]