

Sheppard Mullin Ninth Circuit Class Action Victory

06.05.2019

Sheppard Mullin successfully represented Hanson Aggregates Pacific Southwest, Inc., a subsidiary of Lehigh Hanson, in two appeals arising out of the District Court's orders denying class certification and rejecting plaintiff's request for catalyst attorneys' fees in an action alleging the improper recording of telephone calls. On the class certification issue, the Court affirmed the lower court's ruling, in a published opinion, holding that it did not need to address the preponderance issues relied on by the lower court to deny certification, because appellant lost its individual case on the merits at trial, and as such, lacked standing to pursue a class action. On appellate's request for catalyst attorneys' fees, the Court found, in an unpublished opinion, that the plaintiffs did not satisfy the requirement for a prelitigation demand.

"We are extremely pleased with these results," said Sheppard Mullin partner Fred Puglisi who led the defense team. "These two decisions by the Court finally ends almost seven years of litigation and clearly shows that our client was in the right from the beginning."

The Sheppard Mullin team, led by partner Fred Puglisi, included special counsel Valerie Alter and associate Jay Ramsey.

[Click here to read the published opinion.](#)

Background on the Case

NEI Contracting and Engineering, Inc. was a customer of concrete supplier Hanson Aggregates, Inc. and generally placed orders for Hanson's products by calling into a dedicated telephone order line. In July 2009, Hanson began including a pre-recorded message stating that calls "may be monitored for quality assurance." Several years later, a billing dispute arose between the NEI and Hanson, and the recorded calls were used to refute NEI's claims. After resolving the billing dispute, NEI filed a class action lawsuit against Hanson, which was initially certified, but then decertified by the district court. NEI then proceeded to take its individual claim to trial, which it lost on the merits. Despite this loss, NEI then sought catalyst attorneys' fees for allegedly needing litigation to influence Hanson's behavior. The district court disagreed and rejected NEI's request for attorneys' fees. NEI then appealed the decertification order and the order denying its request for attorneys' fees.

Attorneys

Valerie E. Alter

Fred R. Puglisi

Jay Ramsey

Practice Areas

Class Action Defense

Litigation