

EXHIBIT 3

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

IN RE: CAPITAL ONE CONSUMER)
DATA SECURITY BREACH LITIGATION) MDL No. 1:19md2915 (AJT/JFA)
_____)

This Document Relates to the Consumer Cases

**DECLARATION OF DAVID F. REIGN IN SUPPORT OF PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

I, David F. Reign, hereby declare and state as follows:

1. My name is David F. Reign. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am a former Assistant Special Agent in Charge of the Tampa FBI Field office, with nearly 25 years of investigative experience. I investigated and managed multiple complex white-collar crime cases, with an emphasis on health care fraud, public corruption, and financial crimes. As Deputy Chief of the Enron Task Force, I led a team of investigators and analysts in the successful investigation and prosecution of several executives of the Enron Corporation.

3. In 2012, I retired from the FBI and began as an investigator with Morgan & Morgan.

4. In that role I investigate Qui Tam and Class Action matters to include research, interviews, preparing disclosure statements, and collecting and reviewing evidence.

5. In this case I was tasked by attorney John Yanchunis to investigate any familial connection between an objector in this matter, Constance ("Connie") Pentz, (Doc. 2241), and well-known professional objector John J. Pentz.

6. Using my decades of investigative knowledge, skills, and experience, I have determined that objector Constance Pentz is the mother of John J. Pentz.

7. To reach this conclusion I reviewed numerous online sites to obtain specific information that related to Constance Pentz and John J. Pentz. The specific searches are described below:

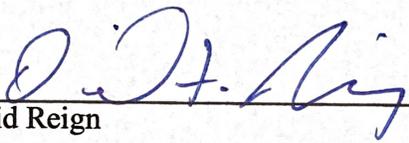
- a. I utilized the Public Records feature of an online legal research service named Westlaw, a subsidiary of the Thomson Reuters Corporation. I developed possible leads and individuals with similar names to locate Constance Pentz and John J. Pentz. I used the Westlaw searches to uncover additional facts through Google searches that would confirm the identity, residences, and other facts. I then cross referenced several possible positive hits with other known court documents, newspaper articles, and other writings. The combined searches of the Westlaw data and the publicly available news and court documents confirmed that Constance Pentz was related to John J. Pentz.
- b. The cross-referenced news article was dated October 16, 2005, and appeared in the Pocono Record. The article was about John Pentz being an attorney in Stroudsburg, Pennsylvania (where Constance Pentz also resides) discussing his representation of a client, attached hereto as **Exhibit A**; and second article was an obituary of John J. Pentz, Jr. that identified John J. Pentz as a surviving child and provided his wife's name (Hannah), and the city he resides in (Sudbury), attached hereto as **Exhibit B**. These details—e.g., Mr. Pentz's spouse's name and residence—were validated through Westlaw and other public sources.

- c. From the newspaper article I was able to determine that John J. Pentz was connected to Stroudsburg. The article also contained a quote from Connie Pentz. The obituary article further showed the surviving spouse as Connie Pentz.
- d. A filing from another case in which John J. Pentz represented Constance Pentz, attached hereto as **Exhibit C**, established Mr. Pentz's address.

8. Connecting these facts helped me to conclude with a very high degree of likelihood, that Constance Pentz is John J. Pentz's mother.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on August 26, 2022, at Tampa, Florida.



David Reign

Exh. A

POCONO RECORD

POCONO RECORD

tonight

ANDREW SCOTT, Pocono Record Writer

Published 12:00 a.m. ET Oct. 16, 2005 | Updated 6:08 a.m. ET Jan. 7, 2011

Stroudsburg in the 1960s was the picture of small-town America, a place and time in which people felt safe enough to leave their doors unlocked and criminal trials were rare.

Especially trials requiring the presence of federal agents.

But Stroudsburg attorney John J. Pentz Jr. recently recalled when agents did visit on one occasion for a case involving his client, Percy Green.

Green was charged with operating a moonshine still in northern Monroe County, using paraphernalia dating back to the Prohibition era, and supplying the liquor to people at a party raided by agents.

Former county District Attorney Elmer Christine prosecuted the case before then-county Judge Fred Davis.

"Percy ended up getting acquitted because they couldn't prove the still was operable," said Pentz, laughing and referring to his former client as a "lovable old Snuffy Smith-type character."

"The jury was out a long time before coming back with its verdict," he said. "When I asked why it took so long, I was told that one of the jurors supposedly drank some of Percy's moonshine."

Pentz recalled Green's situation as the most interesting case he has had in his 47-year career as a lawyer in Monroe County.

Now in his 50th year as a Pennsylvania Bar Association member, Pentz will be honored, along with retiring county Judge Peter J. O'Brien, at a county Bar Association dinner at 6 p.m. today at Pocono Manor.

Unlike O'Brien, Pentz doesn't plan to retire anytime soon.

"I enjoy the intellectual challenge of practicing law and the process of applying logical reasoning to the facts of cases," said the tall, slim Clearfield County native who looks younger than his age, which he declined to release.

POCONO RECORD

In 1955, he started practicing in New Haven, Conn., where he met and later married East Stroudsburg native Connie Beers, then a Yale University student. In 1958, the couple moved to the Poconos so that she could be closer to New York City to pursue an opera career there.

"Instead, I ended up opening a real estate office in the same building as John," she laughed.

Once in Monroe County, Pentz went to work with attorney Leo Achterman and joined the county Democratic Party, campaigning for then-presidential candidate John F. Kennedy.

He later worked with attorneys Charles and Alex Bensinger before opening his own office in Stroudsburg. His areas of focus are real estate, estate planning and administration and corporate and commercial law.

Along the way, the couple raised three sons, and Pentz became involved in the Boy Scouts of America, Kiwanis Club of the Stroudsburgs and Grace Lutheran Church.

With his office now on North Seventh Street, near the county courthouse, Pentz discussed some of the changes he has seen over the years.

"When I started in Monroe County, the area was far less busy than it is now," he said.

"Interstate 80 hadn't been built yet. The population was smaller and the county was less developed, with mostly vacation homes and hunting and fishing clubs.

"There were only 26 lawyers in the county (as opposed to more than 200 now) and one judge for Monroe and Pike counties," he said. "There was no Public Defender's Office. The judge just called up whichever attorney was available to defend a client, and that attorney had just minutes to prepare."

Those were the days when area attorneys had to do title searches themselves and copy information by hand since there were no copy machines.

"Technology and the Internet have made things significantly more convenient," Pentz said.

Since trials at the time were rare, procedures were less specialized, he added. For example, there were no pretrial motions.

"A gentleman's handshake was always good in those days," said Connie Pentz.

POCONO RECORD

extra mile and given his time to his clients. He really cares about people.

Joking that his Saturday hours take away from his golf game, Pentz said, "You have to be patient.

"You have to be a bit of an actor and orator and use common language jurors can understand," he said. "The greatest reward is knowing you've helped someone with a problem."

Exh. B

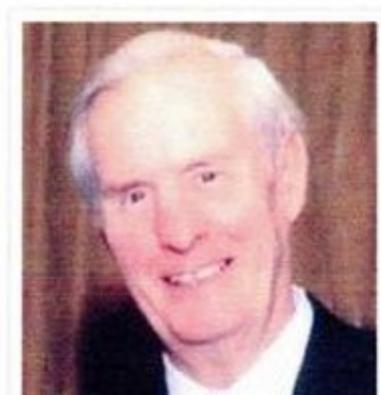
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John J. Pentz, Jr. | 1927 - 2012 | Obituary



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John J. Pentz, Jr.

September 2, 1927 - June 28, 2012

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John J. Pentz Jr. , 84, died Thursday, June 28, 2012 at home. He was the loving husband of Connie Pentz, with whom he shared 54 years of marriage last August.

Born on Sept. 2, 1927 in DuBois, he was a son of the late John J. Pentz Sr. and Mabel Ruth (Peterson) Pentz. John graduated from Mercersburg Academy in 1945 and served in the U.S. Navy. He graduated from Princeton University in 1951 and the University of Michigan Law School in 1954. John was a member of the Monroe County Bar Association and the Pennsylvania Bar Association. He was a well-known attorney in Stroudsburg for 50 years. He was a member of the Grace Lutheran Church in East Stroudsburg and served as a Sunday school teacher and council member. He also volunteered in many capacities with the Boy Scouts for several years and was a longtime member of the Kiwanis Club of the Stroudsburgs.

In addition to his wife, Connie, he is survived by three sons, John J. Pentz III and his wife, Hannah, of Sudbury, MA, James "Jamie" Evans Pentz and his wife, Lisa, of Niwot, CO. and David R. Pentz of East Stroudsburg. He is also survived by four grandchildren, Carter and Julia Pentz of Niwot, CO. and Jacob and George Pentz of Sudbury, MA; a brother, William H. Pentz and his wife, Marcia, of Berwyn; a brother-in-law, King W. Beers of East Stroudsburg; and several nieces, nephews and cousins. In addition to his parents, he was preceded in death by two sisters, Mary Joan Pentz and Helen Jean Bennett.

There will be a viewing on Sunday, July 1, from 2:30pm to 5:00pm at the William H. Clark Funeral Home, 1003 Main Street, Stroudsburg. The funeral service will be on Monday, July 2 at 10:30AM in St. John's Lutheran Church, 9 North 9th Street, Stroudsburg with the Rev. Gail H. Kees officiating. Burial will follow in the Stroudsburg Cemetery.

John loved the Lord Jesus Christ with all his heart, and the family requests that memorial remembrances may be made to a church or charity of one's choice.

[Print Obituary \(/obituaries/print?o_id=1521966\)](/obituaries/print?o_id=1521966)

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Light A Candle



Candle 1



Candle 2



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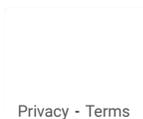
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Exh. C



Legal Document

Illinois Northern District Court
Case No. 1:14-cv-10457
Wright et al v. Nationstar Mortgage LLC

Document 110



View Document



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Prior to their meet and confer, Plaintiffs sent to Mr. Pentz a list of the documents they intended to seek in discovery. *See Exhibit A*. During the April 8, 2016 telephone call, Mr. Pentz informed Class Counsel that there are no responsive documents to most of their requests. There is no retainer agreement, no other attorneys were involved in Mrs. Pentz's objections, there are no fee sharing agreements¹, and there are no written communications between Mr. Pentz and his client. Mr. Pentz also offered to send Class Counsel copies of all objections to class action settlements that Mrs. Pentz has filed during the past five years, a very sensible limit that Judge Kennelly imposed on Class Counsel's open-ended, unlimited request for prior objections in *Kolinek*. See Exhibit 7 to Balabanian Declaration at p. 20 ("I don't think it's overly broad if it goes back to 2010 because it's asking for objections in other cases. I think five years is enough.").

Therefore, there is no need for written discovery from objector Pentz, since Class Counsel either already has all responsive documents, or Mrs. Pentz has agreed to produce the last five years of her objections as soon as Class Counsel agrees not to seek formal discovery that exceeds the scope that was permitted in *Kolinek*. Instead, Class Counsel has elected to clutter the record and burden this Court's time with unnecessary discovery.

With regard to item number 7, loan origination documents, those documents are irrelevant to class membership. Mrs. Pentz is indisputably a class member, since she received a cell phone call from Nationstar, she received individual mailed notice, and Nationstar had her cell phone number in its records as of October 14, 2015. Nothing further is required to establish class membership, pursuant to the Class Notice.

¹ Since that April 8, 2016 call, Mrs. Pentz's counsel on April 28, 2016 retained Arthur Howe of Howe Law LLC to serve as local counsel. Mrs. Pentz's counsel will voluntarily provide to Class Counsel the email between Mr. Pentz and Mr. Howe stating that Mr. Howe's portion of the fees shall be the fraction of the fees that his lodestar bears to the overall lodestar and that he will bill his time in this matter at the rate of \$500 per hour. There are no other fee sharing agreements.

Moreover, as Mr. Pentz informed Class Counsel, Mrs. Pentz never received a loan from Nationstar. Class Counsel now claims that if any of Mrs. Pentz's loan documents authorize the lender to contact her via cellphone, Nationstar *might* have acquired one of those loans and contacted her through constructive consent, despite the fact that *Nationstar is not challenging Mrs. Pentz's claim form or asserting a consent defense in any way*. Class Counsel are actively working *against* the interests of their own clients in an attempt to defeat an objection to their fee request. Indeed, it is notable that it was Class Counsel that was arguing *against* the implied consent defense during the entirety of this case, until their own fees were challenged.²

Class Counsel's position with regard to the need for discovery of loan documents also undermines their claim in their Memorandum of Law in Support of Motion For Final Approval of Class Action Settlement that class members may "claim a cash recovery by submission of an easy to complete Claim Form that required only a relatively minimal amount of contact information." Memorandum at p. 29. If claimants were to bear an affirmative duty to disprove Nationstar's implied consent defense in connection with the filing of a claim form, then the claims process is anything but easy or minimal. Class members would be forced to locate and pore through possibly ancient loan documents in a vain effort to disprove something it is Nationstar's burden to establish. This is certainly would be far more burdensome than the simple class process that Class Counsel has described to this Court, namely that class members need only affirm that their cell phone number was called.

² It is critical to keep in mind that Mrs. Pentz challenges only the excessive 36% fee request. Therefore, her objection can only help the class, by preserving more of the settlement fund for the payment of claims. She does not seek to prevent or delay the settlement in any way. For the same reason, Class Counsel's harassment of her is solely for their own financial benefit, and not that of the Class. The Class will be substantially better off once Mrs. Pentz's objection is upheld, as it was in *Gehrich v. Chase*.

Moreover, even if Mrs. Pentz were to gather all of her various loan documents and produce them, there would be no way of knowing whether Nationstar ever acquired any of them, and if so, which one. Class Counsel intends to request “loan origination documents for the loan about which Mrs. Pentz received the calls at issue,” but Mrs. Pentz has no idea which loan, if any, Nationstar acquired. Only Nationstar, if anyone, would be able to determine that, and Nationstar is not contesting Mrs. Pentz’s claim (or, to the undersigned’s knowledge, any class member’s claim). The consent defense has been waived as part of the settlement. Therefore, there is absolutely no purpose to be served by compelling the production of loan origination documents, since they would not affect class membership in any event, which was already established by the fact that Mrs. Pentz’s cell phone number appears in Nationstar’s records.

II. Discovery of Opposing Counsel Was Denied by Judge Kennelly in *Kolinek* and Serves No Useful Purpose in This Case.

In addition to requesting wholly irrelevant documents from the objector clients, Class Counsel makes an outrageous request for documents from the objectors’ counsel, including documents unrelated to this case or the objectors in this case. Judge Kennelly refused to permit this discovery of irrelevant documents from class members’ attorneys in *Kolinek*, and this Court should do likewise. Discovery from opposing counsel is extremely rare and highly disfavored. *See, e.g., Lincoln Nat’l. Life Ins. v. TCF Nat’l Bank*, 2011 U.S. Dist. LEXIS 142371 (N.D. Ill. Dec. 12, 2011)(following *Shelton v. Am. Motors Corp.*, 805 F.2d 1323 (8th Cir. 1986)).

In *Shelton*, the Eighth Circuit held that discovery of opposing counsel “has long been discouraged ... disrupts the adversarial system and lowers the standards of the

profession ... adds to the already burdensome time and costs of litigation ... and detracts from the quality of client representation.” 805 F.3d at 1327. The Eighth Circuit in *Shelton* set out a three-factor test for when discovery of opposing counsel may be permitted, which has been adopted by most other circuits, including the Seventh. The party seeking to take the deposition of opposing counsel must show that “(1) no other means exist to obtain the information...; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case.” *Id.*

Class Counsel has failed to satisfy any of these three factors. First, all of the requested objections are publicly filed documents, and therefore already available through other means. Second, the request for documents that relate to confidential settlements reached on behalf other clients, in other cases, are both irrelevant and privileged. Most are subject to confidentiality agreements that could not be waived without obtaining the consent of all parties thereto, a cumbersome and time-consuming task that has no relevance to the fairness of Class Counsel’s fee request *in this case*. Finally, Class Counsel’s requests fail to satisfy the third *Shelton* factor since they have failed to demonstrate what relevance any settlement reached on behalf of an unrelated client in another matter could possibly have to do with Mrs. Pentz’s objection in this case, let alone demonstrate that such information is “crucial” to their preparation for their fee request.

The sole issue that Mrs. Pentz’s objection raises is the fairness of Class Counsel’s request for a 36% attorneys’ fee, in the absence of any time records. To the best of undersigned counsel’s knowledge, no court in this Circuit has permitted the overbroad discovery sought here by Class Counsel of an objector’s counsel, in contrast to limited

discovery of an objector him- or herself. There is nothing contained in prior objections filed on behalf of Mr. Pentz's former clients, or, even more remotely, any resolutions of those settlements in other cases, that could possibly have any bearing on the issue of the fairness of Class Counsel's fee request in this case.

Conclusion

As the Seventh Circuit has repeatedly made clear, "objectors play an essential role in judicial review of proposed settlements of class actions. . . ." *Pearson v. NBTY, Inc.*, 772 F.3d 778, 787 (7th Cir. 2014); *see also Eubank v. Pella Corp.*, 753 F.3d 718, 720-21 (7th Cir. 2014). Judge Posner recently emphasized that the submissions and arguments of objectors are often important to the Court's consideration of class action settlements. In *Redman v. Radioshack Corp.*, 768 F.3d 622 (7th Cir. 2014), Judge Posner stated:

The judge asked to approve the settlement of a class action is not to assume the passive role that is appropriate when there is genuine adverseness between the parties rather than the conflict of interest recognized and discussed in many previous class action cases, and present in this case. *See, e.g., Eubank v. Pella Corp.*, 753 F.3d 718, 720 (7th Cir. 2014); *Staton v. Boeing Co.*, 327 F.3d 938, 959-61 (9th Cir. 2003); *In re GMC Pick-Up Truck Fuel Tank Products Liability Litigation*, 55 F.3d 768, 801, 819-20 (3d Cir. 1995). Critically the judge must assess the value of the settlement to the class and the reasonableness of the agreed-upon attorneys' fees for class counsel, bearing in mind that the higher the fees the less compensation will be received by the class members. When there are objecting class members, the judge's task is eased because he or she has the benefit of an adversary process: objectors versus settlers (that is, versus class counsel and the defendant).

Id. at 629.

Even more recently Seventh Circuit reaffirmed its view on class action settlements and large attorneys' fees awards to class counsel in holding that:

Almost all class actions are settled, and as we've noted in recent cases a class action settlement may be the product of tacit collusion between class counsel and defendant. *See, e.g., Pearson v. NBTY, Inc.*, 772 F.3d 778, 786-87 (7th Cir. 2014); *Redman v. Radioshack Corp.*, 768 F.3d 622, 629 (7th Cir. 2014); *Eubank v. Pella*

Corp., 753 F.3d 718, 720 (7th Cir. 2014). The reason is that the optimal settlement for these antagonists is one that awards large attorneys' fees to class counsel but modest damages to the class members, for then the overall cost of the settlement to the defendant is capped at a relatively modest level while the class counsel receive generous attorneys' fees.

CE Design Ltd. v. King Supply Co., 2015 U.S. App. LEXIS 11117, at 7-8 (7th Cir. June 29, 2015). *See also, Redman*, 768 F.3d at 629 (noting that class counsel is "interested primarily in the size of the attorneys' fees provided for in the settlement.").

Allowing class counsel to serve burdensome discovery requests upon objecting class members and objector's counsel would chill the willingness of class members to exercise their right to object to unfair settlements, especially where, as here, there is nothing relevant to be gained from such discovery. Therefore, Mrs. Pentz respectfully prays that this Court deny Class Counsel's requested discovery and grant such other and further relief that justice may require.

Respectfully submitted,
Connie Pentz, by her attorneys,

/s/ Arthur J. Howe
Arthur J. Howe
Howe Law LLC
155 N Wacker Dr Ste 4250
Chicago, IL 60606
Phone: (312) 600-8336
howe@howe-llc.com

/s/ John J Pentz
John J. Pentz, pro hac vice application
pending
19 Widow Rites Lane
Sudbury, MA 01776
Phone: (978) 261-5725
jjpentz3@gmail.com

CERTIFICATE OF SERVICE

I certify that on April 29, 2016, I electronically filed a true copy of the foregoing document with the Clerk of the Court by using the CM/ECF system and that the foregoing document is being served this day, via transmission of Notices of Electronic Filing generated by CM/ECF, upon all counsel who are registered CM/ECF users.

/s/ Arthur J. Howe