

The Sixth Circuit Affirms Dismissal of Student Fraud Claims

8.5.13

The U.S. Court of Appeals for the Sixth Circuit recently held in *MacDonald v. Thomas M. Cooley Law School* that the Michigan Consumer Protection Act does not apply to the purchase of a legal education to attain employment. The court further held that the school's dissemination of an annual employment report and salary survey containing graduate employment rates and average starting salaries did not constitute common law fraud. *Cooley* is an important ruling for educational institutions dealing with student fraud claims, particularly those brought under state consumer protection statutes.

In *Cooley*, 12 graduates of Thomas M. Cooley Law School sued their alma mater alleging that the school violated the Michigan Consumer Protection Act and committed common law fraud by allegedly disseminating false employment statistics in the annual Thomas M. Cooley Law School Employment Report and Salary Survey. Each employment report and salary survey "purported to show the employment outcomes of Cooley graduates in a given class year by showing: the percentage of graduates employed, the average starting salary of graduates and the percentages of graduates employed in various sectors – private practice, government, public interest, academic, judicial clerkship and business." Cooley generated the statistics for the report from surveys the law school mailed to its graduates. Some graduates returned the surveys, some did not. Plaintiffs alleged that the reports were deceptive because the "percentage of graduates employed" statistic and the "average starting salary of all graduates" statistic did not correspond with the plaintiffs' actual employment prospects upon graduation.

The district court dismissed the Michigan Consumer Protection Act claim and held that the act "d[id] not apply to the purchase of a legal education to attain employment." To fall within the purview of the act, a consumer must purchase a good or service "primarily for personal, family, or household purposes[.]" The act "does not apply to purchases that are primarily for business purposes." The Sixth Circuit affirmed the decision of the district court and held that "because the graduates admitted in their complaint that they bought their legal education for a business purpose, to make a living, ... they failed to state a claim under the act."

The district court also held that plaintiffs failed to state a claim for fraud under Michigan law. Specifically, the court held that one statistic – percentage of graduates employed – was literally true, and that plaintiffs could not reasonably rely on the other statistic – average starting salary for all graduates – when determining whether to attend the school. Plaintiffs argued that the statistics contained in the report were fraudulent because the law school included employment and salary numbers for nonlegal jobs obtained by graduates.

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The Sixth Circuit rejected plaintiffs' argument and affirmed the decision of the district court. The Sixth Circuit reasoned that "[t]he graduates might have thought that 'employed' meant employed in a permanent position for which a law degree was required or preferred – but, again, '[a] plaintiff's subjective misunderstanding of information that is not objectively false or misleading cannot mean that a defendant has committed the tort of fraudulent misrepresentation.' " The Sixth Circuit further reasoned that "the statement 'average starting salary for all graduates' expressly contradicted other statements in the very same report showing that the report itself was based not on data for the entire class but on data from those who completed the surveys." It is unreasonable for a plaintiff to rely "on one of the defendant's statements if another of the defendant's statements contradicts it."

What This Means to You

Coolley has broad implications for many educational institutions facing fraud claims brought under state consumer protection statutes. Like Michigan, many states require a purchase made primarily for personal or household purpose. The "personal or household purpose" element can be challenged at the early stages of a case – potentially defeating the claim prior to incurring the distraction and costs typically associated with protracted litigation. Finding that the purchase of a legal education to attain employment does not satisfy the "personal or household purpose" requirement makes *Coolley* a powerful arrow in the quiver of educational institutions that are sued under consumer protection statutes.

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