NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2012 CA 0095

MICHAEL SULLIVAN, CHARLES BALDWIN, JOHNNY KNIGHTEN, JIMMY PHILLIPS AND RON DICKERSON, INDIVIDUALLY AND AS CLASS REPRESENTATIVES

VERSUS

THE WORLEY COMPANIES, WORLEY CATASTROPHE SERVICES, L.L.C., WORLEY CATASTROPHE RESPONSE, L.L.C., AND CLAIMS LIQUIDATING, L.L.C., FORMERLY KNOWN AS WORLEY CLAIMS SERVICES OF LOUISIANA, INC.

Judgment Rendered: December 21, 2012

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Docket Number 599,055

Honorable R. Michael Caldwell, Judge Presiding

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BEFORE: WHIPPLE, McCLENDON, AND HIGGINBOTHAM, JJ.

McClendon, J. dissents for reasons assigned.

WHIPPLE, J.

In this appeal, defendants challenge the trial court's judgment certifying this matter as a class action. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

On April 20, 2010, the Deepwater Horizon offshore drilling rig exploded, resulting in a massive oil spill in the Gulf of Mexico. Thereafter, Worley Catastrophe Services, L.L.C., and Worley Catastrophe Response, L.L.C., provided claims adjusting services on behalf of ESIS, Inc., BP Exploration & Production, Inc. ("BP"), and the Gulf Coast Claims Facility ("the GCCF") for third-party claims arising from the event. Worley, in turn, contracted with approximately 1,200 adjusters to perform adjusting services on its behalf for those claims. In connection with their performance of these adjusting services for claims from the oil spill, these 1,200 adjusters signed employment agreements with Worley, all in substantially the same form and substance.

On February 8, 2011, plaintiffs, Michael Sullivan, Charles Baldwin, Johnny Knighten, Jimmy Phillips, and Ron Dickerson, claims adjusters hired by Worley to perform adjusting services, filed a petition styled "Class Action Petition," asserting claims on their own behalf and as representatives of other similarly situated individuals and naming as defendants The Worley Companies, Worley Catastrophe Services, L.L.C., Worley Catastrophe Response, L.L.C., (hereinafter referred to collectively as "Worley"), and Claims Liquidating, L.L.C., formerly known as Worley Claims Services of Louisiana, Inc.[1] In the original and amending petitions, plaintiffs averred that pursuant to written employment agreements entered into with Worley,

[1]Plaintiffs later sought and were granted dismissal without prejudice of their claims against Claims Liquidating, L.L.C.

they were entitled to wages in excess of those paid to them by Worley. Specifically, plaintiffs averred that while the employment agreements they signed provided for a wage "equivalent to 65% of the total fee Worley invoiced its client," they had received at most $550.00 per day, plus expenses, an amount less than the agreed-upon 65% of the fee invoiced to, and paid by, Worley's clients, ESIS, the GCCF, and BP. Thus, individually and on behalf of all class members, plaintiffs sought unpaid wages allegedly due under the employment agreements together with statutory penalties and attorney's fees pursuant to LSA-R.S. 23:631 and 23:632.[2]

On June 6, 2011, plaintiffs filed a "Motion to Certify Action as Class Action" pursuant to LSA-C.C.P. art. 592, contending that all of the elements necessary for class certification were present. Although plaintiffs did not set forth in their motion how the class should be defined, in a supplemental memorandum in support of their motion to certify the action as a class action, plaintiffs averred that the proposed class would be easily definable by objective criteria as "[a]ny individual who was employed by Worley on or after April 20, 2010 to perform claims adjusting and/or management services in connection with the Oil Spill pursuant to a signed employment contract and who was paid not more than $550.00 per day for his/her services."

Worley opposed the motion, contending that plaintiffs had not met the burden of proving that class certification was appropriate. Worley also noted that in an identical breach-of-contract claim pending in the United

[2]Louisiana Revised Statute 23:631 provides for the payment of wages due upon the discharge or resignation of an employee, and LSA-R.S. 23:632 imposes liability upon the employer for the payment of penalties and attorney's fees where the employer fails or refuses to comply with the provisions of LSA-R.S. 23:631.

States District Court for the Eastern District of Louisiana, the federal magistrate had denied the plaintiffs' motion to certify the claim as a class action. Thus, Worley contended that the court below "should deny certification of the same class for the same reasons certification was denied by the federal court under the similar Federal Rule of Civil Procedure 23." Worley further asserted that class certification was inappropriate because there was "no evidence of any adjusters, other than the five [p]laintiffs, who have ratified the forum selection clause" in the employment agreements, which it averred was a "prerequisite to participating in this lawsuit." Finally, Worley argued that "the breach of contract claim will require an adjuster-by-adjuster, claim-by-claim, file-by-file, invoice-by-invoice, day-by-day, receipt-by-receipt analysis that precludes class treatment."

A hearing on the motion was conducted on September 9, 2011, and by judgment dated September 21, 2011, the trial court granted the motion to certify the action as a class action. Worley then filed the instant devolutive appeal, contending that the trial court committed legal error in:

(1) finding that the predominance and superiority requirements were met when highly individualized factual questions exist concerning liability, affirmative defenses, damages, claims, and forum-selection and choice-of-law clauses, all of which will require an adjuster-by-adjuster analysis;

(2) certifying a class that requires claims and defenses dependent for their resolution upon proof individual to a member of the class;

(3) certifying a class when only five class members ratified the necessary forum-selection and choice-of-law clauses in the employment agreement at issue;

(4) finding the commonality requirement satisfied when the law is clear that a single common issue is insufficient to warrant class treatment, particularly when individualized issues predominate; and

(5) finding adequate representation when class representatives and members will be seeking a percentage of the same files on which they jointly worked, thereby creating a conflict of interest.

APPLICABLE LAW

A class action is a non-traditional litigation procedure that permits a representative with typical claims to sue or defend on behalf of, and stand in judgment for, a class of similarly situated persons when the question is one of common interest to persons so numerous as to make it impracticable to bring them all before the court. Dupree v. Lafayette Insurance Company, 2009-2602 (La. 11/30/10), 51 So. 3d 673, 679. The purpose and intent of the class action procedure is to adjudicate and obtain res judicata effect on all common issues applicable not only to persons who bring the action, but also to all others who are "similarly situated." Dupree, 51 So. 3d at 679.

The class action is an exception to the rule that litigation be conducted by and on behalf of the individual named parties only. Thus, the determination of whether a class action meets the requirements imposed by law requires a "rigorous analysis." Price v. Martin, 2011-0853 (La. 12/6/11), 79 So. 3d 960, 966. Nonetheless, any errors to be made in deciding class action issues should be in favor of and not against maintenance of the class action because a class certification is always subject to modification or decertification if later developments so require.[3]

[3]To that end, LSA-C.C.P. art. 592(A)(3)(a) provides that the trial court "may alter, amend, or recall its initial ruling on certification and may enlarge, restrict, or otherwise redefine the constituency of the class or the issues to be maintained in the class action." Dupree, 51 So. 3d at 680.

See LSA-C.C.P. art. 592(A)(3)(c). The trial court should, however, evaluate the case closely before certifying the class in light of the consequent burdens of giving notice and additional discovery. Dupree, 51 So. 3d at 680.

The requirements for class certification are set forth in LSA-C.C.P. art. 591. Subsection (A) of article 591 sets forth five threshold prerequisites that must be met, as follows:

> (1) The class is so numerous that joinder of all members is impracticable.
>
> (2) There are questions of law and fact are common to the class.
>
> (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class.
>
> (4) The representative parties will fairly and adequately protect the interests of the class.
>
> (5) The class is or may be defined objectively in terms of ascertainable criteria, such that the court may determine the constituency of the class for purposes of the conclusiveness of any judgment that may be rendered in the case.

These five threshold prerequisites are often referred to as numerosity, commonality, typicality, the adequacy of representation, and an objectively definable class. Dupree, 51 So. 3d at 680.

In addition to these five prerequisites, article 591(B) lists additional criteria, which apply and must be satisfied depending on the type of class action sought by the parties. In the instant case, the additional requirement that must be satisfied is found in LSA-C.C.P. art. 591(B)(3),[4] which provides that the court must find that the questions of law or fact common to the members of the class predominate over any questions affecting only

[4]Herein, the trial court issued its class certification order pursuant to its finding that the requirement set forth in LSA-C.C.P. art. 591(B)(3) was met. Moreover, the class types implicated by article 591(B)(1) and (2) are considered "non-opt out classes," which do not appear to be the type of class requested or intended by plaintiffs or the trial court. See Dupree, 51 So. 3d at 681 n.6.

individual members and that the class action is superior to other available methods for the fair and efficient adjudication of the controversy.

In reviewing a trial court's judgment regarding class certification, the trial court's factual findings are subject to the manifest error standard, while the court's ultimate decision regarding whether to certify the class is reviewed under the abuse of discretion standard. Dupree, 51 So. 3d at 680.

DISCUSSION

On appeal, Worley challenges the trial court's finding that the threshold requirements of numerosity, commonality, and adequacy of representation are met and its conclusion that the requirements of LSA-C.C.P. art. 591(B)(3) and (C) are satisfied. We address each of these challenges below.

Numerosity
(Assignment of Error No. 3)

Generally, a class action is appropriate whenever the interested parties appear to be so numerous that separate suits would unduly burden the courts, and a class action would be more useful and judicially expedient than the other available procedures. LSA-C.C.P. art. 591(A)(1); Display South, Inc. v. Graphics House Sports Promotions, 2007-0925 (La. App. 1st Cir. 6/6/08), 992 So. 2d 510, 518, writ not considered, 2008-1562 (La. 10/10/08), 993 So. 2d 1274.

The record reflects that in the instant case, the parties stipulated that approximately 1,200 adjusters signed employment agreements with Worley in substantially the same form and substance (hereinafter collectively referred to as "the Agreement"), and that the Agreement is the basis for this breach-of-contract and wage-payment action. As noted by the trial court, even if omitting consideration of the "50 or 70" adjusters who had

participated in the federal court action, there were still "over 1100 possible plaintiffs."[5] Thus, we agree that joinder of that number of plaintiffs would be unwieldy, and separate suits in myriad courts could burden the court system. See Display South, Inc., 992 So. 2d at 518, and Mire v. Eatelcorp, Inc., 2002-1705 (La. App. 1st Cir. 5/9/03), 849 So. 2d 608, 615, writ denied, 2003-1590 (La. 10/3/03), 855 So. 2d 317. Accordingly, based on the stipulation alone, it appears that the numerosity requirement is easily met.

Nonetheless, Worley contends in its third assignment of error that because of a forum-selection clause it included in the Agreement signed by the adjusters,[6] the numerosity requirement cannot be met. Specifically, Worley notes that Louisiana law provides that such forum-selection clauses in employment agreements are null unless the employee expressly agrees to and ratifies the clause after the occurrence of the incident that is the subject

[5]In Altier v. Worley Catastrophe Response, LLC, filed in the United States District Court for the Eastern District of Louisiana under docket numbers 11-241 and 11-242, fifty-seven plaintiffs asserted contract actions against Worley similar to those asserted herein. However, the federal district court denied the plaintiffs' motion for class certification, Altier v. Worley Catastrophe Response, LLC, 2011 WL 3205229 (E.D. La. 7/26/11), and the plaintiffs later settled their claims. Altier v. Worley Catastrophe Response, LLC, 2012 WL 161824 (E.D. La. 1/18/12).

[6]The forum-selection clause in the Agreement at issue provides as follows:

> Employee further agrees that venue is proper for all purposes only in the 19th Judicial District Court of the Parish of East Baton Rouge, State of Louisiana, and that the State of Louisiana shall have personal jurisdiction of all disputes or other matters arising out of this agreement.

of the suit. See LSA-R.S. 23:921(A)(2).[7] Worley then avers that because plaintiffs provided no evidence that any of the putative class members (beyond the five named plaintiffs) ratified or wished to ratify the forum-selection clause, plaintiffs failed to establish the numerosity requirement. We disagree.

Just as there is the ever-present potential that some putative class members may elect to "opt out" of a class action, there is also the possibility that some putative class members may choose not to ratify the forum-selection clause at issue. However, we cannot conclude that the possibility of such an "opt out" or failure to ratify negates the stipulated evidence establishing numerosity herein.

Instead, the failure of any potential class members to ratify the forum-selection clause appears to have no effect on numerosity in that the failure or refusal of any putative class member to ratify the forum-selection clause in his or her employment contract would simply mean that the clause in that particular contract was null and void. See LSA-R.S. 23:921(A)(2). Thus, the putative class member would not be obligated by the contractual choice of jurisdiction and venue of the forum set forth in the Agreement. However, as noted by plaintiffs herein, Worley has not pointed to any provision in the Louisiana Code of Civil Procedure requiring that all putative class members

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[7]Louisiana Revised Statute 23:921(A)(2) provides as follows:

> The **provisions of every employment contract or agreement**, or provisions thereof, **by which any foreign or domestic employer** or any other person or entity **includes a choice of forum clause or choice of law clause in an employee's contract of employment** or collective bargaining agreement, or attempts to enforce either a choice of forum clause or choice of law clause in any civil or administrative action involving an employee, **shall be null and void except where** the choice of forum clause or choice of law clause is **expressly, knowingly, and voluntarily agreed to and ratified** by the employee after the occurrence of the incident which is the subject of the civil or administrative action. [Emphasis added.]

agree to the venue selected by the class representatives prior to the filing of or certification of a class action, as a prerequisite to establishing numerosity.[8] Accordingly, we find no merit to the argument that the trial court was manifestly erroneous in finding that the numerosity requirement was established.

Commonality
(Assignment of Error No. 4)

In its fourth assignment of error, Worley contends that the trial court erred in finding that the commonality requirement was satisfied where it found there was only one issue or question in common, i.e., whether the Agreement applied in the hiring of the adjusters forming the putative class.[9] The commonality prerequisite mandates that "[t]here are questions of law or fact common to the class." LSA-C.C.P. art. 591(A)(2). Commonality requires a party seeking certification to demonstrate that the class members' claims depend on a common contention, and that common contention must be one capable of class-wide resolution—one where the determination of its truth or falsity will resolve an issue that is central to the validity of each member's claims in one stroke. Price, 79 So. 3d at 969. To satisfy the

[8]Louisiana Code of Civil Procedure article 593 addresses proper venue for a class action, providing that "[a]n action brought on behalf of a class shall be brought in **a** parish of proper venue as to the defendant." (Emphasis added). In this case, the Agreement purported to select the Nineteenth Judicial District Court in East Baton Rouge Parish as the proper jurisdiction and venue for all disputes arising therefrom, and, indeed, this matter was so filed in that court by the named plaintiffs. While a forum-selection clause in an employment agreement may otherwise be null, the law provides that such a clause may be ratified by the employee, LSA-R.S. 23:921(A)(2), thus rendering the venue set forth therein a proper venue. By their actions in filing this suit in the Nineteenth Judicial District Court, the named plaintiffs clearly ratified the forum selection clause. Accordingly, East Baton Rouge Parish is clearly **a** parish of proper venue for this class action under LSA-C.C.P. art. 593. As such, we question whether ratification of the forum-selection clause by the remaining putative class members is necessary for purposes of establishing that venue is proper.

[9]At the outset, we disagree with Worley's statement that the trial court found only one common issue existed and, thus, improperly certified the class. Indeed, the trial court also found that Worley was asserting a common defense to these claims in its contention that the employment relationship of the parties was governed by oral agreements rather than the common written Agreement upon which plaintiffs rely.

commonality requirement, there must exist, as to the totality of the issues, a common nucleus of operative facts. A common question is one that, when answered as to one class member, is answered as to all of them. Dupree, 51 So. 3d at 682-683.

As set forth in the Class Action Petition, plaintiffs base their claims for additional compensation on the Agreement, which the parties have stipulated was signed by each of the approximately 1,200 putative class members "in connection with their deployment to perform adjusting services for claims arising from the oil spill following the explosion of the Deepwater Horizon offshore oil rig in the Gulf of Mexico."

In the proceedings below (and on appeal) Worley contends, in defense to plaintiffs' assertions, that the Agreement does not apply to the parties' employment relationship for claims adjusting services related to the oil spill, but, rather, only applies to "insurance-type adjusting"[10] relying on the testimony of Allen Carpenter, Worley's designated corporate representative, at the class certification hearing. According to Carpenter, the putative class members were working under a "verbal" (or more precisely, an oral) contract. The 1,200 adjusters had agreed to an oral agreement "prior to arriving" at a Worley facility where they signed the written Agreement at issue; and the only purpose for having the adjusters sign the Agreement was to have these adjusters in Worley's database for any future "insurance event" that may occur. Thus, Carpenter candidly acknowledged that Worley would take the same position on this issue i.e., that the Agreement did not apply to

[10]Carpenter contended that there is a difference between environmental and insurance-type claims in the context of Worley's business, in that insurance-type claims arise out of a natural disaster in which an insurance client retains Worley's services to adjust claims for its individual insured's damages, whereas environmental claims adjusting involves a non-insurance entity retaining Worley's services to adjust third-party claims not related specifically to an insurance policy.

the work performed by the putative class members in connection with the oil spill, if called upon to defend individual lawsuits, regardless of whether there were 500, 600, or 1,200 separate, individual lawsuits.

On review, we find the record before us clearly discloses a "common nucleus of operative facts" regarding the circumstances surrounding the employment of the putative class members herein as well as common contentions capable of class-wide resolution. Specifically, the common contention of the plaintiffs is that the written Agreement governed the employment relationship at issue and, further, that the reasonable interpretation of the compensation portions of the Agreement entitles them to compensation in the amount of 65% of the fee Worley billed its clients for their services. Worley's common contentions, on the other hand, are that the Agreement does not apply herein and that oral agreements with each putative class member govern instead. Thus, the record supports a finding of common questions capable of class-wide resolution as to whether the parties intended the written Agreement to govern their employment relationship for claims adjusting services relating to the oil spill or whether an oral contract governed the parties' relationship instead and the proper interpretation of the compensation portion of the Agreement, if it is found to apply to the employment relationship at issue. Accordingly, we find no manifest error in the trial court's determination that plaintiffs satisfied the commonality prerequisite.

This assignment of error also lacks merit.

Adequacy of Representation
(Assignment of Error No. 5)

The final threshold prerequisite of LSA-C.C.P. art. 591(A) challenged by Worley is the requirement in subsection (A)(4) that the representative parties will fairly and adequately protect the interests of the class. In its fifth assignment of error, Worley contends that the trial court erred in finding adequate representation by the class members because "the class members necessarily have antagonistic or conflicting claims with other members of the class." The parties seeking to maintain a class action must demonstrate that the representative parties will fairly and adequately protect the interests of the class, which requires a determination that the chosen class members do not have antagonistic or conflicting claims with other members of the class. Mire, 849 So. 2d at 615.

Worley contends on appeal that because plaintiffs allege that under the Agreement, they are entitled to "65% of every BP claim or file they worked on" and each of the named plaintiffs worked on the same files as other adjusters (who are potential class members), "they will necessarily be trying to recover the same 65% as those they claim to represent." However, these assertions clearly misstate the relief requested by plaintiffs herein and are premised on acceptance of Worley's assertions as to the proper interpretation of the compensation provisions of the Agreement. Plaintiffs contend that the compensation provisions of the Agreement entitle them to 65% of the rate that Worley charged its clients on a daily basis for each adjuster's work, i.e., 65% of the "day rate" Worley charged and was paid, not 65% of any particular file. As such, under plaintiffs' theory of recovery, because Worley charged its clients a day rate for the work

performed by each of the 1,200 adjusters, there would be no antagonistic or conflicting claims among the class members.

Notably, in considering this issue, the court, from the evidence presented, rejected Worley's argument that there would be a conflict between the class representatives and the remaining class members. Moreover, the court specifically and astutely noted that if it were later determined that Worley's suggested interpretation of the compensation portions of the Agreement should prevail and, thus, that compensation was to be determined on a file-by-file basis, rather than a percentage of the day rate Worley charged for each adjuster's services, then there may be a necessity at that time to decertify the class. This is a remedy specifically sanctioned by the Code of Civil Procedure. LSA-C.C.P. art. 592(A)(3)(c).

Errors to be made in deciding class action issues should be in favor of and not against the maintenance of the class action. Orrill v. Louisiana Citizens Fair Plan, 2011-1541 (La. App. 4th Cir. 6/13/12), 96 So. 3d 647, 648. Moreover, LSA-C.C.P. art. 592(A)(3)(c) provides that when a class is certified, the trial court may "at any time thereafter before a decision on the merits of the common issues ... alter, amend, or recall its initial ruling on certification." Thus, a class certification may be modified or the class decertified if subsequent developments during the course of the litigation so warrant. Orrill, 96 So. 3d at 648-649.

Considering these precepts and the record before us, we likewise find no merit to this assignment of error.

Predominance and Class Superiority
(Assignments of Error Nos. 1 and 2)

In assignment of error number one, Worley challenges the trial court's determination that the requirements of predominance and class superiority set forth in LSA-C.C.P. art. 591(B)(3) were met where the claims and defenses presented depend for their resolution on proof individual to each class member. Thus, in assignment of error number two, Worley contends that class certification was inappropriate pursuant to LSA-C.C.P. art. 591(C).[11] Louisiana Code of Civil Procedure article 591(B)(3) class actions build on the "commonality" requirement established in article 591(A) and require a court to further find that the class commonalities predominate over any questions affecting only individual members of the class and that the class action is superior to other available methods for the fair and efficient adjudication of the controversy, such as joinder or individual actions. Robichaux v. State, Department of Health and Hospitals, 2006-0437 (La. App. 1st Cir. 12/28/06), 952 So. 2d 27, 37, writs denied, 2007-0567, 2007-0580, 2007-0583 (La. 6/22/07), 959 So. 2d 503-504. The six illustrative factors which courts consider in determining whether to grant article 591(B)(3) certification, are as follows:

> (a) The interest of the members of the class in individually controlling the prosecution or defense of separate actions;
>
> (b) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

[11]With regard to Worley's reliance on LSA-C.C.P. art. 591(C) in its second assignment of error, this section of the article provides that "[c]ertification shall not be for the purpose of adjudicating claims or defenses dependent for their resolution on proof individual to a member of the class," but that "following certification, the court shall retain jurisdiction over claims or defenses dependent for their resolution on proof individual to a member of the class." In interpreting this article, this court has noted that it does not say that a class cannot be certified if, following certification of the class, individual claimants will have to prove their entitlement to compensation. Rather, it is the certification process itself that is not to include an adjudication of individual claims. Display South, Inc., 992 So. 2d at 521.

> (c) The desirability or undesirability of concentrating the litigation in the particular forum;
>
> (d) The difficulties likely to be encountered in the management of a class action;
>
> (e) The practical ability of individual class members to pursue their claims without class certification;
>
> (f) The extent to which the relief plausibly demanded on behalf of or against the class, including the vindication of such public policies or legal rights as may be implicated, justifies the costs and burdens of class litigation[.]

LSA-C.C.P. art. 591(B)(3)(a)-(f); Robichaux, 952 So. 2d at 37-38.

Worley contends on appeal that plaintiffs cannot establish that common issues of fact or law predominate over individual issues and that, because of these individualized issues, the superiority requirement was likewise not satisfied, thus rendering class certification inappropriate. In particular, Worley contends that individualized issues of liability will require inquiries to establish each element of the plaintiffs' causes of action as well as individualized considerations of affirmative defenses asserted by Worley, that the calculation of damages will require "an adjuster-by-adjuster, claim-by-claim, invoice-by-invoice, day-by-day, receipt-by-receipt analysis," and that choice-of-forum and choice-of- law issues will require individual determinations for each class member.[12]

However, as set forth above, the basis for plaintiffs' claim of liability is the same as to each proposed class member, namely that the Agreement

[12]With regard to the choice-of-forum and choice-of-law arguments asserted by Worley, we partially addressed this issue in our analysis of assignment of error number three. Moreover, with regard to these clauses, we note that the court ordered the parties to prepare a notice to be sent to the putative class members. At oral argument of this matter, counsel indicated that the parties were drafting language in the class notification to be sent to the putative class members that would provide a mechanism by which the putative class members could ratify these clauses in the Agreement. Clearly, inclusion of such an option in the class notification would eliminate any later "individualized" consideration of whether the class members ratified the clauses.

each signed obligated Worley to provide compensation to each adjuster at a rate of 65% of the day rate Worley charged its clients for the work of each individual adjuster. As noted above, Worley's corporate representative specifically testified that Worley's defense to each claim would be the same. Worley has set forth common defenses to all these claims, i.e., that the clear wording of the Agreement demonstrates that it does not apply to the employment relationships at issue. Moreover, in concluding that the class commonalities predominated, the court below noted that while there would be some individual questions, the "crux" of the matter involved the common issues set forth above. Accordingly, we find no manifest error in the trial court's conclusion that common questions of law or fact predominate over those affecting only individual members.[13]

Finally, with regard to the policy concerns underlying the factors listed in LSA-C.C.P. art. 591(B)(3), given the large number of putative plaintiffs and the relatively small nature of each individual claim asserted, the class action mechanism would afford each plaintiff a meaningful opportunity to pursue a remedy while simultaneously preventing a multitude of individual lawsuits. Moreover, Worley will be able to defend all such

[13]Further, with regard to the issue of calculation of damages, we note that Worley's assertion that class certification is improper because resolution of the claims involves regarding highly individualized determinations as to damages based on "an adjuster-by-adjuster, claim-by-claim, invoice-by-invoice, day-by-day, receipt-by-receipt analysis" is dependent upon its interpretation of the Agreement being accepted as the prevailing interpretation. On the other hand, the interpretation of the compensation provisions of the Agreement asserted by plaintiffs would involve a much simpler determination of the issue of damages. Additionally, the fact that individual class members may be entitled to varying damage awards is not fatal to class certification, especially where common liability issues predominate over individual damage issues. McCastle v. Rollins Environmental Services of Louisiana, Inc., 456 So. 2d 612, 620 (La. 1984); Lewis v. Texaco Exploration and Production Co., Inc., 96-1458 (La. App. 1st Cir. 7/30/97), 698 So. 2d 1001, 1013.

claims in one forum. See Display South, Inc., 992 So. 2d at 521, and Mire, 849 So. 2d at 614-615. Thus, we find no manifest error in the trial court's determination that the class action mechanism is superior to other available methods of adjudication. Likewise, considering the foregoing and the record as a whole, we cannot conclude that the trial court abused its discretion in certifying this matter as a class action.

CONCLUSION

For the above and foregoing reasons, the September 21, 2011 judgment certifying the action as a class action is hereby affirmed. Costs of this appeal are assessed against Worley Catastrophe Services, L.L.C., and Worley Catastrophe Response, L.L.C.

AFFIRMED.

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McCLENDON, J., dissents and assigns reasons.

I do not find that class commonalities predominate over questions affecting only individual members of the class such that the class action is superior to other available methods for fair and efficient adjudication of the controversy. The plaintiffs' breach of contract allegations, if proven, will require individualized determinations of the damages each plaintiff sustained. Regardless of whether plaintiffs are seeking 65 percent of the total amount paid by BP to Worley or the total amount billed by Worley to BP, specific individual determinations will have to be made regarding the particular file each adjuster worked, the amount that Worley billed BP or the amount BP paid per adjuster per file, the amounts Worley had paid to each individual adjuster, and a calculation of the difference between what each plaintiff was paid per day and 65% of the amount Worley received or invoiced for the particular files on which the adjuster worked. Accordingly, given these highly individualized determinations, I conclude that the class was improperly certified.[1] Therefore, I respectfully dissent.

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[1] Accord **Altier v. Worley Catastrophe Response, LLC**, 2011 WL 3205229, p. 13 (E.D. La. 7/26/11), ("Most importantly, plaintiffs' breach of contract allegations "will require highly individualized determinations" of the damages each plaintiff sustained.")