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Bayada Ordered to Provide Contacts for Potential Pa. Wage-and-Hour Class Claimants

The appeals court quashed Bayada's appeal from a Philadelphia trial judge's Sept. 26, 2018, order, which gave the company 20 days to hand over to the plaintiffs contact information for all current and former employees who could potentially be class members in Pennsylvania.

By Zack Needles | June 13, 2019



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In what appears to be a case of first impression, the Pennsylvania Superior Court rejected Bayada Home Health Care's bid to withhold contact information for all potential Pennsylvania class members in a wage-and-hour lawsuit—and suggested possible sanctions against the health care company for improperly delaying the litigation.

The appeals court in *Reed v. Bayada Home Health Care* quashed Bayada's appeal from a Philadelphia trial judge's Sept. 26, 2018, order, which gave the company 20 days to hand over to the plaintiffs contact information for all current and former employees who could potentially be class members in Pennsylvania. The lead plaintiffs allege violation of Pennsylvania wage-and-hour statutes on behalf of themselves and similarly situated nurses.

Senior Judge James Gardner Colins, writing for a unanimous three-judge panel (<http://www.pacourts.us/assets/opinions/Superior/out/j-a15040-19m%20-%2010402020365996345.pdf#search=%22bayada%22>) in an unpublished June 7 memorandum, said Bayada failed the three-prong test for appealing from a collateral order.

"To summarize, appellant failed to assert a constitutional or statutory privacy interest or a specific privilege," Colins said. "Its generalized concerns about privacy and privilege are inadequate to satisfy the requirement of Pa.R.A.P. 313(b) that 'the right involved is too important to be denied review[.]' Consequently, appellant has failed to satisfy the second prong of the test for the appealability of collateral orders as it relates to the September 26 order. Since one prong fails, the entire test fails, and collateral appellate review cannot be allowed."

Colins was joined by Judges Susan Peikes Gantman and John Bender.

Bayada initially responded to the plaintiffs' discovery request by agreeing to produce the wage-and-hour data from one of its 116 Pennsylvania offices, according to Colins' opinion. The plaintiffs countered by offering to limit their discovery request to wage-and-hour data from 10 to 20 of Bayada's Pennsylvania offices, but Bayada rejected that offer.

After the plaintiffs filed two motions to compel discovery, they wrote a letter to the trial court saying they would limit their requests to the names, addresses, emails and phone numbers for the potential Pennsylvania class members. On Sept. 26, 2018, the court ordered Bayada to produce that information within 20 days. Bayada was not, however,

ordered to produce personnel files or wage-and-hour data. Bayada appealed, arguing to the Superior Court that “the information sought by [plaintiffs] is private information that is both confidential and proprietary in nature, and implicates informational privacy rights and privacy concerns.”

But Colins noted that while Bayada made several references to “privileged material” and “privileged and confidential information,” it never asserted a specific privilege.

“We find no case law directly on point, involving a challenge to a discovery order for the personal information of third parties, and appellant provides us with none,” Colins said. “Nonetheless, the Supreme Court of Pennsylvania has held, that ‘the mere assertion of a privacy interest related to discovery’ does not ‘implicate as-of-right interlocutory appellate review.’”

Colins said the Supreme Court has recognized the need to allow interlocutory appeals where the discovery request at issue involves constitutional or statutory privacy interests, but noted that Bayada did not argue that either of those applied.

Colins also said Bayada misconstrued the Pennsylvania Supreme Court’s ruling in *Pennsylvania State Education Association v. Commonwealth, Department of Community and Economic Development* as standing for the proposition that “ordering the disclosure of names, addresses, phone numbers and email addresses of non-parties violates their right to informational privacy.”

“The current appeal concerns employees of a private corporation, not individuals employed by the commonwealth or other public entity,” Colins said. “Furthermore, the stipulated confidentiality agreement in the current case precludes the contact information of class members from being shared with the general public or accessed by a member of the public at any time, unlike the statutorily-sanctioned disclosure at issue in PSEA. In conclusion, PSEA does not permit appellant’s assertions of a privacy interest to satisfy the ‘importance’ prong of the collateral appeal doctrine.”

The Superior Court panel remanded the case to the trial court to execute the order

requiring Bayada to hand over the requested information to the plaintiffs and, in the closing line of its opinion, said that “[the] court shall order any additional relief or clarification that it deems fit.” In a footnote to that last sentence, Colins said, “We suggest that appellant only filed this appeal from an unappealable order for purposes of delay; ergo, the trial court may fashion any remedy or sanction that it deems necessary, including ordering appellant to pay appellees’ costs and counsel fees for this appeal pursuant to 42 Pa.C.S. Section 2503(7).”

Counsel for Bayada, Thomas Collins of Buchanan Ingersoll & Rooney in Harrisburg, could not be reached for comment.

Counsel for the plaintiffs, Michael Shaffer of Shaffer & Gaier in Philadelphia, said the parties have been arguing over discovery for a long time.

“We’re looking forward to getting this case moving forward on the merits,” Shaffer said.

“We’re very confident in our position and we want to get the case moving forward.”

(Copies of the 15-page opinion in Reed v. Bayada Home Health Care, PICS No. 19-0710, are available at <http://at.law.com/PICS> (<http://at.law.com/PICS>).

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