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NO. 95416-0

SUPREME COURT OF THE STATE OF WASHINGTON

CHAN HEALTHCARE GROUP, INC.,

Petitioner,

v.

LIBERTY MUTUAL FIRE INSURANCE COMPANY and
LIBERTY MUTUAL INSURANCE COMPANY,

Respondents.

AMICUS BRIEF OF THE ATTORNEY GENERAL OF WASHINGTON

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

This Court is asked to determine the proper scope of review where a class member collaterally challenges a class action settlement approved by a court in another state. The Court requested the Attorney General's view on that issue in a letter dated September 19, 2018.

The Attorney General expresses no view on the specific dispute in this case. However, a review of cases addressing the scope of collateral review of due process challenges to class action settlements shows varying approaches and suggests that courts adapt the collateral review to the circumstances of the case. The Court has substantial latitude in assessing the competing interests and determining the proper scope of review in this case.

II. STATEMENT OF THE CASE

The Petitioner collaterally challenged the adequacy of representation in a multistate class action settlement approved in an Illinois trial court in 2015, and affirmed in the Illinois Appellate Court. The Petitioner argues that the settlement violates due process and should not preclude claims filed in King County Superior Court. *Chan Healthcare Group, PS, v. Liberty Mut. Fire Ins. Co.*, 1 Wn. App. 2d 529, 531, 534, 406 P.3d 700 (2017), *review granted*, 190 Wn.2d 1017 (2018). The superior court found that the named plaintiff in the Illinois class action did not adequately represent the interests of Washington class members and

allowed the Washington action to proceed. *Chan Healthcare*, 1 Wn. App. 2d at 533.

Division One of the Court of Appeals reversed, holding that the question of adequate representation of Washington class members was raised, litigated, and decided in both the Illinois trial and appellate courts, so that the class action settlement approved by the Illinois courts was entitled to full faith and credit in Washington. *Id.* at 541-42. In this Court, a central issue is whether the Court of Appeals applied the correct standard in reviewing the collateral challenge to the Illinois settlement.

III. ARGUMENT

A. A Class Action Judgment or Settlement in a State Court Is Entitled to Full Faith and Credit in Another State Only Where the Originating Court Complied with the Due Process Clause of the United States Constitution

The Full Faith and Credit Clause of the United States Constitution, art. IV, § 1, requires state courts to give full faith and credit to judgments of courts of other states. *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 232-33, 118 S. Ct. 657, 139 L. Ed. 2d 580 (1998). However, a state court judgment—including a class action settlement—is entitled to full faith and credit only where the court complied with the Due Process Clause. *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 482, 102 S. Ct. 1883, 72 L. Ed. 2d 262 (1982). "Redetermination of issues is warranted [in subsequent

litigation] if there is reason to doubt the quality, extensiveness, or fairness of procedures followed in prior litigation." *Kremer*, 456 U.S. at 481.

In *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 105 S. Ct. 2965, 86 L. Ed. 2d 628 (1985), the Court identified three basic due process elements that must be satisfied for a class member to be bound by a class action judgment: (1) the class member "must receive notice plus an opportunity to be heard and participate in the litigation, whether in person or through counsel"; (2) the class member must receive "an opportunity to remove himself from the class"; and (3) the named plaintiff must "at all times adequately represent the interests of the absent class members." *Id.* at 811-12.[1] This case involves a challenge to adequate representation.

In *Hansberry v. Lee*, 311 U.S. 32, 61 S. Ct. 115, 85 L. Ed. 22 (1940), the Court established both that a court obtains personal jurisdiction over absent class members only if the class representative adequately represents them, *id.* at 40-41, and that adequate representation is necessary to satisfy the requirements of due process and full faith and credit, *id.* at 43. *Hansberry* thus established the "adequate representation" rule as a due process requirement that must be satisfied to bind class members to a

[1] The Supreme Court explicitly limited its holding to class actions seeking money judgments, and expressed "no view concerning other types of class actions, such as those seeking equitable relief." *Shutts*, 472 U.S. at 811 n.3. The Illinois court decisions at issue here (attached to Respondents' Supplemental Brief) indicate that plaintiffs in that case sought and received both money payments and injunctive relief.

class action judgment. *Hansberry*, 311 U.S. at 42-43. *See Shutts*, 472 U.S. at 808, 812.[2]

The inquiry regarding adequate representation is intended to "uncover conflicts of interest between named parties and the class they seek to represent." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625, 117 S. Ct. 2231, 138 L. Ed. 2d 689 (1997). A class representative "must be part of the class and possess the same interest and suffer the same injury as the class members." *Id.* at 625-26 (internal quotation marks omitted). Adequacy analysis also may include an assessment of "competency and conflicts of class counsel." *Id.* at 626 n.20.

After *Shutts*, *Kremer*, and *Hansberry*, it appears clear that a judgment or settlement entered or approved in a class action without compliance with the required due process elements is constitutionally infirm, and therefore not entitled to full faith and credit by the courts of another state. Unfortunately, none of these cases explained how and to what extent an alleged failure to meet the required due process elements can be challenged in a collateral review in the courts of another state.

[2] Fed. R. Civ. Proc. 23(a)(4) and analogous state rules (including Washington Superior Court Rule 23(a)(4)) require the trial court in a class action to assess the adequacy of representation when certifying a class. As seen in the cases cited below, courts typically consider representational adequacy both at the time of certification and at the time of settlement or judgment when assessing compliance with the due process requirement.

B. Courts Are Divided as to the Scope of Review to Be Applied in Collateral Challenges to Class Action Judgments and Settlements in Courts of Other States

Cases after *Shutts* have disagreed as to the permissible scope of collateral challenges where a judicially approved class action settlement from one state is collaterally attacked in the courts of another state. Many courts apply a narrow, procedure-focused review. These courts tend to be concerned with the efficient use of judicial resources, finality of judgments, and the full faith and credit to be afforded courts in other jurisdictions.[3] In a collateral review a court in another jurisdiction is being asked to *reevaluate* findings and conclusion made by the first court, which undercuts finality and respect for another sovereign state.

Other courts apply a broader, substantive collateral review. These courts typically express concern about the due process right to have one's day in court.[4] Broad review also can be a response to legitimate concerns

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[3] *See, e.g.*, *Hosp. Mgmt. Assocs., Inc. v. Shell Oil Co.*, 356 S.C. 644, 659, 591 S.E.2d 611 ("It would seem to be a waste of judicial resources to require reviewing courts to conduct an extensive substantive review when one has already been undertaken in a sister state."), *cert. denied*, 543 U.S. 916 (2004); *Moody v. Sears Roebuck & Co.*, 191 N.C. App. 256, 273, 664 S.E.2d 569 (2008) (same, noting "important judicial interests in the efficiency and finality of class-action litigation" and in preventing waste of judicial resources); William B. Rubenstein, *Finality in Class Action Litigation: Lessons from Habeas*, 82 N.Y.U. L. Rev. 790, 797 (June 2007) (observing that preclusion—i.e., finality—is desirable in class actions "so as to foreclose litigation because the size of the class presents unique opportunities for numerous relitigations, upsetting the possibility of global peace, which, after all, is precisely the point of the class action").

[4] *See Richards v. Jefferson County, Ala*., 517 U.S. 793, 798, 116 S. Ct. 1761, 135 L. Ed. 2d 76 (1996) (referring to "the general consensus in Anglo-American jurisprudence that one is not bound by a judgment *in personam* in a litigation in which he is not designated

about forum shopping for settlement-friendly courts that enable early settlement to improve the odds of both recovery and attorney fees.[5]

The two primary approaches to collateral review are illustrated by comparing the majority and dissenting opinions in *Epstein v. MCA, Inc.*, 179 F.3d 641 (9th Cir.), *cert. denied*, 528 U.S. 1004 (1999). The majority applied a narrow, procedure-focused collateral review. The dissenting judge would apply a broader collateral review that reevaluates the substance of the originating court's due process determinations.

The decision in *Epstein* was issued after a remand from the Supreme Court in *Matsushita Electric Industrial Co. v. Epstein*, 516 U.S. 367, 116 S. Ct. 873, 134 L. Ed. 2d 6 (1996). The case involved parallel class actions filed after Matsushita Electric made a tender offer and then acquired MCA. A class action was filed in a Delaware state court alleging the MCA directors breached their financial duty to shareholders by failing to obtain

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as a party or to which he has not been made a party by service of process" as "part of our deep-rooted historic tradition that everyone should have his own day in court") (internal quotation marks omitted); Stephanie J. Bowser, *Collateral Attacks Upon Class Action Judgments: Ending the Scope of Review Debate by Addressing the Underlying Notice Problems*, 13 Roger Williams U. L. Rev. 631, 652 (Summer 2008) (suggesting that the interests in finality, efficiency, and full faith and credit are in tension with due process protection for absent class members).

[5] *See, e.g.*, *Eubank v. Pella Corp.*, 753 F.3d 718, 720 (7th Cir. 2014) (summarizing, first, the incentive to settle class actions resulting from defendants' desire to limit the potential liability produced by claim aggregation, together with class counsel's opportunity, absent effective client control, to maximize attorney fees; and, second, the judge's disadvantage in evaluating fairness to the class without an adversary proceeding, i.e., where the judge is being urged by both adversaries to approve the class-action settlement they've negotiated).

the best acquisition price. A second class action was filed in federal court in California alleging a violation of federal securities regulations. A settlement was reached in the Delaware class action that included a global release of all claims arising out of Matsushita Electric's acquisition of MCA, including the federal claims. The Supreme Court held that the state court settlement was entitled to full faith and credit in federal court because, under the Full Faith and Credit Act, 28 U.S.C. § 1738, the federal court had to apply Delaware law, which permitted the global release.[6]

On remand to the Ninth Circuit, the appellant shareholders argued that the Delaware settlement should not be accorded full faith and credit because, *inter alia*, it violated their due process right to adequate represent-tation. *Epstein*, 179 F.3d at 644. The *Epstein* majority held that the issue of adequacy of representation was not left open on remand because the Supreme Court's holding in *Matsushita Electric* was "necessarily premised upon the constitutional validity of the Delaware judgment." *Id.* at 645-47.

Nevertheless, the *Epstein* majority went on to address and reject the shareholders' argument that *Shutts* and *Kremer* supported broad collateral review in a due process challenge to a class action settlement. The majority

[6] By its terms, the Full Faith and Credit Clause in the Constitution requires *states* to give full faith and credit to judicial proceedings of other *states*. The Full Faith and Credit Act directs federal courts to treat a state court judgment with the same respect that it would receive in that state's courts. *Matsushita Elec.*, 516 U.S. at 373.

held that "the absent class members' due process right to adequate representation is protected not by collateral review, but by the certifying court initially, and thereafter by appeal within the state system and by direct review in the United States Supreme Court." *Epstein*, 179 F.3d at 648. Relying on a statement in *Kremer* that a judgment is not entitled to full faith and credit "if there is reason to doubt the quality, extensiveness, or fairness of *procedures* followed in prior litigation," *id.* (quoting *Kremer*, 456 U.S. at 481 (emphasis added in *Epstein*)), the *Epstein* majority focused solely on "whether the procedures in the prior litigation afforded the party against whom the earlier judgment is asserted a 'full and fair opportunity' to litigate the claim or issue." *Id.* at 649.

Judge Thomas dissented. He argued that *Matsushita Electric* did not decide the issue of adequate representation[7] and that "[t]here is nothing in the opinion that relieves us of our responsibility to examine the merits of the due process argument fully and fairly." *Epstein*, 179 F.3d at 652. He pointed to the more recent decision in *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625-28, 117 S. Ct. 2231, 138 L. Ed. 2d 689 (1997), in which the Court concluded representation was inadequate after conducting an

[7] Judge Thomas cited a footnote in which the Court specifically declined to further address the shareholders' claim of inadequate representation as "outside the scope of the question presented in this Court." *Epstein*, 179 F.3d at 652 (quoting *Matsushita Elec.*, 516 U.S. at 379 n.5).

extended analysis of the district court's class certification, including a substantive review of the district court's approval of representational adequacy. Following *Amchem Products*' lead, Judge Thomas substantively examined the record in the Delaware court and concluded that adequacy of representation was not litigated during the settlement proceedings and that the claims raised in the collateral attack were never addressed in the Delaware court. *Epstein*, 179 F.3d at 652-55.

Four years after *Epstein*, the Second Circuit decided *Stephenson v. Dow Chemical Co.*, 273 F.3d 249 (2d Cir. 2001), *aff'd in part, vacated in part*, 539 U.S. 111, 123 S. Ct. 2161, 156 L. Ed. 2d 106 (2003), which disagreed with the reasoning of the *Epstein* majority. In *Stephenson*, two Vietnam War veterans brought suit for injuries based on exposure to Agent Orange during the war. Approximately 15 years earlier, however, a class action involving identical claims had been settled.[8] The plaintiffs argued that because their injuries arose after the depletion of the settlement fund in the earlier class action, they were not adequately represented in that action, and, therefore, could not be bound by the judgment.

[8] The prior class action was litigated in federal court, so the issue in *Stephenson* was claim preclusion, rather than full faith and credit. In a due process challenge, the analysis is identical. *See Hansberry*, 311 U.S. at 42-43.

The Second Circuit declined to apply the limited collateral review from *Epstein*, because no court had yet considered the adequacy of representation as to these plaintiffs. *Stephenson*, 273 F.3d at 258 n.6. Instead, it held that a broader review is appropriate where the interests of the collateral challengers are not the same as those of the represented class, *id.* at 258 (citing *Hansberry*, 311 U.S. at 41), in part because the court adjudicating a class action "may not be able to predetermine the res judicata effect of its own judgment," *id.* (internal quotation marks omitted) (quoting *Shutts*, 472 U.S. at 805). The court found that the settlement made no provision for recovery for persons whose Agent Orange-related injuries became apparent after 1994, so that these plaintiffs were not adequately represented in the class action and their claim was not barred. *Id.* at 260-61.[9]

C. Courts Following *Epstein* or *Stephenson* Typically Apply a Scope of Review That Depends on the Circumstances of the Case

Although the scope of collateral review is often characterized as a "hotly contested" or "hotly litigated" question,[10] the divide between *Epstein*

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[9] The court clarified that the plaintiffs were not attacking the merits or finality of the settlement itself, but instead were arguing that it should not bar their claims. *Stephenson*, 273 F.3d at 259.

The Supreme Court granted certiorari, but ultimately issued a per curium opinion by an equally divided Court that did not resolve the disagreement represented by *Epstein* and *Stephenson*. 539 U.S. 111 (2003).

[10] *See, e.g.*, *Lamarque v. Fairbanks Capital Corp.*, 927 A.2d 753, 764 (R.I. 2007) ("hotly contested"); *Hosp. Mgmt. Assocs., Inc. v. Shell Oil Co.*, 356 S.C. 644, 658, 591 S.E.2d 611 ("hotly litigated"), *cert. denied*, 543 U.S. 916 (2004).

and *Stephenson* and their respective progeny may not be as wide as sometimes portrayed, as noted by the Pennsylvania Supreme Court:

> The apparent divide between the approaches by Judge O'Scannlain [in *Epstein*] and the *Stephenson* panel is likely a product of the differing tasks and factual circumstances facing the two courts. In *Epstein*, the dominant issue was the adequacy of class representation, while *Stephenson* pertained to the propriety of a class member's inclusion in the class which was subject to a prior settlement. In *Epstein*, the settlement court had already reviewed specific challenges to class counsel's representation, but in *Stephenson* the certifying and direct appeal courts had not previously addressed the interests of class members who became injured following the exhaustion of the 1984 settlement funds. Thus, the two approaches may not necessarily represent a schism in the law, so much as the reality that courts reviewing a collateral attack on a class settlement, and asked to balance judicial efficiency, finality of a judgment, and an individual's due process rights, may reasonably make different determinations in different circumstances.

Wilkes ex rel. Mason v. Phoenix Home Life Mut. Ins. Co., 587 Pa. 590, 617, 902 A.2d 366, *cert. denied*, 549 U.S. 1054 (2006).

The reality of collateral review shows flexibility. Where the originating court carefully followed the civil rules when certifying a class and approving a settlement, making all necessary and appropriate findings supported by evidence in the record, a narrow collateral review may be sufficient to confirm that the originating court provided the required due process. This appears to have been the situation in *Epstein*, as viewed by the majority. *See Epstein*, 179 F.3d at 645 (describing the state court's

findings and conclusions). It also appears to describe the situation in cases that have aligned with *Epstein*.

For example, in *Fine v. America Online, Inc.*, 139 Ohio App. 3d 133, 743 N.E.2d 416 (2000), *appeal dismissed*, 90 Ohio St. 3d 1427 (2000), *cert. denied*, 532 U.S. 942 (2001), the appellate court held that the settlement in an Illinois class action was entitled to full faith and credit and precluded an Ohio action. Addressing the due process challenge to the Illinois settlement and citing *Epstein*, the Ohio court rejected the challenger's invitation to directly review the adequacy of representation in the Illinois court. Instead, it conducted only a procedural review, limited to "(1) whether safeguards to guarantee sufficient notice and adequate representation were in place during the prior litigation and (2) whether such safeguards were applied." *Id.* at 142. The Ohio court reviewed the record, found that the Illinois court referenced and considered the factors necessary to certify a class action under the controlling Illinois statute, and concluded no further inquiry was required. *Id.* at 144. Citing *Epstein*, the Ohio court held that absent class members' rights to due process are protected, not by substantive collateral review in another state, but by the application of appropriate procedures in the certifying court and on direct appeal. *Id.* at 140.

Similarly, in *Hospitality Management Associates, Inc. v. Shell Oil Co.*, 356 S.C. 644, 591 S.E.2d 611, *cert. denied*, 543 U.S. 916 (2004), the

South Carolina Supreme Court concluded that Tennessee and Alabama class action settlements were entitled to full faith and credit and were not susceptible to collateral attack on due process grounds for inadequate representation of absent class members. Relying heavily on *Epstein*, the court limited collateral review to whether the certifying court had adopted and utilized appropriate procedures, and held that the merits of the certifying court's determinations are subject to direct review by appellate courts of the state in which the class action was litigated. The South Carolina court applied the same analysis as in *Fine*, asking "(1) whether there were safeguards in place to guarantee sufficient notice and adequate representation; and (2) whether such safeguards were, in fact, applied." *Hosp. Mgmt. Assocs.*, 356 S.C. at 660. The court reviewed the procedures that actually were used by the other state courts and found that both courts had addressed representational adequacy on the record and that many of the allegations and objections raised in the collateral review had been raised and considered in the Alabama and Tennessee courts. *Id.* at 665-66. The South Carolina court found the prior procedures to be constitutionally sufficient. *Id.*

In *Moody v. Sears Roebuck & Co.*, 191 N.C. App. 256, 664 S.E.2d 569 (2008), the court concluded an Illinois class action settlement was entitled to full faith and credit in North Carolina. The court started with the

presumption that judgments rendered in class action litigation are, like other judgments, presumptively entitled to full faith and credit. North Carolina courts apply a limited review, assessing whether foreign judgments met due process requirements by referencing the foreign court's findings whether the due process issues were already litigated, rather than by conducting an independent review. *Moody*, 191 N.C. App. at 272-73. In this case, the court found that the parties in the Illinois class action had engaged in extended mediated negotiations, that the Illinois court was well informed on the due process aspects of the proposed settlement agreement, and that the judge extensively questioned the parties before approving the settlement. *Id.* at 274-75.

In contrast to the settlements collaterally reviewed in the above cases, not every originating court carefully follows the civil rules when certifying a class and approving a settlement. One kind of difficulty arises where the record in the originating court is unclear or incomplete, the conclusions are not supported by findings, or the findings are not supported by the record. The record in the originating court may not be adequate to support a conclusion on collateral review if only a narrow review is undertaken. This appears to have been the situation in *Wolfert v. Transamerica Home First, Inc.*, 439 F.3d 165 (2d Cir.), *cert. denied*, 549 U.S. 882 (2006), which involved a lender's collateral challenge to a

settlement in a California class action against that lender. The lender alleged inadequate representation in the prior action because New York law afforded significantly greater rights than California law, and because the California court applied California law over the lender's contention that New York law applied. The Second Circuit found that the California court had not explicitly considered and decided whether New York law afforded greater protection to class members when it rejected the lender's request to apply New York law. *Wolfert*, 439 F.3d at 172. It therefore conducted an independent review comparing protections afforded under the respective state laws and concluded that New York law did not afford greater protection than California law. *Id.* at 173-75. On that basis, the Second Circuit held that the California settlement was entitled to full faith and credit in New York.

A second kind of difficulty arises where the parties appear to have colluded, or the originating court "rubber stamps" a settlement or otherwise fails to provide adequate review. In this circumstance, a procedural review may not uncover the failure of due process, while a substantive review likely would do so. A reviewing court appropriately may be prompted to expand the scope of collateral due process review. This appears to be what the court did in *Hesse v. Sprint Corp.*, 598 F.3d 581 (9th Cir.), *cert. denied*, 562 U.S. 1003 (2010). In *Hesse*, notwithstanding the limitations articulated in

Epstein, the Ninth Circuit reviewed the merits of a due process argument, concluding that a broader review was warranted because the question of adequate representation "was not addressed with any specificity" by the Kansas court that entered the class action judgment. *Hesse*, 598 F.3d at 588. The Kansas court "made no finding that [counsel's] representation of the class was adequate" as to the claims identified in the collateral challenge. *Id.* The court therefore directly reviewed the adequacy of representation in the Kansas class action and found it lacking. *Id.* at 588-89.[11]

There also are cases where the record suggests the class representative is unable to adequately represent the class, because of inexperience, conflicting interests within the class, or another reason. This appears to have been the situation in *Stephenson. See Stephenson*, 273 F.3d at 258 (finding that the interests of the collateral challengers were not the same as those of the represented class and were not represented in the class action).

This may also have been the situation in *State v. Homeside Lending, Inc.*, 175 Vt. 239, 2003 VT 17, 826 A.2d 997 (2003), in which the Vermont Supreme Court reversed a trial court decision giving full faith and credit to

[11] The court clarified that, having found a due process violation, it was not setting aside the Kansas court's approval of the settlement and would accord that judgment full faith and credit and presume that it is binding on all claims that it properly released under Kansas law. The court held only that any release of the particular claims at issue in the collateral challenge would violate due process. *Hesse*, 598 F.3d at 589 n.5.

an Alabama class action settlement against the same defendants. In response to a collateral challenge alleging due process violations, the court examined the substance of the Alabama settlement, including attorney fees arrangements, differential class benefits and the sources of payments to class members, and misleading statements by attorneys to class members. *Homeside Lending*, 175 Vt. at 257-62. The court held that the Alabama settlement was not enforceable against Vermont class members and could not be raised as a bar to an action by the State of Vermont. *Id.* at 268.

Finally, there are courts that consider it their duty to substantively consider colorable due process claims, even when raised in a collateral review. In *Gooch v. Life Investors Insurance Co. of America*, 672 F.3d 402 (6th Cir. 2012), for example, the court afforded full faith and credit to a class action settlement approved by an Arkansas court and affirmed by the Arkansas Supreme Court, and held that it precluded a parallel class action proceeding in federal court. In reaching that conclusion, the court held that it was bound by *Hansberry* to review the substance of whether the state court settlement complied with the Due Process Clause in response to an allegation of inadequate representation:

> [W]hen the judgment of a state court, ascribing to the judgment of another court the binding force and effect of res judicata, is challenged for want of due process it becomes

> the duty of this Court to examine the course of procedure in both litigations to ascertain whether the litigant whose rights have thus been adjudicated has been afforded such notice and opportunity to be heard as are requisite to the due process which the Constitution prescribes.

Gooch, 672 F.3d at 421 (quoting *Hansberry*, 311 U.S. at 40).[12] The court then examined at length the allegation that representation was not adequate in the Arkansas class action because the settlement (including attorney fees) was agreed to before the class action was even filed. The court ultimately concluded there was no due process violation.

These decisions show that courts adapt the scope of collateral review to the circumstances of the case. A procedural review of a challenged class action judgment or settlement may be enough to resolve a collateral due process challenge. But where a procedural review reveals a basis for concern, many courts engage in a more substantive review to ensure due process was satisfied before affording full faith and credit to the challenged judgment or settlement. The scope of that review varies with the case.

[12] The court described this broad review as consistent with *Stephenson* and most federal circuits, and rejected the reasoning of the *Epstein* majority as having disregarded a "long line of authority holding that, when we are asked to give full faith and credit to a state-court judgment, we retain the power to decide whether the judgment was consistent with the Due Process Clause." *Gooch*, 672 F.3d at 421.

D. The Scope of Collateral Review in Washington Courts

In the supplemental briefs, the parties cite only one Washington appellate decision that addresses a due process collateral challenge to a foreign class action judgment or settlement. We found no others.[13]

In that decision, *Nobl Park, L.L.C. of Vancouver v. Shell Oil Co.*, 122 Wn. App. 838, 95 P.3d 1265 (2004), *review denied*, 154 Wn.2d 1027 (2005), the owner of an apartment complex collaterally challenged a Tennessee class action settlement, alleging that the notices sent to class members provided no opportunity to opt out, and that representatives of the settlement class—single unit owners—did not adequately represent the interests of multiple unit owners. Like many of the decisions cited above, the Court of Appeals appears to have adapted the scope of collateral review to the circumstances of the case. It substantively examined the notices sent to class members in the Tennessee class action to determine if they were constitutionally adequate. *Id.* at 846-47. In contrast, in reviewing the challenge to the adequacy of representation, it simply concluded, without identifying the basis for its conclusion, that there was no conflict of interest

[13] Two other Washington cases addressing full faith and credit are cited in the supplemental briefs: *OneWest Bank, FSB v. Erickson*, 185 Wn.2d 43, 367 P.3d 1063 (2016), and *In re Estate of Tolson*, 89 Wn. App. 21, 947 P.2d 1242 (1997). In our view, they have no bearing on the present case. Neither case involves a collateral attack on a class action judgment or settlement that alleges a violation of the Due Process Clause as a reason not to accord full faith and credit to the judgment or settlement. Consequently, neither case addresses the scope of collateral review of an alleged due process violation.

or difference in claims between single and multi-unit owners and no basis to find that the interests of multi-unit owners were inadequately represented. *Nobl Park*, 122 Wn. App. at 847-48.

IV. CONCLUSION

Courts across the country have reached no consensus as to the proper scope of review when a class action judgment or settlement entered or approved in the court of one state is collaterally challenged in the court of another state by a class member alleging a violation of due process in the originating court. Instead, most courts appear to adapt the scope of collateral review to the circumstances of the case. The current state of the law gives this Court substantial latitude in determining the scope of review to apply in this collateral challenge.

RESPECTFULLY SUBMITTED this 5th day of October 2018.

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I certify, under penalty of perjury under the laws of the state of Washington, that on this date I have caused a true and correct copy of the Amicus Brief Of The Attorney General Of Washington to be served on the following via the Court's electronic filing system as well as a .pdf version to the listed e-mails:

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