

IN THE SUPREME COURT OF OHIO

ORIGINAL

STAMMCO, LLC
d/b/a THE POP SHOP, *et al.*

Plaintiffs-Appellees,

vs.

UNITED TELEPHONE COMPANY
OF OHIO, AND SPRINT NEXTEL
CORPORATION

Defendants-Appellants

Case No.: 2012-0169

On Appeal From the Fulton County Court of
Appeals, Sixth Appellate District,
Case No. 11FU000003

**MEMORANDUM IN OPPOSITION TO JURISDICTION BY APPELLEES STAMMCO
LLC D/B/A THE POP SHOP, KENT STAMM AND CARRIE STAMM**

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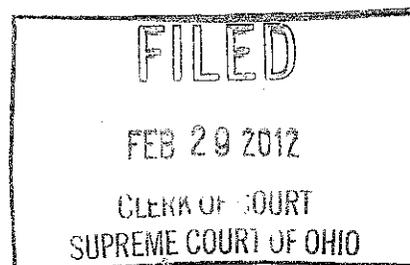
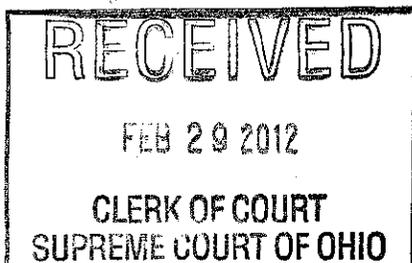


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THIS CASE IS NOT ONE OF PUBLIC AND GREAT GENERAL INTEREST

This Court should not accept discretionary review. The entire basis of the argument of the Appellant (Sprint) is: Sprint simply disagrees with the unanimous decision by the Sixth District Court of Appeals for this matter to proceed on behalf of the class of telephone consumers whose bills were crammed with phony charges. The amended class definition provided by Appellees (the class or the plaintiffs) and unanimously approved by the Sixth District Court of Appeals does not create an impermissible fail-safe class. This is simply a garden variety class certification matter. The legal issue in this cramming case is not one of public or great general interest. The issue is not novel or of broad application.

There are three issues, as follows: 1) how did the courts below follow this Court's mandate when the case was remanded; 2) why this is not a fail-safe class; and 3) why this case is not of public or great general interest.

This Court in *Stammco LLC v. United Telephone Co. of Ohio*, 125 Ohio St.3d 91, 2010-Ohio-1042, 926 N.E.2d 292 ¶14 determined that the definition of the class, as it had been certified by the trial court, was ambiguous. On March 24, 2010 this matter was remanded to the trial court "so that it may clarify the class definition". Instead, while considering Plaintiffs' revised class definition, the trial court on remand came to the following conclusions:

- (1) that the "class definition," as submitted by the Plaintiffs is a prohibited "fail-safe class";
- (2) that the Plaintiff's action has been brought against the "local exchange carrier," rather than the culprit "third party provider," and
- (3) that the action proposes to impose a "duty" upon the Defendant Carrier, that is not required of them, according to the status of current legislation and case law."

Stammco, LLC v. United Telephone Co., Fulton CP. No. 05CV000150 (December 22, 2010) at pp. 3-4. Plaintiffs appealed that ruling. The Sixth District Court of Appeals unanimously reversed the decision of the trial court, finding that the reasons for the trial court's denial of class

certification were improper considerations of the merits of the case, having no relationship to class certification questions. The Sixth District Court of Appeals held that the class, as defined, was not a fail-safe class. It was also observed that the trial court did “not articulate how its forays into misplaced blame or questionable duty relate to its determination that the requirements of Civ.R. 23, which it once had determined were satisfied, which [the Sixth District] concluded were satisfied, and which the two justices of the Ohio Supreme Court who addressed the issue concluded were satisfied, are now found wanting.” *Stammco*, 2011-Ohio-6503 at ¶¶46, 49. Unhappy with that decision, Sprint now seeks another review by this Court.

Sprint attempts to convince this Court that the Sixth District improperly relied upon *Ojalvo v. Bd. Of Trustees of Ohio State Univ.*, 12 Ohio St.3d 230, 466 N.E.2d 875 (1984) in reaching its decision. Sprint would further invite this Court to overrule *Ojalvo* in response to the U.S. Supreme Court’s recent decision in *Wal-Mart v. Dukes*, 131 S.Ct. 2541, 180 L.Ed.2d 374 (2011). In doing so, Sprint misreads the holding in *Dukes*, which did not alter the long-standing jurisprudence on the scope of a merits inquiry for purposes of determining the propriety of class certification. Both *Dukes* and *Ojalvo* agree that the class certification requirements of Rule 23 may very well involve some inquiry into the merits of a case, *as and when* they relate to the propriety of class maintainability. But, both cases clearly distinguish this from an improper foray into the merits of a claim when that is not required for determining class certification.

The trial court denied class certification, even with the correct post-remand amended class definition, *because* it believed that this was a fail-safe class. The plaintiffs agree that any definition that constitutes a fail-safe class may not be certified. However, this has never been a fail-safe class. The essence of a fail-safe is “heads, I win”, “tails, you lose.” For example, if the class were to have been defined as “all Sprint local telephone customers who, due to Sprint’s

negligent billing practices, were billed for unauthorized third-party charges,” that would constitute an impermissible fail-safe class. There, in order to determine class membership, it would first be necessary to establish Sprint’s liability for such negligence in billing. This would be impermissible because if Sprint was not negligent, then there would be no class. The class would be bound if it won, but there would be no class if Sprint won.

Here, the class is defined as Sprint telephone customers who were billed for third-party charges, but gave no authorization to Sprint to place charges for third-parties on their bills. So, if it is determined, *as Sprint vigorously contends*, that Sprint has no legal obligation to secure any prior authorization from the telephone customers, before billing such third-party charges, class members would lose, Sprint wins, and the class would be bound by that decision.

Every court, at every stage of this litigation, until the trial court’s error of December 22, 2010, agrees: *that our definition is not one that constitutes a fail-safe class.* (At the trial court; then unanimously at the court of appeals; then at this court, and then at the court of appeals, unanimously, the second time.) In the decision immediately below, the Sixth District Court of Appeals again found that this is not a fail-safe class, relying in part on the reasoning of former Chief Justice Moyer, in his concurring opinion. *Stammco*, 125 Ohio St.3d 91 at ¶¶42-44. Class membership is not dependent upon a finding of liability on the part of Sprint. This class will continue to exist even if, *as Sprint contends*, there is no liability. The class would be bound by any adverse decision. The Sixth District did not twice fail to understand, nor to misconstrue, the law regarding fail-safe classes. And neither did this Court with the late Chief Justice Moyer. Sprint’s attempt to use this fail-safe argument to create a matter of public and great general interest is yet another ruse to avoid disgorgement.

The Sixth District Court of Appeals decided only that the proposed class definition was an appropriate clarification and that the trial court's reasoning to deny class certification and to dismiss the case was improper. Decisions, such as this, are not of public or great general interest. This Court has routinely refused to accept discretionary appeals for the purpose of reviewing a class certification decision. *Pevets v. Crain Communication, Inc.*, 2011-Ohio-2700, March 2, 2011, is just such an example.

STATEMENT OF THE CASE AND ADDITIONAL FACTS

In order for the bogus third-party billings to exist, Sprint actually purchased the accounts receivable from the third-party billers. Sprint¹ entered into contracts with large billing clearinghouses or billing aggregators who, in turn, billed on behalf of a large number of other third-party entities. Sprint then placed the third-party charges on the local telephone bills of its customers and collected the payments. Many of these third-party billing entities were simply bogus, i.e. they provided absolutely nothing.

Sprint placed, on average, more than 200,000 third-party charges each month on the bills of Ohio telephone customers. Sprint faced widespread complaints from its customers who were billed by Sprint for services they did not request and did not receive. If the customers had enough time and were sharp enough to discover the practice and then also had the stamina to go through a grueling process to complain, Sprint provided a credit to the telephone bill.

Sprint's practices required more than 4,000 monthly credits arising out of customer complaints. But those were only from the customers who were able to detect cramming and then complain of the practice. Because the credits were driven by actual Sprint-accepted customer

¹The Sprint entity providing local telephone service in Ohio at the time this case was filed was the United Telephone Company of Ohio. As the Sixth District recognized, Appellant's "ownership has been through a number of incarnations. Sprint became Sprint-Nextel, then Embarq Corporation, which merged with CenturyTel, Inc. d.b.a CenturyLink." *Stammco*, 2011-Ohio-6503, fn.1. For simplicity the Sixth District referred to Appellant as Sprint, and we shall do the same here.

complaints, it is clear that Sprint's practices resulted in far more than 4,000 per month of bogus charges. Many, if not most, customers did not notice a small charge to their Sprint telephone bill. Or they could not take the time to inquire. Or they were caught up in the daunting and frustrating experience of dealing with Sprint's system of giving them the runaround. Many customers simply paid the bill without taking steps to dispute the charges. The breadth of the problem is far beyond the Sprint credits.

Stammco received a Sprint telephone bill in October 2004 for service at its business, The Pop Shop. This bill included unauthorized charges of \$87.98 billed by OAN Services, Inc. which were in turn "billed on behalf of Bizopia." This was a large line item and it stuck out enough on the telephone bill to induce Mr. Stamm to investigate. Upon review of the monthly phone bills for The Pop Shop, as well as his personal telephone bills, numerous other unauthorized and bogus charges were uncovered.

Mr. Stamm was not aware that Sprint was billing him on behalf of third parties. Stammco had not given any approval to Sprint prior to Sprint initiating any third-party charges. Until this initial large single charge was encountered, earlier third-party cramming billing items were so small that they had gone unnoticed. (Mr. Stamm managed to also have these newly identified charges reversed, but only after a great deal of difficulty.) By cramming Stammco and class members' bills with bogus charges, Sprint cheated its customers. Sprint did not allow customers to block such bogus charges, despite allowing such blocks in other states which required Sprint to have such blocks. Accordingly, many class members have paid for absolutely nothing.

ARGUMENT IN RESPONSE TO APPELLANTS' PROPOSITIONS OF LAW

I. APPELLANTS' PROPOSITION OF LAW NO. 1

***Wal-Mart v. Dukes* Rejects *Ojalvo's* Interpretation of *Eisen*: A Trial Court Does Not Abuse Its Discretion By Evaluating The Merits Of The Plaintiffs' Claims When Denying Class Certification**

Appellees' Response to Proposition of Law No. 1

The first proposition of law is irrelevant to this case and to the decision of the Sixth District Court of Appeals. The Court of Appeals did not misconstrue the holding of *Eisen v. Carlisle & Jacqueline*, nor of *Wal-Mart v. Dukes* by citing to *Ojalvo*. While the court of appeals below found that the trial court's decision on class certification was, in part, improperly based upon the trial court's opinion of the merits, those considerations were *sua sponte* determinations of the trial court, *as to the merits*, having no connection to class certification issues. While some review of the merits is required for class certification, it is only such review which is necessary to determine whether a class exists.

The U.S. Supreme Court in *Wal-Mart v. Dukes*, 131 S.Ct. 2541, 2551-52 (2011), clarified prior decisions and is consistent with Ohio decisions holding that “[i]n determining whether to certify a class, the trial court must not consider the merits of the case except as necessary to determine whether the Civ.R. 23 requirements have been met.” *Ojalvo*, 12 Ohio St. 3d at 233. In *Dukes*, the Supreme Court recognized that “sometimes it may be necessary for the court to probe behind the pleadings before coming to rest on the certification question.” *Dukes*, 131 S.Ct. at 2551 (citation omitted). Contrary to Sprint's contention, this is not new. Explaining the seeming conflict with *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156, 177 (1974), the U.S. Supreme Court observed that “in that case, the judge had conducted a preliminary inquiry into the merits of a suit, not in order to determine the propriety of certification under Rules 23(a) and

(b) * * *, but in order to shift the cost of notice required by Rule 23(c)(2) from the plaintiff to the defendants.” *Id.* at fn.6. As previously explained by another court, “*Eisen* is best understood to preclude only a merits inquiry that is not necessary to determine a Rule 23 requirement.” *Newton v. Merrill Lynch, Pierch, Fenner & Smith, Inc.*, 259 F.3d 154, 169 (3rd Cir. 2001). Accordingly, at the class certification stage, the court has always been “precluded from addressing any merits inquiry unnecessary to making a Rule 23 determination.” *In re Hydrogen Peroxide Antitrust Litigation*, 552 F.3d 305, 316-317 (3rd Cir. 2008).

The U.S. Supreme Court confirmed these interpretations of the Rule 23 inquiry in *Dukes*, stating that “[f]requently [the Rule 23] ‘rigorous analysis’ will entail some overlap with the merits of the plaintiff’s underlying claim.” *Dukes*, 131 S.Ct. at 2551. The Sixth District also recognized this distinction by stressing that this case “is now in the class certification phase” and “the question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met.” *Stammco*, 2011-Ohio-6503 at ¶ 48, citing *Eisen*, 417 U.S. at 178.

It is important to note that the trial court below, in a fifteen page opinion, merely listed, once, the seven requirements that must be satisfied to maintain a class action. The trial court never discussed the class certification requirements nor stated how the class definition proposed by Appellees did, or did not, meet any of the requirements. The trial court recognized that “a trial court may consider any evidence before it at that stage of the proceedings *which bears on the issue of class certification*” (Fulton Co. Dec. 22, 2010 decision at p. 11, quoting *Senter v. General Motors Corp.*, 532 F.2d 511, 523 (6th Cir. 1976) (emphasis added). But it never explained how the evidence that it considered related to the certification requirements.

Clearly, the Sixth District's decision was not based upon any misplaced reliance on *Ojalvo* for the proposition that all consideration of the merits is impermissible at the class certification stage. Rather, it was plainly based upon the court's correct conclusion that considerations of the merits, while addressing class certification, must relate to the determination that the requirements of Civ.R. 23 are, or are not, met. This is wholly consistent with the U.S. Supreme Court's position that the class certification inquiry frequently "will entail some overlap with the merits of the plaintiff's underlying claim." *Dukes*, 1315 Ct. at 2551. The Sixth District properly concluded that, by examining the merits of the case, and not the requirements of Civ.R. 23, the determination of the trial court was an abuse of the trial court's discretion.

II. APPELLANTS' PROPOSITION OF LAW NO. 2

The Trial Court Did Not Abuse Its Discretion By Refusing To Certify A Fail-Safe Class Improperly Defined By The Merits

Appellees' Response to Proposition of Law No. 2

The proposition that the class of telephone customers in this case is an improper fail-safe class had been rejected numerous times. Yet Sprint continued to make the same baseless arguments, until Sprint managed to confuse the trial court into submission. The Sixth District corrected this error and again explained why this is not a fail-safe class. The holding by the trial court that the class members "would be bound only by a judgment favorable to Plaintiffs, but not by an adverse judgment" (*Stammco, LLC*, Fulton C.P. No.05CV000150 at *13) is simply incorrect.

The term fail-safe class refers to a class definition that is improper because the members of the class cannot be known, until after a determination has been made on the merits of the claims. *Adashunas v. Negley*, 626 F.2d 600, 603 (7th Cir. 1980). An impermissible fail-safe class constitutes "heads, I win", "tails you lose", because the definition of the class bases the

class membership on the success of the claim. For example, a class defined as all persons who paid an “illegal brokerage fee”, was a fail-safe class because membership in the class could not be determined until after it was determined that the contested fees were illegal. *Dafforn v. Rousseau Ass., Inc.*, 1976 U.S. Dist. LEXIS 13910. If the fees were not illegal, the class would not include anyone; it would just “disappear”; binding no one to the legality decision. A fail-safe class would be bound only by a judgment favorable to the Plaintiffs. But if there was no liability, in the final analysis, no one would be bound.

Sprint’s circular reasoning appears once again in its Memorandum in Support of Jurisdiction, at fn 5. Sprint states that “[t]he definition here is a classic fail-safe class because *if the charges were authorized, then the customer would not be a class member because United Telephone could not be liable*, and that customer would not be bound by an adverse judgment because he would not be in the class.” This statement is nonsensical.

Sprint’s analysis turns the inquiry on its head. The class is presently defined as those customers who never gave prior authorization to Sprint in writing, or by some other method sufficient to verify that the customer agreed to the charge, but who were nevertheless billed for third-party charges. Thus, a class member is a Sprint customer who did not authorize Sprint to put third-party charges on its bill. Class members will be identified without addressing the merits of the claims. The class of persons who did not provide Sprint with authorization but were billed for a third-party charge exists, without any regard to whether Sprint will one day be found liable to the class members for those third-party charges. In this case the class will be bound by any judgment favorable to Appellees, as well as a judgment favorable to Sprint.

The Sixth District correctly explained that “[a]ssuming that [Sprint] was not found liable in the present case, the class would still exist because the determination of the class members

does not rest on a determination of the merits. The class would still exist for: (1) customers of United Telephone of Ohio who, during the relevant period, (2) were billed for third party charges, (3) without prior authorization, (4) in writing or by an acceptable alternative. This is not a fail-safe class.” *Stammco, LLC*, 2011-Ohio-6503 at ¶46.

In his concurring and dissenting opinion, the late Chief Justice Moyer aptly observed that Sprint was still contending that “class membership cannot be determined until a finding on the issue of liability has been made. In so contending, appellants appear to concede that the lack of permission equates automatically with liability, but this is not the case. Defining the class in this way does not require a determination on the issue of liability or the merits of the underlying causes, because finding a class of customers who were assessed charges that they had not authorized does not require a determination that appellants are liable to the customers.” *Stammco, LLC*, 2010-Ohio-1042 at ¶43. This is a concept that should not be difficult to understand, yet Sprint continues to get it wrong. The Sixth District properly recognized that this was not a fail-safe class and there is nothing further to review.

III. APPELLANTS’ PROPOSITION OF LAW NO. 3

The Sixth District Improperly Rejected This Court’s Determination That The Proposed Class Definition Did Not Permit Class Members To Be Identified With Reasonable Effort

Appellees’ Response to Proposition of Law No. 3

This Court remanded this case to the trial court “to clarify and complete the class definition.” *Stammco, LLC*, 2010-Ohio-1042 at ¶13. The “class definition d[id] not allow the class members to be readily identified” and needed to be clarified. *Id.* at ¶1. The class members could not be readily identified because the class definition was ambiguous. *Id.* at ¶10.²

² “This definition does not specify whether the customers were expected to give Sprint or the third parties authorization for billing, or whether the third parties were expected to obtain authorization from the customers for charges on the bill. In addition, in the phrase ‘their permission’ in the class definition, it is unclear who the word

Sprint would read this Court's previous opinion, to be that there were two specific findings: 1) that the class definition was ambiguous *and*, 2) that the class members could not be identified with reasonable effort. However, this Court's decision was, that the previous class definition did not permit the class members to be readily identified, *because* the class definition was ambiguous. (i.e., the problems in identifying the class members as described by this Court were the result of the deficient class definition).

In any respect, the Sixth District properly resolved the question in its decision. The appellate court held that the ambiguity issue had been adequately resolved. "The amended class now defines to whom permission is to be granted; appellee, whose permission was required' the customer, and the manner the permission was to be granted; in writing or an alternative method by which appellee could verify agreement. The amended definition deletes any reference to customers who receive unauthorized charges. In our view, the amended language satisfies the specific concerns of the court in its mandate for remand." *Stammco, LLC*, 2011-Ohio-6503 at ¶39.

The new proposed class definition cures the deficiencies noted by this Court and, with the clarifications, allows the class members to be reasonably identified. The new class definition specifically addresses the former ambiguity that left open the question of individually determining how authorization had been provided. As the late Chief Justice Moyer stated, "[t]he ambiguity lies in the phrase 'without their permission'; the trial court lacks a method to determine the form and manner that the permission should have taken. But once that method is

'their' refers to. While one might assume that the word 'their' refers to customers, it could be read to refer to either customers or third parties. Nor is it clear how authorization was to be accomplished – that is, whether written, verbal, or any other form of permission was necessary to authorize billing, and to whom it should be given, whether directly to Sprint or the third party." *Stammco, LLC*, 2010-Ohio-1042 at ¶10.

clarified, the trial court will possess sufficient means for determining class membership from the class definition.” *Stammco, LLC*, 2010-Ohio-1042 at ¶26.

Thus, with the new class definition, every customer who received a bill from Sprint with third-party charges, if Sprint did not have a written authorization for the charges or some alternative form of authorization in its records sufficient to verify the authorization, that customer is a class member. Determining whether a particular customer is a class member can be done by a review of Sprint’s own records. No mini-trials need to be conducted to determine if a customer agreed to a charge. Class certification is proper, in this garden-variety case. With the use of database experts, the damages will easily be calculated.

Appellees’ revised class definition has resolved the problem recognized by this Court that the class members were not readily identifiable. Appellants’ third proposition of law is moot.

IV. APPELLANTS’ PROPOSITION OF LAW NO. 4

An Ohio Appellate Court Must Consider Decisions In “Nearly Identical Federal Proceedings” When Determining Whether A Trial Court Abused Its Discretion By Denying Class Certification

Appellees’ Response to Proposition of Law No. 4

In this proposition of law, Sprint has fabricated a “rule” which would create a sweeping new subservient duty for all appellate courts. Sprint’s proposition of law No. 4 would seemingly fashion a new obligation for all Ohio reviewing courts to “consider” similar federal cases. But what it states is a new mandatory duty for Ohio courts to *adopt* the findings of any similar federal decisions. This is clearly *not* a requirement in any of the cases cited by Sprint.

This Court in *Marks v. C.P. Chemical Co., Inc.*, 31 Ohio St.3d 200, 201(1987) correctly observed that, because Federal Rule 23 is identical to the Ohio rule “federal authority is an appropriate *aid to interpretation* of the Ohio rule.” (emphasis added). *Wilson v. Brush Wellman*,

Inc., 103 Ohio St.3d 538, 2004-Ohio-5847, ¶17 also states that “*guidance* is provided from the federal courts which have considered this issue on multiple occasions.” (emphasis added). These cases do not mandate a requirement that another court arrive at the same decision as a federal court when analyzing a similar, but not identical, situation. Nor should there be.

In *Howland v. Purdue Pharma L.P.*, 104 Ohio St.3d 584, 2004-Ohio-6552, ¶24, this Court determined that an appellate court abused its discretion when it did not examine the learned-intermediary doctrine in the light of “an almost identical suit” in a federal court that had been resolved based on that doctrine. “A trial court that dispenses with a party’s arguments in such a fashion, fails to examine a well-established doctrine, *and* ignores nearly identical federal proceedings does not merely misconstrue the letter and spirit of the law – it ignores them.” *Id.* at ¶26 (emphasis added). Appellants’ further citation to *Maas v. Penn Central Corp.*, 11th Dist. No. 2006-T-0067, 2007-Ohio-2055 as support, is unavailing. The *Maas* court upheld a trial court decision that did not follow a federal precedent when “there is no evidence that the trial court ignored federal law.” *Id.* at ¶75.

Indeed, Sprint did bring to the attention of the Sixth District Court of Appeals several federal cases dealing with telephone cramming. Each of those cited cases denied class certification. But, each did so *because* in those cases, the causes of action would require individual inquiries. The causes of action in this action, do *not* require those individualized inquiries. Each of the causes of action here will involve a scrutiny of *Sprint’s conduct*, but will not require individualized inquiries into each bill to determine liability.

While liability is a centralized issue for the class, the need to prove damages on an individual basis is not fatal to class certification. *Randleman v. Fidelity National Title Ins. Co.*, 646 F.3d 347, 353 (6th Cir. 2011), citing *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 559, 568 (6th

Cir. 2007). Although there is no specific discussion in the Sixth District decision of those cases cited by Sprint, there is likewise no need to do so. There is no evidence that the appellate court ignored them. The trial court articulated three reasons for its denial of class certification. The Sixth District Court of Appeals discussed each one at length, found each reason to be in error and reversed the decision of the trial court. *Stammco*, 2011-Ohio-6503, ¶¶13, 50, 51.

V. APPELLANTS' PROPOSITION OF LAW NO. 5

Where A Trial Court Properly Denies Class Certification, But The Court of Appeals Disagrees With Aspects Of Its Reasoning, The Decision Must Be Affirmed

Appellees' Response to Proposition of Law No. 5

Appellant's fifth proposition of law fails because the trial court's denial of class certification was improper. The decision of the trial court was not reversed merely because the court of appeals disagreed with its reasoning. It was reversed because it was bad law.

A correct judgment of a trial court may not be reversed just because it was based in whole or part on an incorrect rationale. *State ex rel. Galloway v. Cook*, 126 Ohio St.3d 332, 2010-Ohio-3780, ¶4. But, "where a trial court completely misconstrues the letter and spirit of the law, it is clear that the court has been unreasonable and has abused its discretion." *Warner v. Waste Management*, 36 Ohio St. 3d 91, 99 (1988), fn. 10.

Class certification is proper where the common question to be answered is the legality of Sprint's common billing practices for bogus charges which never were authorized.

CONCLUSION

Class members were billed for bogus charges. This was accomplished by the practice known as cramming. Although class members asked Sprint to stop the cramming practice, Sprint refused and the unauthorized billings continued. The Sixth District Court of Appeals has unanimously agreed that this action may properly continue on behalf of the class.

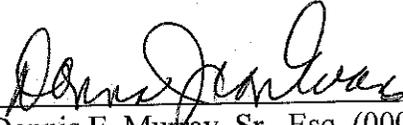
Appellants continue to dispute that decision, raising the exact same arguments that they did in the courts below. In such a manner, Sprint has successfully drawn out this litigation for almost seven years.³

This is merely another case in which a defendant does not want to proceed under well-established rules for civil procedure. The only issue decided by the Court of Appeals, was whether class certification was proper. It is important to remember, that as the Court of Appeals recognized “[w]hen enmeshed in the sometimes deliberate complexity of litigation, it is frequently difficult to sort out the immediate task at hand. Where this case is now is in the class certification stage. ‘In determining the propriety of a class action, the question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits but rather whether the requirements of Rule 23 are met.’” *Stammco*, 2011-Ohio-6503 at ¶ 48, quoting *Eisen*, 417 U.S. at 178.

This case is not one of great public or general interest. Sprint’s petition to accept the appeal should be denied and this matter should finally proceed to the issues of liability and damages.

³This case has plodded along, with Sprint likewise involved in other extensive litigation and lengthy merger proceedings, using its considerable skills to slow progress in the courts. See Sprint-Nextel’s latest 10K filing with the SEC for details at: <http://investors.sprint.com/Cache/12774388.pdf?O=3&IID=4057219&OSID=9&FID=12774388>. Sprint has previously settled similar cramming litigation with the Florida Attorney General. See <http://www.myfloridalegal.com/NewsBrie.nsf/txt/A83364FE9073FA23852577B500655C0A>. This case is not unique in any respect.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing **Memorandum in Opposition to Jurisdiction by Appellees Stammeo LLC D/B/A The Pop Shop, Kent Stamm and Carrie Stamm** was forwarded by

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