United States District Court, M.D. Florida.
Patricia Winn CARTER, Maxine M. Jones, Cynthia Silianoff, Judy Lauber, Patricia Grimaldi, Kathleen Leep, Julie Reiter, and Alice Kooiman, individually and on behalf of all other persons similarly situated, Plaintiffs,
v.
WEST PUBLISHING COMPANY, West Publishing Corporation, West Services, Inc., and Bank Baldwin Law Publishing Company, Defendants.
No. 97-2537-CIV-T-26A.

May 20, 1999.

ORDER

LAZZARA

***1** Before the Court are Plaintiffs' Motion for Class Certification (Dkt.42), Memorandum in Support of Plaintiffs' Motion for Class Certification (Dkt.46), Defendant West Publishing Company's Memorandum in Opposition (Dkt.81), Plaintiffs' Unopposed Motion for Hearing on Class Certification (Dkt.91), and various other supplemental filings in support of class certification. After carefully reviewing the pleadings, motions, declarations, affidavits, depositions, exhibits, and other materials in the file, the Court is of the opinion that class certification should be granted.

This Court denied partial summary judgment on April 19, 1999, and set forth a detailed factual statement of this case in that order. The facts stated in that order are incorporated by reference in this order. Some of the facts will be reiterated for the sake of convenience.

PARTIES

Defendant West Publishing Company (West) “was a private-held company from its inception in the late nineteenth century until June 1996, at which time it was purchased by a Canadian publishing conglomerate, the Thomson Corporation [Thompson].” (Dkt. 123, Sec. Am. Compl. at para.14). West sold shares to selected employees in three different categories: 1) members of the Management and Executive Committee-a designation on the payrol; 2) unit holders of Key Employee Incentive Program (KEIP)-; and 3) salespersons. Some of the facts pertaining to the subjective nature of the decision-making with respect to stock offerings and the person or persons responsible for making the offers are disputed. It appears that Dwight Opperman was the main, if not sole, decision-maker in determining who received stock, although he received recommendations from the company's directors and a few other top executives. (Dkt. --- Depo. of Operman at 51-52, 82, 220-21, 224, 234-25, 237, 288).

The eight named plaintiffs are all former or present female employees of West who were employed during the time period from January 20, 1996, to June 20, 1996. Of the eight, four are attorneys, two are proofreaders, one is an executive secretary, and one is a telemarketer. Three continue to be employees, and five are no longer employed by West or Thomson. All eight were employed at some time during the period from January 20, 1996, to June 20, 1996.

The eight named plaintiffs represent the three categories as follows: five were members of the Management and Executive Group (Silianoff, Lauber, Grimaldi, Lepp, and Kooiman); six were unit holders of KEIP (Jones, Silianoff, Grimaldi, Lepp, Reiter, and Kooiman); and three were salespersons (Jones, Carter, and Reiter). Out of the eight, only Ms. Kooiman was offered and received stock in West. (Dkt. 94 at Exh. Tab W-Declar. of Kooiman).

ALLEGATIONS

In the Second Amended Complaint, Plaintiffs sue West for a violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.,* and the Equal Pay Act.[FN1] The class certification must be decided for the Title VII action only. The Title VII claims involve both disparate treatment and disparate impact.

***2** This is a dispute over West's eligible female employees' alleged rights to stock ownership in the company.[FN2] West awarded stock mainly to those employees selected from a pool of Key Employee Incentive Program (KEIP) unit holders, members of the Management Group, and salespersons. West arranged for the stock sale to be a risk-free device whereby a bank financed the employees who lacked cash to purchase the stock. The stock paid dividends about six times a year. The stock increased in value. As soon as any debt was retired, the dividends

accrued to the employee/shareholders as a supplement to their other compensation.

According to Plaintiffs, the stock program "constituted a continuing form of compensation to those employees who were allowed to purchase stock and was a privilege of their employment." (Dkt. 123 at para. 48). Pursuant to the stock agreement. West had a repurchase option in the event of death, incompetence, or termination of employment, which is always exercised. Additionally, West had a right of first refusal if the employee wanted to sell any stock. Plaintiffs allege that the "increase in stock book value, and the payment of stock dividends, constituted a form of additional and continuing compensation from West to those who were invited to participate in the stock program." (Dkt. 123 at para. 60). This compensation was unavailable to employees who were not shareholders. The shareholders were predominantly male, "despite the relative balance of males and females in West's work force, and despite the parity of qualifications between West's male and female employees." (Dkt. 123 at para. 63).

Plaintiffs allege that West engaged in a systematic pattern of gender-based discrimination. This pattern and practice of discrimination set the stage for few, if any, women ranking as highly as their male colleagues in job performance, which in turn virtually insured that few, if any, women would receive the same terms, compensation and benefits, particularly the opportunity to buy into the stock program.

Plaintiffs seek a jury trial and request an award of back pay; damages for lost compensation and job benefits that the individual plaintiffs and the class they seek to represent would have received but for West's discriminatory practices; compensatory damages for emotional distress, humiliation, embarrassment and anguish; and punitive damages commensurate with West's ability to pay and to deter future discriminatory conduct. (Dkt. 123 at prayer for relief). Plaintiffs seek to certify the following class:

All females who:

1. were employed by West between January [20], 1996 and June 20, 1996; and

2. during their employment by West, either

a. did not receive any shares of West stock, but

i. were in the Management and Executive Group,

ii. were recipients of units in the Key Employees' Incentive Plan, or

iii. were sales representatives in any of West's departments of divisions, or

***3** b. received some shares of West stock, but fewer shares than were received by similarly-situated males.

The above-defined "class" actually consists of four subclasses, with the first three comprising of eligible females who never owned stock in West, and last subclass consisting of females who owned stock in West.

Again this backdrop, the Court will address each criterion necessary to establish class certification in this Title VII case. It will employ the "rigorous analysis" dictated by *General Telephone Co. v. Falcon,* 457 U.S. 147, 160-61 (1982).

STANDING

In a Title VII case, the court first must determine whether the named plaintiffs have standing. *See Andrews v. American Telephone & Telegraph Co.,* 95 F.3d 1014, 1022 (11th Cir.1996) (plaintiffs who were induced to make 900-number calls, were targets of attempts to collect alleged illegal debts, had their phone service disconnected for failure to pay 900-number charges but had paid some of 900-number charges, held to have standing because these alleged facts constituted injury sufficient to create a "case or controversy"); *Jones v. Firestone Tire and Rubber Co.,* 977 F.2d 527, 531-32 (11th Cir.1992) (quoting *Griffin v. Dugger,* 823 F.2d 1476, 1482 (11th Cir.1987)). The standing issue is a threshold one subject to de novo review. *See Griffin v. Dugger,* 823 F.2d 1476, 1482 (11th Cir.1987), *cert. denied,* 486 U.S. 1005 (1988).

Pursuant to the "single-filing rule, ... [a]s long as at least one named plaintiff timely filed an EEOC charge, the

precondition to a Title VII action is met for all other named plaintiffs and class members." *Jones,* 977 F.2d at 532, quoting *Griffin,* 823 F.2d at 1482. The rule encompases two requirements: "First, at least one plaintiff must have timely filed an EEOC complaint that is not otherwise defective.... Second, the individual claims of the filing and non-filing plaintiffs must have arisen out of similar discriminatory treatment in the same time frame." *Jones,* 977 F.2d at 531.

Timely-filed Complaint Not Otherwise Defective

Only Maxine Jones filed an EEOC complaint. Each of the additional plaintiffs rely on the EEOC charge filed by Maxine Jones pursuant to Title VII's "single-filing rule." This Court determined in its order denying partial summary judgment that Ms. Jones filed a timely complaint on November 6, 1996, with the "Texas Commission on Human Rights/EEOC, alleging that in addition to discriminatory territory assignments, on a continuing basisshe and other female employees at West were denied participation in the employee stock purchase program." (Dkt. 123 at para 90.) This allegation is substantiated by the specific wording of the charge of discrimination:

> On a continuing basis, I along with other women have been denied participation in the employee stock purchase program. The program was canceled in June 1996, with a payment to participating employees of $3 billion. In July 1996, I was offered a reassignment with less responsibilities and assigned territory, Pittsburgh, PA. In July, 1996, I was denied a better territory in Houston, TX.

***4** (Emphasis added). (Dkt. 123 Exh. 1). This charge encompases gender-based discrimination in the sale of stock coupled with discrimination in the assignment of territories. Accordingly, the Court finds the EEOC complaint was timely and the complaint was not otherwise defective.

Similar Discriminatory Treatment in Same Time Frame

Having determined that the first prong of the standing issue has been met, the Court must now consider whether the individual claims of the filing and non-filing plaintiffs arose out of similar discriminatory treatment in the same time frame. The temporal scope of the proposed class is from January 20, 1996, to June 29, 1996.[FN3] The last acts of the continuing acts of discrimination occurred on June 4, 1996, which was the last payment of stock dividends, and on June 20, 1996, which the payment of stock redemptions. January 20, 1996, is 300 days before November 6, 1996, which is the date Ms. Jones filed her complaint. Consequently, the plaintiffs have allegedly suffered injury in the sale of stock and assignment of territories for at least the five-month period porffered as the appropriate scope of the proposed class.

West's failure to offer stock to the plaintiffs, some former and some current employees, presents similar discriminatory treatment or discriminatory impact. As stated in this Court's prior order denying partial summary judgment, the payment of stock dividends and stock redemptions to predominately males constitutes a violation of a continuing nature. The Court found that the last payment of stock on August 30, 1994, was not the one triggering discrete act of discrimination against the filing and non-filing plaintiffs. Hence, for the purposes of establishing standing, similar discriminatory treatment occurred in the same time frame.

FOUR PREREQUISTIES UNDER RULE 23(A)

Having established that Maxine Jones and the named plaintiffs have standing, the court must next determine whether the four prerequisites of Federal Rules of Civil Procedure 23(a) have been met. *See Jackson v. Motel 6 Multipurpose, Inc.,* 130 F.3d 999, 1005 (11th Cir.1997). The four prerequisites are numerosity, commonality, typicality, and adequate representation. *See* Fed.R.Civ.P. 23(a). In analyzing these factors, the Court emphasized that this Title VII action for disparate treatment and impact is grounded in discrimination encompassing territory assignments and the sale of stock. This case is not proceeding on retaliation, harassment or hostile work environment claims. It is imperative that the somewhat narrow focus of this lawsuit control the resolution of class certification.

Another matter which places this lawsuit in a unique posture is the fact that stock sales no longer can occur because of the merger. Left with no choice of pursuing injunctive relief, Plaintiffs seek relief under Rule 23(b)(3) only. Injunctive relief is no longer available because the alleged discriminatory pattern and practices and disparate impact ceased with the close of the merger on June 20, 1996. If one accepts as true the materials supporting the fact that a great deal of the information was revealed after, for whatever reason, the June 20th transaction, then one

must assume that it was too late to claim any injunctive relief by the time sufficient information was assimilated to file suit. For this reason, Plaintiffs should not be penalized by having to proceed under Rule 23(b)(3).

Numerosity

***5** In determining numerosity, the court may consider the proposed class size, ease of the identifying members' names and addresses, ease with which they could be served, and their geographic location. *See Kilgo v. Bowman Transp., Inc.,* 789 F.2d 859, 878 (11th Cir.1986). The proposed class size is at least 144, if not more at this juncture. The individuals reside in Florida and throughout the United States. Thus, the Court concludes that Plaintiffs have established that the class is so numerous that joinder of all members is impracticable.

Commonality

Rule 23(a)(2) defines commonality in terms of whether there are questions of law or fact common to the class. It is well established that the burden of demonstrating commonality under Rule 23(a)(2) is far less stringent than the commonality requirement of Rule 23(b)(3). *See Amchem Products, Inc. v. Windsor,* 521 U.S. 591, 117 S.Ct. 2231, 2243 (1997) ("Rule 23(a)(2)'s 'commonality' requirement is subsumed under, or superseded by, the more stringent Rule 23(b)(3) requirement that questions common to the class 'predominate over' other questions"). In this case, the common questions of law or fact are whether women received less favorable territory assignments than men and whether West's sale of stock was discriminatory on the basis of gender. Thus, the Court finds that under the less stringent test of Rule 23(a)(2), questions of law or fact are common to the named Plaintiffs and to the class.[FN4]

Typicality

Rule 23(a)(3) defines typicality as whether the claims or defenses of the representative parties are typical of the claims or defenses of the class. In other words, the court must look at whether the named plaintiffs are typical of the class. The typicality requirement tends to merge with the commonality requirement of Rule 23(a)(2). *See General Telephone Co. v. Falcon,* 457 U.S. at 157 n. 13, 102 S.Ct. at 2371 n. 13 (1982); *Washington v. Brown & Williamson Tobacco Corp.,* 959 F.2d 1566, 1569 n. 8 (11th Cir.1992) (citing *Falcon* for proposition that commonality, typicality and adequacy of representation merge).

The named Plaintiffs are typical because all fit into one of the three categories of women to which West could have offered stock but either 1) were never offered stock, or 2) received stock, just fewer shares than men. The fact that the three categories include women from differing degrees of employment classifications, i.e., from attorneys to proofreaders to executive secretaries, does not defeat the typicality requirement. *See Wagner v. Taylor,* 836 F.2d 578, 591 (D.C.Cir.1987) (black attorney in senior executive position could represent regular hourly wage employees in Title VII action based on race discrimination in promotions; relevant inquiry is whether plaintiff "suffered injury from a specific discriminatory promotional practice of the employer"). As indicated by Plaintiffs, "[t]here were no variations in the selection process [for stock] based on an employee's job position or work site." (Dkt. 46 at 3).

***6** Moreover, generally, there are no unique defenses raised by Defendants, which would militate toward finding that typicality did not exist. Based on the above, the Court finds the named Plaintiffs' claims are typical of the class.

Adequate Representation

The last prerequisite of Rule 23(a) concerns whether the representative parties will fairly and adequately protect the interests of the class. *See* Fed.R.Civ.P. 23(a)(4). The adequacy-of-representation requirement tends to merge with commonality and typicality. *See Amchem,* 521 U.S. 591, 117 S.Ct. at 2251 n. 20 (citing *Falcon*). In addressing this factor, Defendants cite two cases: *General Telephone of the Northwest, Inc. v. EEOC,* 446 U.S. 318, 100 S.Ct. 1698 (1980), and *Amchem.* The only portion of *General Telephone of the Northwest* upon which Defendants could rely is the statement that "[i]n employment discrimination litigation, conflicts might arise, for example, between employees and applicants who were denied employment and who will, if granted relief, compete with employees for fringe benefits or seniority." *General Telephone,* 446 U.S. at 333, 100 S.Ct. at 1707.

Amchem involved plaintiffs already inflicted with asbestos-related disease and plaintiffs who had been exposed to but had not yet manifested injuries from the asbestos exposure. The Supreme Court distinguished between mass torts involving a single accident and the

class members in *Amchem* who "were exposed to different asbestos-containing products, in different ways, over different periods, and for different amounts of time; some suffered no physical injury, others suffered disabling or deadly diseases." *Amchem,* 117 S.Ct. at 2243. In *Amchem,* it was obvious that the diverse medical conditions of the named parties prevented a single class capable of alignment. *Id.* at 2251. The *Amchem* Court stressed the different goals of the currently injured to receive generous immediate payment versus the exposure-only plaintiffs who wanted an ample fund for the future. *Id.*

This case is easily distinguishable from both *General Telephone of the Northwest* and *Amchem.* Defendants argue that only a specific amount of stock was sold each year to only a finite number of employees, which places a limit on the available stock pool for the class. Hence, argue Defendants, each Plaintiff must argue that her claim "has more merit than any other claim" to limit the number of prevailing claimants. As pointed out by Plaintiffs, however, no conflict exists in the remedy sought between those who received stock and those who did not, because an award received by either group will be paid from the current assets of West rather than from West's employees who were shareholders before the acquisition in June 1996. With respect to whether there were limitations placed by West on the number of shares sold and the number of employees who could receive them, this matter alone is not sufficient to create a clear conflict at this stage of the proceedings.

***7** Finally, Plaintiffs' counsel have shown that they are competent, legal counsel, well-equipped to adequately represent the interests of the class. Accordingly, Plaintiffs' counsel are appointed as class counsel.

TWO CRITERIA UNDER RULE 23(B)(3)

Having determined that the four prerequisites of Rule 23(a) have been met, the court must next analyze whether, in this particular case, the two requirements of Rule 23(b)(3)-increased efficiency and predominance-have been met.[FN5] *See Jackson,* 130 F.3d at 1005-6. Rule 23(b)(3) provides:

> An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:
>
> the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of 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; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

This Court addresses *Allison v. Citgo Petroleum Corp.,* 151 F.3d 402 (5th Cir.1998), because it has been cited by West and discussed by Judge Albritton of the Middle District of Alabama, another district court in the Eleventh Circuit. Judge Albritton wrote that he firmly believed that "the Eleventh Circuit will apply the same reasoning as the Fifth Circuit, with similar results." *Faulk v. Home Oil Co.,* 1999 WL 137731, *19 (M.D.Ala. Mar. 9, 1999); *see also Pickett v. IBP, Inc.,* 182 F.R.D. 647, 657 (M.D.Ala.1998) (Albritton, J.); *Taylor v. Flagstar Bank,* 181 F.R.D. 509, 518 (M.D.Ala.1998) (Albritton, J.).[FN6] This Court finds that neither *Allison* nor *Jackson* dictates that the outcome of this case be the same as that in Judge Albritton's cases.[FN7]

Predominance/Increased efficiency or Superiority

The predominance issue under Rule 23(b)(3) is whether the questions of law or fact common to the members of the class predominate over any questions affecting only individual members. The superiority issue is whether a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The Court is aware of the language in *Jackson* that "the issues in the class action that are subject to generalized proof and thus applicable to the proposed class as a whole will not predominate over those issues that are subject only to individualized proof." *Jackson,* 130 F.3d at 1008. This Court does not read *Jackson* as holding that at any time under any circumstances alleging a practice and policy of discrimination prohibits the creation of a class issue which predominates over the individual issues. *Jackson* involved retaliation and hostile work environment claims, and an alleged practice or policy of discrimination against customers and employees on the basis of race in denying room accommodations, providing substandard accommodations, and segregating the races.

***8** Unlike *Jackson,* this case does not focus on the factual issues regarding the various employment histories of the class members or the job descriptions of the women. This case, boiled down to its essence, involves discrimination in the sale of stock, which at this juncture has been persuasively alleged to be a benefit of employment. As articulated in a recent district court case granting class certification under Rule 23(b)(3), "[t]o paraphrase *Jackson,* most if not all of plaintiffs' claims will stand or fall on the question whether [West in this case] has adopted and applied such a centralized policy and practice of [gender-based] discrimination, and not on the resolution of the highly case-specific factual issues alluded to by [West in this case]." *Israel v. Avis Rent-A-Car Systems, Inc.,* 1999 WL 228746, *14 (S.D.Fla. Feb. 8, 1999). As also noted in *Israel,* the fact that "so few putative class members have filed individual lawsuits suggests that the members are not interested in controlling their own litigation." *Id.* at *15.

The Court has not overlooked the language of *Allison,* which is not binding precedent on this Court, regarding compensatory and punitive damages. The plaintiffs in *Allison,* like Plaintiffs here, brought suit under Title VII alleging both disparate treatment and impact theories. *Allison* concerned employment practices such as failing to post or announce job vacancies, use of an informal word-of-mouth announcement process for filing job vacancies, use of racially biased tests to evaluate candidates for hire or promotion, and use of a subjective decision-making process by a predominantly white supervisory staff. Unlike *Allison,* this case to date does not involve over a thousand potential plaintiffs; it involves approximately 144. Unlike *Allison,* Plaintiffs in this case have provided subclasses which appear to avoid manageability problems to a certain degree. *See Allison,* 151 F.3d at 420 n. 15 (plaintiffs argued that they could break the class into subclasses to avoid manageability problems, yet they never offered the court a plan).

In short, this Court recognizes the potential problems with the individualized proof necessary to establish compensatory and thereafter perhaps punitive damages in the context of class certification. Nevertheless, even after the 1991 amendments to the Civil Rights Act, this Court finds it difficult to imagine that a bright-line rule applies to deny a district court the discretion to grant class certification under Rule 23(b)(3) in every Title VII case in which the plaintiffs seek compensatory and punitive damages and a jury trial. In this particular case, Plaintiffs have asserted a claim based on discrimination in the territory assignments and sale of stock to women. They have not asserted a claim based on discrimination in failure to hire, promote, or provide adequate lodging to potential customers as in *Jackson.* Accordingly, the Court finds that at this stage of the proceedings, class certification is warranted until such time as the Court may find the class proceedings inefficient, less superior, or unmanageable.

Other Observations

***9** The Court has reviewed both *Bonilla v. Oakland Scavenger Co.,* 697 F.2d 1983 (9th Cir.1982), and *Martinez v. Oakland Scavenger Co.,* 680 F.Supp. 1377 (N.D.Cal.1987), which were cited by the parties. In *Bonilla,* the Ninth Circuit made it clear that the limiting of share ownership to particular persons of one national origin and either family members or close friends of current shareholders could render applicable Title VII. *See Bonilla,* 697 F.2d at 1302. There, the court found that the shareholder preference plan constituted a condition of employment and not a "proprietary right" not covered by Title VII, because the company tied "preferential wages, hours, and job assignments to ownership of its stock." *Id.* at 1302. As stated, "the Company's organization closely entangles stock ownership and employment privilege, but the predominant characteristics are those of employment." *Id.* at 1302-03.

The district court on remand from *Bonilla* discussed the application of Title VII. *See Martinez v. Oakland Scavenger Co.,* 680 F.Supp. 1377, 1387 (N.D.Cal.1987). In *Martinez,* the court asserted that "[t]he Ninth Circuit did not reach the issue of whether the opportunity to purchase shares in the company is a term, condition, or privilege of employment which is subject to Title VII." *Id.* at 1387. "The Ninth Circuit did note that the payment of cash dividends to shareholders on the shares might be the equivalent of a wage premium which could violate Title VII." *Id.* at 1387. The district court noted that the "equivalency was not proved at trial." *Id.* at 1387. Considering the procedural posture of the instant case, this Court finds that Title VII is applicable to the facts of this case as they stand today.

It is therefore ORDERED AND ADJUDGED as follows:

1. Plaintiffs' Motion for Class Certification (Dkt.42) is GRANTED. The class, which includes four subclasses, as set forth above in this order constitutes the certified class.

2. Plaintiffs' Unopposed Motion for Hearing on Class Certification (Dkt.91) is DENIED as moot.

3. Plaintiffs' present counsel are declared class counsel.

DONE AND ORDERED at Tampa, Florida, on this 20th day of May, 1999.

FN1. Notice of opting-in to the Equal Pay Act has been stayed by stipulation of the parties until the Court rules on the class certification of the Title VII action.

FN2. Although the Second Amended Complaint makes reference at times to retaliation, sexual harassment, and a hostile work environment, this Court has previously ruled that these allegations are deemed as explanatory facts in support of the claims of disparate treatment and disparate impact based on gender discrimination in the territory assignments and sale of stock only. (Dkt. 120-order of Feb. 25, 1999).

FN3. Both parties argue extensively about the effect of *Gosche v. West Publishing Company,* Civ. No. 97-Z-1954, which was filed in the United States District Court for the District of Colorado. This Court has already addressed its effect, or lack thereof, at length in the order denying partial summary judgment.

FN4. The Court recognizes that it is more difficult to find commonality and typicality in disparate treatment claims as opposed to disparate impact claims. In this case, however, both claims are viable, and both claims involve the sale of stock, which entails a far more objective employment “practice” than do factually dissimilar disparate treatment claims. *See Washington v. Brown & Williamson Tobacco Corp.,* 959 F.2d 1566, 1570 n. 10 (11th Cir.1992) (citing *Nelson v. United States Steel Corp.,* 709 F.2d 675, 679 n. 9 (11th Cir.1983)).

FN5. The Supreme Court refers to the two companies of Rule 23(b)(3) as “superiority” (rather than increased efficiency) and “predominance.” *See Amchem,* 117 S.Ct. 2231, 2246.

FN6. Apparently, the parties did not appeal the ruling in *Faulk, Pickett* has been reassigned to another district judge, and the parties in *Taylor* have been permitted to file another motion for class certification, after which the parties may be able, if they desire, to take advantage of Federal Rule of Civil Procedure 23(f). Rule 23(f), which was amended effective December 1, 1998, permits the court of appeals in its discretion to review an order of the district court granting or denying class action certification if it is made within ten days after entry of the order. Had one of Judge Albritton's cases been appealed and the appeal accepted, this Court might have deferred ruling on this motion until the Eleventh Circuit ruled on the issues raised by *Allison.*

FN7. This Court is also aware of *Saunders v. Bellsouth Advertising & Publishing Corp.,* Case Number 98-1885 (S.D.Fla.1998).