

The “Omnibus Order” - “Mutually Beneficial ‘Kitchen- sinking’” | Part One

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“MBKS” or Mutually beneficial “kitchen-sinking.” It’s a thing. . . . No, seriously, it is *totally* a thing!

Well, it should be! I credit opposing counsel in a substantial life insurance claim litigation for having suggested that in a single order we might have the court nonsuit (voluntarily dismiss) some claims; nonsuit some arguably interested parties; allow and approve both interpleading of funds and partial payouts of non-interpleaded funds; conditionally dismiss the interpleading party; and generally streamline the pending case to the core factual/legal issue(s)/matters about which the remaining principal parties would be left to dispute. “Not possible,” I was confident. “No way a judge signs off on all that in a single order.”

I was willing to try it, of course,—this “omnibus order” approach, as I had dubbed it, where we would toss in everything but the “kitchen sink”—in hopes of achieving all of the above in inconceivably record time. “Doubting Thomas” that I am, however, I had little expectation of this actually working and was confident it would only end up serving to add costs and delay unnecessarily to all of the procedural and substantive agreements we’d negotiated. I waited for the inevitable call to come from the law clerk informing counsel that there were certain rules and procedures to be followed for these sorts of things, and asking (but not really asking) if I would we be so kind as to file the appropriate multitude of motions to be heard at the proper times on succeeding Fridays, etc. . . . etc. But, as you’ve no doubt already discerned, the call never came. The omnibus order was entered, and, as if having just scored an unexpected “Fast Pass” at Disneyworld, we shot to the front of the litigation roller-coaster line short-circuiting much of the anticipated pre-trial delays.

Attorneys, litigators in particular, are typically paid really well to know the law (or at least how to figure it out when and as necessary in a given situation!), and compensated even better if able to apply it effectively to their clients’ advantage. Mutually beneficial “kitchen-sinking” is about saving clients’ time and money. Adversaries willing to resolve multiple substantive and procedural matters in a single omnibus order well-serve their clients and, concomitantly, the legal system (by helping keep dockets unclogged and access unfettered) and themselves, “...to the extent one’s reputation among both future adversaries and potential future clients is immeasurably impacted by one’s own choices.”

The best litigators know and apply the law to their clients’ substantive advantage with a time and cost efficiency that avoids results where “only the lawyers win,” because these lawyers understand that a pyrrhic victory is no victory at all. One would be wise to remember that, to one’s client, “winning at all costs”—whether or not one’s client appreciates it at the time!—is typically tantamount to a loss. #MBKS!