

AMENDMENT OFFERED BY Sensenbrenner (WI)  
TO THE AMENDMENT IN THE NATURE OF A  
SUBSTITUTE

Page 6, after line 25, insert the following (and make such technical and conforming changes as may be appropriate):

1       “(c) EXCEPTION.—

2               “(1) SUBMISSION TO COURT.—Notwithstanding  
3       subsection (a), a predispute arbitration agreement  
4       and a predispute joint-action waiver shall be valid  
5       and enforceable with respect to an employment dis-  
6       pute, consumer dispute, antitrust dispute, or civil  
7       rights dispute, unless—

8               “(A) the counsel for the plaintiff submits  
9       to the court in which the action relating to such  
10       dispute is filed an affidavit describing the man-  
11       ner in which counsel will receive attorneys’ fees,  
12       including a copy of a written engagement letter  
13       or retainer agreement;

14               “(B) the engagement letter or retainer  
15       agreement provides that—

16               “(i) any fees received shall be—

1 “(I) reasonable in relation to any  
2 relief obtained for the plaintiff; and

3 “(II) either—

4 “(aa) are reasonable under  
5 the standard specified in section  
6 722(b) of the Revised Statutes of  
7 the United States (42 U.S.C.  
8 1988(b)); or

9 “(bb) if calculated as a per-  
10 centage of the recovery, do not  
11 exceed 33 percent of the value of  
12 the relief obtained for the plain-  
13 tiff;

14 except that in a case involving a claim  
15 under a statute that authorizes the  
16 prevailing plaintiff to recover attor-  
17 neys’ fees, such fees do not exceed the  
18 award of attorneys’ fees recoverable  
19 under the statute;

20 “(ii) any recovery of costs by counsel  
21 for the plaintiff is limited to out-of-pocket  
22 expenditures by counsel reflected on  
23 itemized receipts submitted to the client  
24 and filed with the court for in camera re-  
25 view prior to the entry of judgment; and

1                   “(iii) if the action is certified as a  
2                   class action—

3                   “(I) counsel will not seek a deter-  
4                   mination of fees until the distribution  
5                   of any monetary recovery to class  
6                   members has been completed; and

7                   “(II) the attorneys’ fee award  
8                   shall not exceed the total amount of  
9                   money directly distributed to and re-  
10                  ceived by all class members; and

11                  “(C) the engagement letter or retainer  
12                  agreement provides that the court may deter-  
13                  mine whether a proposed fee satisfies the re-  
14                  quirements of subparagraph (B).

15                  “(2) TIMING OF SUBMISSION.—The filing de-  
16                  scribed in paragraph (1) shall be made along with  
17                  the filing of the complaint. Any amended agreement  
18                  shall be filed not later than 7 days after the amend-  
19                  ment is made.”.

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