

## Expert Analysis

### Bally's/LA Fitness Deal Spawns Multiple Consumer Class-Action Lawsuits

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Lawsuits filed in the past month in California, New Jersey and Pennsylvania seek permission to proceed as class actions against Bally and LA Fitness. The common dispute in these lawsuits arises of the Nov. 28 acquisition of almost 200 Bally's gyms by LA Fitness and the uproar that occurred when Bally's members tried to use their old gyms.

One of the most consistent complaints is that LA Fitness apparently told Bally's members who previously purchased prepaid lifetime memberships that they would be charged new membership fees.

Some members complained that their lifetime memberships were national memberships that gave the purchaser the right to attend any Bally's gym in the country for life. Others complained that LA Fitness closed down some Bally's locations, which effectively made it impossible or extremely burdensome to attend because the members were directed to LA Fitness gyms that were extremely far away.

N.J. attorney Mark S. Guralnick filed both the New Jersey lawsuit, *Rose v. Bally Total Fitness*, and the Pennsylvania lawsuit, *Tobia v. Bally Total Fitness*. Guralnick operates a Facebook site called Bally's/LA Fitness class action lawsuit. According to the site, it is Mr. Guralnick's goal to represent all Bally's members nationwide affected by the sale.

Before the lawsuits were filed, it appeared that LA Fitness took some steps to try to remedy the situation.

According to a press release, from late December 2011, LA Fitness said Bally's lifetime/national members would be permitted to use all gyms previously owned by Bally. LA Fitness further stated that lifetime members whose Bally enrollment was at only one gym would be permitted to use any converted Bally or LA Fitness gym in their home state. Obviously, these measures by LA Fitness did not dissuade plaintiffs' counsel from filing and continuing to prosecute the lawsuits.

There are multiple issues affecting how these lawsuits will proceed.

While the lawsuits all seek permission to represent all affected Bally's members, only one lawyer or law firm can be chosen to be lead counsel. If other attorneys file more lawsuits, the potential pool of lawyers jockeying for the position of lead counsel will grow more crowded.

Since class-action fees for plaintiffs' lawyers can be lucrative and approved at several times a lawyer's usual hourly rate, there can be significant battles between counsel, which sometimes have to be decided by a court. Whether the already existing lawyers will reach agreements on how to proceed, and who is lead counsel remains to be seen.

Another set of important issues relates to whether the claims are suited to proceed as a class action.

Under Federal Rule of Civil Procedure 23, a lawsuit can only be approved to proceed as a class action if a variety of factors is present.

Some of the key factors include the following:

- The class is so numerous that joinder of all members is impracticable.
- There are questions of law or fact common to the class or common defenses by those defending the class.
- There are questions of law or fact common to the class members that predominate over any questions affecting individual members.
- A class action is the superior method for adjudicating the controversy fairly and efficiently.

With regard to the latter tests, much is yet to be known about the specific contracts signed by each Bally's member who alleges he/she has been wronged. Based on information I reviewed about several claims, some members have agreements with Bally that go back more than 20 years.

As it is typical for large businesses such as Bally to change their contracts over time, there is the potential that there could be many years of different contracts, with varied terms which may ultimately have a profound impact on how Bally's contractual obligations are viewed.

Stretched between multiple states, all of which have their own consumer and contract laws, the associated complexity could result in a situation whereby a judge would refuse to certify any lawsuit because individual issues of each consumer and each state could predominate over the issues common to the class. If Bally's contracts are more uniform, and stayed the same between states and over the years, there would be a stronger possibility that a court could certify a class.



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