

**FILED**

**NOT FOR PUBLICATION**

JUL 23 2012

**UNITED STATES COURT OF APPEALS**

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

**FOR THE NINTH CIRCUIT**

**BERNARD PARRISH; ROY LEE  
JEFFERSON; CHUCK BEDNARIK;  
PAUL HORNUNG; JOHN BRODIE;  
CLIFTON MCNEIL; WALTER  
BEACH, on behalf of themselves and all  
others similarly situated,**

Plaintiffs - Appellants,

v.

**MANATT, PHELPS & PHILLIPS,  
LLP; MCKOOL SMITH, PC,**

Defendants - Appellees.

No. 10-17868

D.C. No. 3:10-cv-03200-WHA

**ORDER**

Before: **KOZINSKI**, Chief Judge, **N.R. SMITH** and **CHRISTEN**, Circuit Judges.

Former class members (“plaintiffs”) brought malpractice claims against two law firms that jointly served as class counsel. The district court found those claims barred by principles of estoppel, and the plaintiffs appealed. After the case was argued and submitted, plaintiffs reached a tentative settlement with one of the law firms (McKool) but not with the other law firm (Manatt). Because any settlement involving the class requires approval from the district court, plaintiffs and McKool

request “that the above-captioned matter be remanded to the District Court, with respect to Defendant-Appellee McKool only.”

We are aware of no authority to remand half a case while retaining the other half. The only case remotely on point is Empagran S.A. v. F. Hoffman-LaRoche, Ltd., 388 F.3d 337, 345–46 (D.C. Cir. 2004) (per curiam), where the D.C. Circuit denied such a motion. We have jurisdiction to review final judgments and, absent a Rule 54(b) severance, no appeal of the district court’s judgment may be taken by one party while the district court is busy working on another party’s case. See 28 U.S.C. § 1291; Fed. R. Civ. P. 54(b). The district court entered no severance order, so we have a single judgment for review. We have no authority to split the judgment in half and send part of it back to the district court.

It would also be pointless to remand half the case, because we will certainly render our decision as to Manatt long before the district court could approve any class settlement as to McKool. Nonetheless, if plaintiffs and McKool prefer to be bound by their settlement rather than our decision regarding the merits of the appeal, we could decide only the claims against Manatt and remand the case so that the district court can effectuate the settlement between McKool and plaintiffs. We will enter such a split disposition only if unequivocally requested by plaintiffs and McKool before we render our decision. To that end, any motion making such a

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request must be filed no later than 7 days after the filing of this order. Any opposition to such a motion must be filed no later than 7 days thereafter.

**DENIED.**