

AMENDMENT TO RULES COMMITTEE PRINT 116-

32

OFFERED BY MR. SENSENBRENNER OF

WISCONSIN

Page 6, after line 25, insert the following:

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—

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

1 “(II) either—

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

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

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

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

24 “(iii) if the action is certified as a
25 class action—

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

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

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

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

⊗