

American Conference Institute's Defense Counsel Forum on

POSITIONING THE CLASS ACTION DEFENSE FOR EARLY SUCCESS

The Premiere Event for Expert Insights and Strategies

SEPTEMBER 26-27, 2007
JW Marriot Desert Ridge Resort and Spa
Phoenix, AZ

In this era of predatory class action litigation, the need to be one step ahead has never been greater. Gain valuable strategic information for defense counsel on:

- CONSIDERING the options for positioning your case for early disposal
- ARGUING against class certification to undermine the plaintiff's case
- PREPARING for the process of discovery and data management
- BALANCING the cost of litigation with the option of settlement

MASTER CLASS: Complex Settlement Administration for the Class Action Litigator

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“ The new Democratic Congress, beholden to trial lawyers special interests, is likely to attempt substantive changes in federal law that [will] create opportunities for class action abuse...”

- "The Class Action Fairness Act Two Years Later"
American Enterprise Institute for Public Policy Research (March 2007)

WHAT WILL YOUR RESPONSE BE?

With the class action's evolution into plaintiff counsel's primary weapon of choice for attacks on corporate America, the defense counsel who can position the class action for early success will be a hero. This lawyer will not only save the client money, but also minimize collateral damage that may occur as the result of public and media scrutiny, preserving the corporate brand.

The thought of responding to intrusive discovery requests – coupled with the likely reassignment of internal resources and the cost of litigation itself – can make a settlement offer seem most attractive. Yet, as more and more class actions gain access to federal courts post-CAFA, aggressive efforts early on to defeat the plaintiff's case on the merits may ultimately prove beneficial to the weary defendant.

The challenges of defending against class action litigation are ominous. To aid you in creating a defense strategy that works best for your client, the **American Conference Institute** brings you the one cross-industry event focused on providing you with specific, tactical suggestions for achieving *early and advantageous disposition* of class action litigation, **Positioning the Class Action Defense for Early Success**.

Attend this unique event to discover how to mount your best defense when engaging in class action litigation. Register now for this sure to be sold out event – call 1-888-224-2480, or fax your registration form to 1-877-927-1563, or register online at www.americanconference.com/classactions.



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AGENDA-AT-A-GLANCE

- ✓ Establishing a Front Line of Defense In Order to Minimize Future Litigation Risks
- ✓ Analysis of New Developments and Trends in Class Action Certification
- ✓ Finishing the Case Before It Starts: Defeating Certification and Utilizing Experts to Win the Case
- ✓ Responding To and Pursuing Discovery: Aggressive Strategies for Data Management and Cost Control
- ✓ Center Stage: Analyzing Trends, Similarities, and the Evolving Exposures of Class Action Litigation
- ✓ Finding Your Way in the Ethical Grey Area in Class Action Litigation
- ✓ Confronting the Court of Public Opinion: Preparing for Media Scrutiny and the Added Exposure of Litigating a Class Action Case
- ✓ Coming to the Table: An Update on the Status of Contractual Class Action Waiver and Alternative Dispute Resolution Clauses
- ✓ Analyzing the Effect of CAFA on Class Action Litigation
- ✓ Foregoing Settlement and Taking the Class Action to Trial: Navigating Largely Uncharted Waters

WHO YOU WILL MEET

Corporate Executives including:

- General Counsel
- Litigation Counsel
- Directors and Vice Presidents of Legal Affairs

Law Firm Counsel practicing in:

- Complex Litigation
- Class Action Litigation
- Litigation

DAY ONE: WEDNESDAY, SEPTEMBER 26, 2007

8:45 REGISTRATION AND CONTINENTAL BREAKFAST

9:15 CO-CHAIRS' OPENING REMARKS



John Beisner

Head, Class Action, Mass Torts
and Aggregated Litigation Practice
Managing Partner, Washington, DC Office
O'MELVENY & MYERS LLP (Washington, DC)



Sheila L. Birnbaum

Head, Complex Mass Tort & Insurance Group
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP (New York, NY)

9:30 ESTABLISHING A FRONT LINE OF DEFENSE IN ORDER TO MINIMIZE FUTURE LITIGATION RISKS



James B. Moorhead

Partner, Class Actions Practice Leader
STEPTOE & JOHNSON LLP (Washington, DC)



Thomas J. Frederick

Chair, Litigation Department
WINSTON & STRAWN LLP (Chicago, IL)

- Revising your company's compliance plan to anticipate issues that can arise in the class action litigation context
 - coordinating legal and marketing functions to proactively prevent plaintiff claims that may evolve into a class action
 - establishing an effective customer complaint resolution and response program in advance of litigation
- Deciding whether to continue a practice after it has been flagged in a government investigation but outside the context of a formal order or settlement
- Developing a strategy early on to coordinate government and private plaintiff actions should they arise

10:30 MORNING REFRESHMENT BREAK

JUMPING THE CLASS CERTIFICATION HURDLE

10:45 ANALYSIS OF NEW DEVELOPMENTS AND TRENDS IN CLASS ACTION CERTIFICATION



John Beisner

Head, Class Action, Mass Torts and
Aggregated Litigation Practice Group
Managing Partner, Washington, DC Office
O'MELVENY & MYERS LLP (Washington, DC)



James P. Muehlberger

Co-Chair, Class Action and Complex Litigation
Practice Group
SHOOK, HARDY & BACON L.L.P. (Kansas City, MO)

- Interplay of Rule 41 and Rule 23(c)(4) and the issues trials
- Overcoming the challenges that post-CAFA parallel single state class actions pose
- Addressing issues associated with state AG contingency fee suits as pseudo-class actions
- New twists on choice-of-law issues in the class action context
- Strategies for consolidating mass tort claims into single trials
- Implications of extra-territorial class actions
 - class actions brought in foreign countries
 - foreign claims that arise in U.S. class actions
- Defending against class certification-by-statistics theories

12:00 NETWORKING LUNCH

1:15 FINISHING THE CASE BEFORE IT STARTS: DEFEATING CERTIFICATION AND UTILIZING EXPERTS TO WIN THE CASE



Thomas L. Allen

Head, Litigation Group, Pittsburgh Office
REED SMITH LLP (Pittsburgh, PA)



Christopher M. Murphy

Head, International Class Action Practice Group
McDERMOTT WILL & EMERY (Chicago, IL)

- Implied prerequisites of a class – beyond those mentioned in Rule 23
- Determining when injunctive relief predominates over monetary relief and what effect it has on class certification
- Weighing removal vs. multi-district litigation based on forum state certification rules
 - where can a case be sent under 28 USC § 1407 and the MDL Judicial Panel Rules of Procedure?
 - how have these provisions been interpreted by the courts?
- Arguing for review of the merits of the case at the class certification stage – does this always involve experts?
 - assessing the fallout from recent class action cases addressing certification
 - *In re Initial Public Offering Securities Litigation*
 - *Dukes v. Wal-Mart, Inc.*
 - When can or should a circuit court decertify a class?
 - Utilizing consultants and experts during class certification to bolster your case
 - exploring the increased trend in using law professors and other consultants to provide insight on Rule 23 certification requirements
 - attacking the plaintiff's case by utilizing experts to undermine the science behind the claim
 - strategies for asserting decertification at the Daubert hearing
- Utilizing class certification as a defense tactic to obtain an over-inclusive settlement class

2:30 AFTERNOON REFRESHMENT BREAK

2:45 RESPONDING TO AND PURSUING DISCOVERY: AGGRESSIVE STRATEGIES FOR DATA MANAGEMENT AND COST CONTROL



Laurence Z. Shiekman

Practice Leader, Class Action Litigation
Senior Partner, Litigation &
Dispute Resolution Department
PEPPER HAMILTON LLP (Philadelphia, PA)



Gail E. Lees

Chair, Consumer Class Action Practice Group
GIBSON, DUNN & CRUTCHER LLP
(Los Angeles, CA)

- Balancing discovery requests with the cost of litigation – identifying bright lines for responding to and pursuing discovery
 - what constitutes a “reasonable” budget for document production
 - when is it appropriate to allocate costs between the parties?
 - when does it become too costly to request discovery?
- Addressing discovery disputes in a manner that will avoid sanctions and maintain transparency throughout the litigation
- Identifying e-discovery developments under Rule 26 in the class action context
 - handling e-discovery of metadata – what is it and how to produce it
- Understanding and preparing for circumstances that permit a plaintiff to take discovery of a defendant in relation to class settlement

INTERNAL DATA ORGANIZATION AND DISCOVERY MANAGEMENT

- Communicating with the client early on to ensure proper organization of discoverable information
- Establishing a proactive internal data and document retention policy to curb downstream litigation costs
 - enforcing consistency in structure and implementation of document retention policies across corporate locations, divisions and corporate sectors
- Developing a management strategy for dealing with operational issues associated with the internal discovery process
 - determining the appropriate allocation of personnel resources for the discovery of information during litigation
 - how many attorneys should be used?
 - in-house vs. outside – when to use consultants
 - specifying individual responsibilities
- Conducting internal discovery to survey evidence prior to production

4:15 CENTER STAGE: ANALYZING TRENDS, SIMILARITIES, AND THE EVOLVING EXPOSURES OF CLASS ACTION LITIGATION



Dana J. Dunwoody

Partner
SHEPPARD MULLIN RICHTER & HAMPTON LLP (San Diego, CA)



Sean P. Wajert

Co-Chair, Mass Torts and Product Liability Practice Group
DECHERT LLP (Philadelphia, PA)

Various industries have fallen prey to class action litigation in recent years. Based on the number and visibility of certain types of class actions, a few flavors of class actions have emerged as the most heavily litigated and contentious suits to defend. Each with its own nuances, it is essential to the overall success of your defense to be prepared for your day in court. This session will include practical and insightful strategies to assist you in addressing specific litigation issues that occur in:

- Financial services industry class actions
 - Fair Credit Reporting Act
- Class actions requesting medical monitoring
- Consumer protection act cases
 - Third-party payor claims
- Employment class actions
 - discrimination
 - employment status
 - wage and hour

5:15 CONFERENCE ADJOURNS TO DAY 2

NETWORKING COCKTAIL RECEPTION

5:15 – 6:30

All participants are invited to attend this networking opportunity and enjoy a cocktail reception hosted by

Dechert
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9:00 REGISTRATION AND CONTINENTAL BREAKFAST

9:30 CO-CHAIRS' REMARKS

9:45 FINDING YOUR WAY IN THE ETHICAL GREY AREA IN CLASS ACTION LITIGATION



Thomas M. Hefferon

Chair, Consumer Financial Services Litigation Practice
Co-Leader, Litigation Department, Washington, D.C. Office
GOODWIN PROCTER LLP (Washington, DC)



John P. Hooper

Co-Chair, Litigation Department
Chair, Class Action & Mass Litigation Group
EDWARDS ANGELL PALMER & DODGE LLP (New York, NY)

Relevant throughout all stages of litigation, the parameters of professional conduct must always be kept in focus. It is imperative to remain keenly aware of the ethical boundaries of the law – and adhere to them. Join us as our seasoned panel of class action defense litigators discuss with you how to avoid the ethical grey zone as we consider:

- When is it permissible to contact class members?
 - formally vs. informally
 - pre-certification vs. post-certification
- Survey of state-specific jurisdictional rules governing defense communication with the class or class members
- Avoiding assisting plaintiff's counsel when he/she is engaged in unethical behavior
- Specifying the ethical duties and responsibilities of in-house counsel before, during, and after class action litigation
- Examining the ethical guidelines for structuring a settlement with class representatives and members
- Knowing when it is appropriate to structure a “side deal” with objectors in the plaintiff class

POSITIONING THE CLASS ACTION DEFENSE FOR EARLY SUCCESS

- Outlining procedures for contacting individual class members personally to make an offer to settle
 - when and how it can be done
 - regarding opt-in vs. opt-out provisions

11:00 MORNING REFRESHMENT BREAK

11:15 CONFRONTING THE COURT OF PUBLIC OPINION: PREPARING FOR MEDIA SCRUTINY AND THE ADDED EXPOSURE OF LITIGATING A CLASS ACTION CASE



Robert N. Weiner

Head, Business Litigation Practice Group
Arnold & Porter LLP (Washington, DC)



Sheila L. Birnbaum

Head, Complex Mass Tort & Insurance Group
SKADDEN, ARPS, SLATE, MEAGHER
& FLOM LLP (New York, NY)

- Balancing the cost of exposure with the cost of defending against and resolving the case
 - making the strategic consolidation determination – when is it beneficial to consolidate multiple class actions into an MDL
- Developing strategies to address publicity issues that arise when a case is filed without prior warning
 - coordinating a rebuttal response to address plaintiff exploitation of an isolated incident into a class action controversy
 - overcoming sympathy for the class in the eyes of the judge, jury and media
- Defending against negative Internet publicity perpetuated by the use of web blogs and blog sites by plaintiff's counsel during litigation
- Dealing with corporate media communications in the wake of a class action
 - quantifying what the cost of litigation will be to the company's reputation
 - what will the effect of litigation be on stock prices?

12:15 NETWORKING LUNCH

1:30 COMING TO THE TABLE: AN UPDATE ON THE STATUS OF CONTRACTUAL CLASS-ACTION WAIVER AND ALTERNATIVE DISPUTE RESOLUTION CLAUSES



Christopher M. Mason

Co-Head, Class Action Defense Team
NIXON PEABODY LLP (New York, NY)



Lew Goldfarb

LEW GOLDFARB ASSOCIATES LLC
(New York, NY)

In a perfect world, all parties to any contract would be able to come to the table and negotiate an agreement that included a way to resolve all disputes – including potential class action claims – prior to litigation. For years, arbitration clauses seemed to provide just such an alternative. But is that still so today? Take note and participate as you hear from experts who have thought through, and fought through, the class action and arbitration process. Join us as they discuss how the use of contract clauses expressly attempting to waive class actions, or specifying arbitration or other alternative dispute resolution methods, may affect your bottom line and your class action litigation strategies in the future. Points of discussion include:

- Dealing with class action waiver and alternative dispute resolution clauses during class action litigation
 - deciding whether and when to raise the issue
 - how to raise the issue
- Assessing what the risks and costs are of engaging in alternative dispute resolution
- Evaluating the future liability landscape if alternative dispute resolution is used
- Identifying pitfalls of using arbitration to avoid or minimize the threat of class actions

- Investigating where the various jurisdictions stand on the validity of class action waiver and alternative dispute resolution clauses
- Exploring the emerging trends in the use and enforcement of arbitration in class action litigation

2:30 AFTERNOON REFRESHMENT BREAK

2:45 ANALYZING THE EFFECT OF CAFA ON CLASS ACTION LITIGATION



Anthony Rollo

Chair, Consumer Class Action Defense Group
Co-Editor in Chief, CAFA Law Blog
MCGLINCHY STAFFORD PLLC
(New Orleans and Baton Rouge, LA)



Ernest E. Vargo

Chair, Class Action Defense Team
BAKER & HOSTETLER LLP (Cleveland, OH)



Emery G. Lee

Senior Research Associate
FEDERAL JUDICIAL CENTER (Washington, DC)
Co-Author, *The Impact of the Class Action Fairness Act of 2005, Third Interim Report to the Judicial Conference Advisory Committee on Civil Rules*

- Determining which party has the burden of proving federal court jurisdiction post-CAFA
 - who bears the burden of proof if an exception to CAFA jurisdiction applies?
 - how have the courts interpreted revisions to federal court jurisdiction post-CAFA?
 - exceptions to CAFA jurisdiction
 - remand to state court
 - removal to federal court
- Strategic venue considerations triggered by CAFA when dealing with multiple filings in various jurisdictions
- How the courts have interpreted remand and removal provisions post-CAFA

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- Bracing for follow-on or parallel administrative/government enforcement and private litigation triggered by CAFA settlement reporting requirements
- Coordinating government and private plaintiff actions in order to consolidate liability and manage litigation costs
- Incorporating CAFA implications into your settlement strategy
 - staying abreast of which regulators need to be notified based on the parties involved in the litigation
 - preparing for heightened scrutiny from various government agencies triggered by CAFA reporting requirements
 - coordinating the communication of settlement to state attorneys general and other government regulators

4:00 FOREGOING SETTLEMENT AND TAKING THE CLASS ACTION TO TRIAL: NAVIGATING LARGELY UNCHARTED WATERS



Diane Sullivan
Partner
DECHERT LLP (Princeton, NJ)



Steven E. Bizar
Co-Chair, Litigation Section
BUCHANAN INGERSOLL & ROONEY
(Philadelphia, PA)

As you continue to revise your trial strategies in a post-CAFA litigation environment, taking a class action case to trial may not be the disfavored option it used to be. With more and more class actions finding their way into federal court, the cons of trying the case may outweigh the pros of settlement. The option of taking the case to verdict is a real one and one that may be preferable to your client. In the event your case doesn't settle, trial advocacy skills are essential to winning your day in court. Take note as our panel of top notch defense litigators discuss with you strategies that have won the day in court when litigating high stakes class actions. Points for discussion will include:

- Preparing for dealing with multiple opposing counsel – balancing coordinated with non-coordinated plaintiff's counsel and bracing for the complications that can arise in both situations

- Considering the strategic timing for seeking to decertify the class
- Strategies for dealing effectively with counsel for co-defendants prior to and during trial
- Tailoring opening arguments for the class case
- How to examine class representatives and other witnesses at trial: the benefits and pitfalls of a multi-party and multiple counsel defense effort
- Presenting evidentiary objections and motions in a class action trial
- Dealing with damages and other experts in a class action trial: the impact of Daubert and its progeny
- Planning your motion for judgment as a matter of law: special considerations in the class action trial
- Examining a co-defendant's witnesses in a class action trial: balancing the benefits of a true joint defense effort against every one for itself

5:00 CONFERENCE CONCLUDES

PRAISE FOR ACT'S LITIGATION CONFERENCES...

"VERY INFORMATIVE."

Defending & Managing Complex Litigation, March 2006
Clete McGinty, VP of Human Resources
Arby's Restaurant Group, Inc.

"EXCELLENT OVERALL CONFERENCE..."

Defending & Managing Complex Litigation, March 2006
Nicholas Sladic, Senior Director, Associate General Counsel
Capital One Services, Inc.

"GREAT TOPICS! I GOT SOMETHING OUT OF EVERY PRESENTATION. EXCELLENT SPEAKERS..."

Managing Complex Litigation, February 2007
Chris Douglas, Partner
Womble Carlyle Sandridge & Rice PLLC

"GREAT SPEAKERS WITH GREAT CONTENT."

Managing Complex Litigation, February 2007
Robert L. Gibbs, Partner
Brunini, Grantham, Grower & Hewes, PLLC

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COMPLEX SETTLEMENT ADMINISTRATION FOR THE CLASS ACTION LITIGATOR

9:00 AM – 1:00 PM (REGISTRATION BEGINS AT 8:30 AM)

Deciding when and if to settle a complex class action case is an issue that almost every defense litigator must address during the course of litigation. Yet, as an attorney whose primary talent lies in the ability to successfully litigate and defend against complex class action litigation, it is critical to implementing an effective settlement that you also have a thorough understanding of what the real ins and outs are of administering a class action settlement for your client. Join us at this comprehensive master class as we delve into how to put a settlement deal together and explore with you the strategy and mechanics behind coordinating a settlement that delivers final resolution.

SECTION ONE: A HANDS-ON REVIEW OF THE BUILDING BLOCKS OF SETTLEMENT ADMINISTRATION



Orran L. Brown

Partner

BROWN GREER PLC (Richmond, VA)



Julie A. Dunne

Partner

SHEPPARD MULLIN RICHTER & HAMPTON LLP
(San Diego, CA)



Cameron Azari

EPIQ SYSTEMS (Beaverton, OR)

Orran Brown, Julie Dunne, and Cameron Azari will lead you in this in-depth examination of how to coordinate and administer a class action settlement. Providing you with a hypothetical settlement offer as the basis for discussion throughout this session, Orran and Julie will discuss with you the various components of the settlement benefits schedule grid,

factors relevant to categorization, and other critical considerations the defense counsel must consider when developing an administration plan, while Cameron discusses with you strategies for providing notice, including an analysis of the design and adequacy of the notice campaign. Take notes as our experienced workshop leaders examine with you a standard claim form used during settlement and challenge you to brainstorm and provide your comments on how to ensure a claims process that will be easiest for your client to administer. Once you've decided to move forward with settlement, this section will show you how to make it happen.

- Designing the notice and notice campaign – who gets what, when, and how?
- Determining what makes for a good claim form
- Making the decision of whether or not to use a website – what functions should the site include?
- Deciding whether or not use a call center – what questions will be covered?
- Defining registration requirements
- Ascertaining what it takes to be complete for claims review
- Assessing how to handle payment or denial of claims issues
- Dealing with residual funds and closing

SECTION TWO: WHO WILL COME TO THE SETTLEMENT, AND AT WHAT COST?

B. Thomas Florence

President

ARPC (Washington, DC)

Timothy Wyant, PhD

President

RAVENSTAT, INC. (BLUEMONT, VA)



Lew Goldfarb

LEW GOLDFARB ASSOCIATES LLC
(New York, NY)

Now that you've decided to settle and have structured your administration plan, your next challenge is to obtain an accurate count of the class size, determine what the settlement response rates will be, and decide how your client will fund the settlement – all issues that can ultimately affect the efficiency of your administration plan. Attempting to estimate the cost of settlement is no small task. Ascertaining how much money will be required to fund the settlement is a determination which must be made upfront so that you can provide an accurate cost resolution analysis to your client. To aid you in determining how to weigh all of these factors, the faculty of this session, which includes an expert actuarial economist, a statistician who has performed analyses on complex class actions action settlement administration and trusts, and a seasoned defense counsel, will discuss with you exactly what is your team should look at when projecting what the ultimate figures for settlement will be. Learn first-hand how to avoid creating too easy and attractive a settlement structure that can quickly create a black hole for your client.

- Determining the number of class members and how many will become eligible
- Examining models on claiming behavior and the number of claims filed
- Evaluating the methods of funding available and how much funds are needed
- Establishing a budget for administration and deciding who pays

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The Premiere Event for Expert Insights and Strategies

SEPTEMBER 26-27, 2007
JW Marriott Desert Ridge Resort and Spa • Phoenix, AZ

MASTER CLASS:

COMPLEX SETTLEMENT
ADMINISTRATION FOR
THE CLASS ACTION
LITIGATOR

SEPTEMBER 28, 2007

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