POSITIONING THE CLASS ACTION DEFENSE FOR EARLY SUCCESS

Expert Insights from the Nation's Top Class Action Litigators on Winning the Case Early By Utilizing Aggressive Defense Strategies

October 27-28, 2008 | FireSky Resort & Spa | Scottsdale, AZ

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Head, Class Action, Mass Torts
and Aggravated Litigation Practice
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VIEW FROM THE BENCH:



Hon. Gerald Bard Tjoflat U. S. Cir. Ct., Ct. of App., 11th Cir.



Hon. Arthur J. Boylan U.S. Dist. Ct., D. Minn.



Hon. Ann D. Montgomery U.S. Dist. Ct., D. Minn.



Hon. Mark Davidson 11th Civ. Dist. Ct., Harris Co., Texas



Hon. Richard A. Kramer Superior Court of California

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The surge in class action activity – and the high risks that companies face – makes it vital that defense counsel achieve early and advantageous disposition of this litigation. Preeminent class action defense practitioners will provide specific, tactical strategies on how to:

- SHOW that your adversary has not met proof burdens on the "reliance" issue
- COUNTER voluminous discovery requests and USE the discovery process to obtain all relevant information and documents while still keeping it cost-effective for your client
- MITIGATE the prejudice of plaintiff counsel's improper use of expert testimony at the class certification stage
- EXAMINE clauses that place your clients in the best (and worst) position to submit disputes to class **arbitration**
- POSITION your case in a way that ensures you can elect to negotiate a reasonable settlement **before** exorbitant fees are incurred
- FOREGO settlement and TAKE the case to trial and favorable verdict

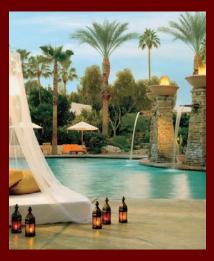
PRE-CONFERENCE WORKSHOP:

A Primer on Class Actions: The Players, Procedures, Laws, and Litigation





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FireSky Resort and Spa

FireSky Resort and Spa is an oasis of elements nestled in the heart of Scottsdale near Fashion Square, museums, golf courses and other favorite places that make Scottsdale such a favored destination. Enjoy the elegance and luxury awaiting in this inspired Kimpton hotel. The grounds of the hotel stretch toward a sandy beach pool and a Mediterraneaninspired lagoon, as well as a torch-lit heated outdoor pool and hot tub surrounded by poolside cabanas and secluded fire pits. Inside, FireSky Resort and Spa enhances its advantageous setting by providing 204 beautifully appointed guestrooms and suites that inspire immediate relaxation. Onsite is the 3,500 squarefoot full-service Jurlique spa, where you can pamper yourself with any number of treatments.

An all-star faculty — the leaders in class action defense — will provide unique "insider know-how" on utilizing effective defense strategies to challenge the plaintiff's case and secure an early victory for your client.

Since CAFA was enacted, there has been a 72% increase in overall federal class action activity for comparable periods in 2001 and 2007, including a dramatic increase in the number of diversity class actions filed (reported in the Federal Judicial Center's 4th Interim Report to the Judicial Conference Advisory Committee on Civil Rules). This surge in activity comes at a time when class action litigation had already been established as one of the most debilitating attacks on corporate America. In addition to the direct costs of the litigation, there is also a huge collateral impact on company resources and public image as the case drags on.

In spite of this, many companies have been slow to realize that a combative strategy may be the best possible recourse. In order to counter the ongoing attacks by plaintiff attorneys, taking an uncompromising approach to winning the case is the best strategy for defendants and their counsel.

To aid you in creating the defense strategy that works best for your client, American Conference Institute has assembled the nation's top class action defense litigators to provide you with specific, tactical strategies for achieving early and advantageous disposition of class action litigation at ACI's 2nd Annual Defense Counsel Summit on POSITIONING THE CLASS ACTION DEFENSE FOR EARLY SUCCESS.

This is the only event where you will learn powerful techniques for defending class actions from the masters of the defense bar. They will guide you through every step of mounting a zealous defense, including tactics for early discovery, *Daubert* challenges, defenses against class certification, and arguing the case at trial. In addition, a special "View From the Bench" session led by renowned jurists with extensive experience in class actions will give you a rare insider look at the evidence and arguments that turn cases one way or the other as they make critical determinations on crucial matters such as class certification.

Plus, expertly navigate the "who," "what," "when" and "why" of class actions and derive greater satisfaction from the main conference by also attending the pre-conference workshop:

A Primer on Class Actions: The Players, Procedures, Laws, and Litigation Oct. 27, 9:00 A.M. To 12:00 P.M.

If your practice focuses on the defense of class actions and complex litigation, you cannot miss this event. To register call 1-888-224-2480, or fax your registration form to 1-877-927-1563, or register online at www.americanconference.com/classactions

AGENDA-AT-A-GLANCE

Day 1 – Monday, October 27, 2008

- Factoring New Developments and Trends in Class Action Certification into Defense Strategies
- Vigorously Challenging and Defeating Class Certification: Strategies for Showing that Plaintiffs Have Not Met Their Burden
- Managing Data and Responding To and Pursuing Discovery in the Most Efficient and Cost-Effective Way for Your Client
- Navigating Ethical Grey Areas in Class Action Litigation

Day 2 - Tuesday, October 28, 2008

- A View From the Bench: Judicial Perspectives on Class Actions
- Examining the Benefits and Risks of Class Arbitration and Negotiating/Structuring Effective Settlements Before Exorbitant Fees Are Incurred
- Assessing Strategic Venue Considerations Triggered by CAFA and Addressing the Still-Unresolved CAFA Issues Impacting Class Actions Today
- Foregoing Settlement and Taking the Class Action to Trial
- Utilizing Defenses in Major Substantive Areas Subject to Active Class Action Litigation

Pre-Conference Workshop Monday, October 27, 2008

9:00 A.M. TO 12:00 P.M. (REGISTRATION OPENS 8:00 A.M.)

A Primer on Class Actions: The Players, Procedures, Laws, and Litigation



Holly E. Loiseau
Partner
Weil, Gotshal & Manges LLP (Washington, DC)



Andrew J. McGuinness Leader, Class Action Defense Team Dykema (Ann Arbor, MI)

This unique comprehensive class will empower the participants with the ability to expertly navigate the "who," "what," "when" and "why" of class actions, and maximize understanding of the main conference. With high-exposure class actions dominating the litigation landscape, it is imperative to have a detailed grounding in the governing laws as well as in the practical concerns that arise at the various stages of litigation, including:

- Understanding what leads to class action vulnerability
- Motions practice, the use of dispositive motions and merits discovery
- The Class Action Fairness Act
- Venue considerations
- The role played by economic experts
- What you must know about class certification and the factors that courts consider in determining whether or not to certify
- Settlement and insurance issues
- The potential use of alternative dispute resolution
- How public relations concerns are addressed in class actions

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For more information about this program or our global portfolio of events, please contact:

Wendy Tyler

Group Leader & Business Development Executive American Conference Institute

Tel: 212-352-3220 x242 Fax: 212-220-4281

w.tyler@AmericanConference.com

Conference: Monday, October 27, 2008

12:15 Registration Opens

1:00 Co-Chairs' Opening Remarks



John Beisner
Head, Class Action, Mass Torts
and Aggravated Litigation Practice
O'Melveny & Myers LLP (Washington, DC)



Sheila L. Birnbaum Head, Complex Mass Tort & Insurance Group Skadden, Arps, Slate, Meagher & Flom LLP (New York, NY)

1:15 Factoring New Developments and Trends in Class Action Certification into Defense Strategies



John Beisner
Head, Class Action, Mass Torts
and Aggravated Litigation Practice
O'Melveny & Myers LLP (Washington, DC)



Charles B. Casper
Chair, Class Action Defense Practice
Montgomery, McCracken, Walker & Rhoads LLP
(Philadelphia, PA)

- Exploring the growing trend in the courts towards requiring that plaintiffs demonstrate "reliance"
- Evaluating the increasing number of cases being brought that present claims for latent injuries
- Understanding recent plaintiff strategies to increase the size of classes
- Assessing plaintiff claims emphasizing omissions of material facts
- Implications of recent developments in judicial handling of experts
 - when the *Daubert* analysis occurs
- Anticipating the increasing challenges presented by opt-outs under Rule 23
- Analyzing plaintiff forum-shopping strategies and the growing use of state forums
- Addressing the plaintiff tactic of presenting claims under multiple statutes
- Impact of consolidation of mass tort claims into single trials
- The future of consumer products class actions after the 2nd Circuit's reversal of certification in *McLaughlin*
- Will courts be swayed by the "annihilation defense"?
- Implications of international class actions trends

2:15 Vigorously Challenging and Defeating Class Certification: Strategies for Showing that Plaintiffs Have Not Met Their Burden



Daniel M. McClure Chair, Class Action Practice Group Fulbright & Jaworski L.L.P. (Houston, TX)



Christopher M. Murphy Head, Class Action Practice Group McDermott Will & Emery LLP (Chicago, IL)



William L. Stern
Co-Chair, Consumer and Class Action Litigation
Practice Group
Morrison & Foerster LLP (San Francisco, CA)

- Capitalizing on the judicial trend toward "reliance" making individual issues predominant and class certification under FRCP 23(b)(3) impossible
 - impact of the Supreme Court decision in Stoneridge
 - analyzing important recent decisions in the 2nd (McLaughlin vs. American Tobacco Co.) and 8th (In re St. Jude Medical, Inc.) circuits
 - understanding the significance of the "Diet Coke" case in Missouri Supreme Court
- 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
 - when does the *Daubert* analysis happen?
 - strategies for asserting decertification at the Daubert hearing
 - using law professors and other consultants to provide insight on certification requirements
 - attacking the plaintiff's case by utilizing experts to undermine the science behind the claim
- Utilizing class certification as a defense tactic to obtain an over-inclusive settlement class

3:40 Managing Data and Responding To and Pursuing Discovery in the Most Efficient and Cost-Effective Way for Your Client



Daniel M. Blouin Chair, Class Action Practice Group Seyfarth Shaw LLP (Chicago, IL)



Todd A. Noteboom Chair, Class Action Practice Group Leonard, Street and Deinard (Minneapolis, MN)

- Handling requests for contact information of pre-certification class members
- Defense strategies for getting your own documents into evidence
 - building your defense during discovery
- Making certain that responses to e-discovery are comprehensive and appropriate
 - understanding the major risks post-Qualcomm
 - authentication of records in light of *Lorraine* v. Markel
- Determining whether there is an obligation to alert non-parties not to destroy evidence
- Avoiding potential sanctions for spoliation of evidence
- 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
- Ensuring 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

3:25 Afternoon Refreshment Break

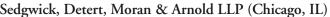
Conference: Tuesday, October 28, 2008

- 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

4:40 Navigating Ethical Grey Areas in Class Action Litigation



Anthony J. Anscombe Partner





Angel A. Garganta Partner

Arnold & Porter LLP (San Francisco, CA)

- Knowing when is it permissible to contact class members
 - formally vs. informally
 - pre-certification vs. post-certification
 - state-specific jurisdictional rules
- 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
- Settlement offers: procedures for contacting individual class members personally
 - when and how it can be done
 - contact regarding opt-in vs. opt-out provisions

5:45 Conference Adjourns to Day 2

Continuing Legal Education Credits



Accreditation will be sought in those jurisdictions requested by the registrants which have continuing education requirements. This course for experienced attorneys is identified as nontransitional for the purposes of CLE accreditation.

ACI certifies that the activity has been approved for CLE credit by the New York State Continuing Legal Education Board in the amount of 13.0 hours, of which 1.0 will apply to ethics. An additional 3.5 credit hours will apply to workshop participation.

ACI certifies that this activity has been approved for CLE credit by the State Bar of California in the amount of 10.75 hours, of which 1.0 will apply to ethics. An additional 3.0 credit hours will apply to workshop participation.

ACI has a dedicated team which processes requests for state approval. Please note that event accreditation varies by state and ACI will make every effort to process your request.

7:45 Continental Breakfast

8:15 Co-Chairs' Opening Remarks

8:25 A View From the Bench: Judicial Perspectives on Class Actions



Hon. Gerald Bard Tjoflat U. S. Cir. Ct., Ct. of App., 11th Cir.



Hon. Arthur J. Boylan U.S. Dist. Ct., D. Minn.



Hon. Ann D. Montgomery U.S. Dist. Ct., D. Minn.



Hon. Mark Davidson 11th Civ. Dist. Ct., Harris Co., Texas



Hon. Richard A. Kramer Superior Court of California

Moderator:



Irene C. Freidel
Practice Group Coordinator, Class Actions
K&L Gates LLP (Boston, MA)

Leading jurists will give you a rare insider look at the evidence and arguments that turn cases one way or the other as they make critical determinations on crucial matters such as class certification. Special attention will be paid to how judges analyze expert testimony and *Daubert* challenges. Bring your most pressing questions to this unique interactive session.

10:00 Morning Coffee Break

10:15 Examining the Benefits and Risks of Class Arbitration and Negotiating/Structuring Effective Settlements Before Exorbitant Fees Are Incurred



Sheila L. Birnbaum

Head, Complex Mass Tort & Insurance Group Skadden, Arps, Slate, Meagher & Flom LLP (New York, NY)



Keith C. Hult Co-Chair, Class Action Practice Group Littler Mendelson P.C. (Chicago, IL)



James M. Schurz
Partner
Morrison & Foerster LLP (San Francisco, CA)

Arbitration

- Assessing the future of commercial arbitration in class action litigation and how to factor it into your current strategies
- Analyzing contract clauses that expressly attempts to waive class actions
 - language specifying different methods for alternative dispute resolution
- 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

<u>Settlement</u>

- Knowing when to pull the plug: deciding when and if to settle a complex class action case
- Coordinating a settlement that delivers final resolution
 - addressing plaintiff opt-outs in settlement negotiations
- Incorporating insurance considerations into settlement strategies
 - understanding trigger of coverage issues for class action defendants
 - describing claims to help support coverage

11:25 Assessing Strategic Venue Considerations Triggered by CAFA and Addressing the Still-Unresolved CAFA Issues Impacting Class Actions Today



Marci A. Eisenstein Co-Leader, Class Action Litigation Group Schiff Hardin LLP (Chicago, IL)



Holly E. Loiseau
Partner
Weil, Gotshal & Manges LLP (Washington, DC)



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

 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
- 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 Attorney Generals and other government regulators

12:35 Networking Luncheon for Speakers and Delegates

1:45 Foregoing Settlement and Taking the Class Action to Trial



Gary R. Long
Chairman, National Product Liability
Litigation Group
Shook Hardy & Bacon LLP (Kansas City, MO)



Stuart M. Richter
Chair, National Class Action Practice
Katten Muchin Rosenman LLP (Los Angeles, CA)



Diane P. Sullivan
Partner
Dechert LLP (Princeton, NJ)

- Factors that make the trial option make sense
- 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

2:55 Utilizing Defenses in Major Substantive Areas Subject to Active Class Action Litigation



Cari K. Dawson Chair, Class Action Practice Team Alston & Bird LLP (Atlanta, GA)



Dana J. Dunwoody Managing Partner of San Diego Office Sheppard Mullin Richter & Hampton LLP (CA, NY, DC and Shanghai)



Charles Lifland
Partner
O'Melveny & Myers LLP (Los Angeles, CA)



Andrew J. McGuinness Leader, Class Action Defense Team Dykema (Ann Arbor, MI)

Moderator:



Gail E. Lees Chair, Consumer Class Action Practice Group Gibson, Dunn & Crutcher LLP (Los Angeles, CA)

- Understanding current drivers behind increased class actions in certain industries
 - impact of negative Internet publicity perpetuated by the use of web blogs and blog sites
- Addressing specific litigation issues that arise in areas experiencing a significant number of class actions
 - financial services industry class actions
 - consumer cases
 - product liability actions
 - employment class actions: spreading to more jurisdictions
- Effectively using powerful substantive defenses
 - preemption (e.g. FDA)
 - compliance with mandatory federal disclosures
 - compliance with other statutory requirements

Who You Will Meet

In-House Counsel including:

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

Law Firm Counsel practicing in:

- Class Action Litigation
- Complex Litigation



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Each year more than 21,000 in-house counsel, attorneys in private practice and other senior executives participate in ACI events – and the numbers keep growing.

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ACI's highly trained team of attorney-producers are dedicated, full-time, to developing the content and scope of our conferences based on comprehensive research with you and others facing similar challenges. We speak your language, ensuring that our programs provide strategic, cutting edge guidance on practical issues.

Unparalleled Learning and Networking

ACI understands that gaining perspectives from – and building relationships with – your fellow delegates during the breaks can be just as valuable as the structured conference sessions. ACI strives to make both the formal and informal aspects of your conference as productive as possible.



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The complimentary ACI Alumni Program is designed to provide returning delegates with unique networking and learning opportunities beyond the scope of their conference experience.

Highlights include:

- Search for and contact fellow Alumni
- Post a question or look for answers in our Industry Forums
- Join a live Industry Chat in progress
- Build your own community
- Earn Forum points towards free conferences & workshops

Expand your Network at www.my-aci.com

4:25 Conference Concludes

American Conference Institute's 2nd Annual Defense Counsel Summit on

POSITIONING THE CLASS ACTION DEFENSE FOR EARLY SUCCESS

Expert Insights from the Nation's Top Class Action Litigators on Winning the Case Early By Utilizing Aggressive Defense Strategies

> October 27-28, 2008 FireSky Resort & Spa Scottsdale, AZ

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Payment Policy

Payment must be received in full by the conference date. All discounts will be applied to the Conference Only fee (excluding add-ons), cannot be combined with any other offer, and must be paid in full at time of order. Group discounts available to individuals employed by the same organization.

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