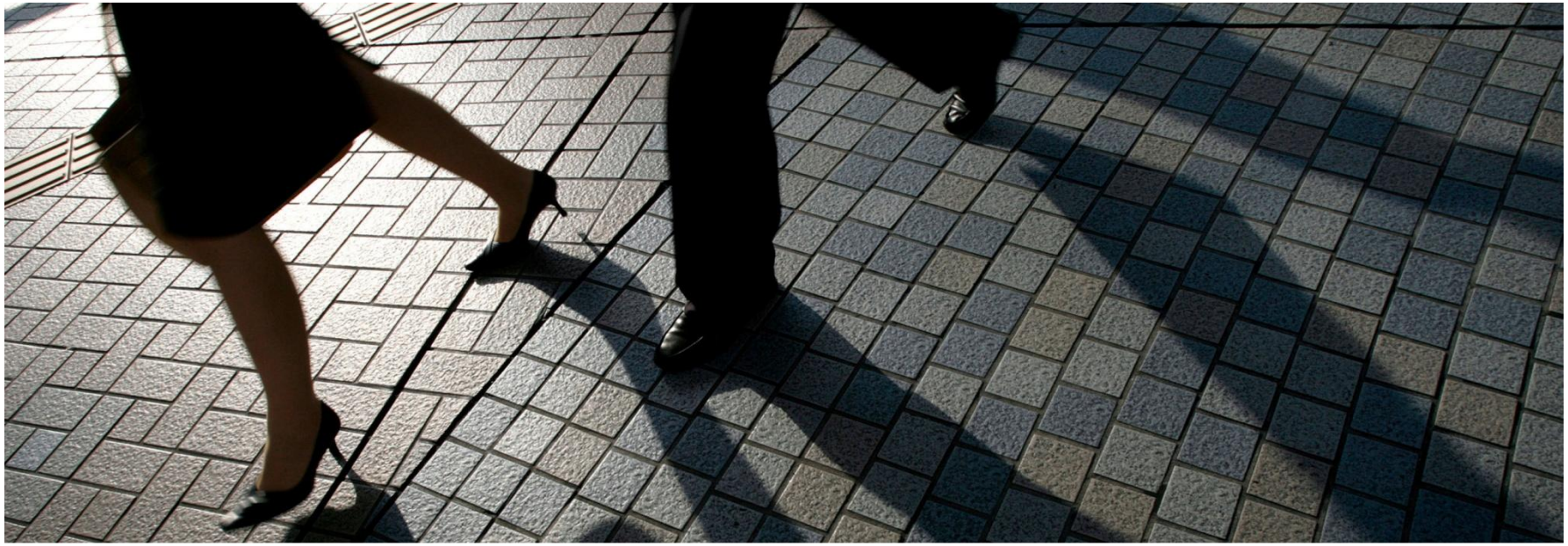

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Class Action Trends and Strategies

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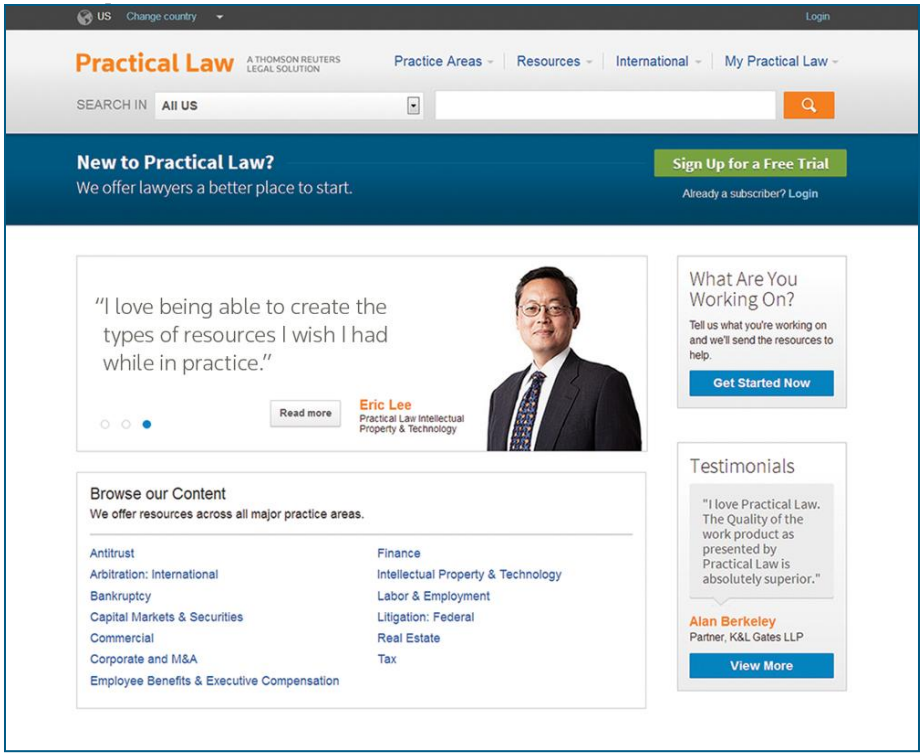

Class Action Trends and Strategies

- The latest developments in class certification law
- Trends in appellate review of class certification rulings
- Recent issues related to removal under the Class Action Fairness Act
- Settlement strategy

Developments in Class Certification Law

- Increased Supreme Court scrutiny
- Application in the circuit courts of appeal
- Recent focus on:
  - Issue Classes
  - Ascertainability

Increased Supreme Court Scrutiny

- In recent years, an increased number of class action *certiorari* petitions have been filed in the Supreme Court.
- The Supreme Court has accepted a number of these petitions and ruled to strengthen class certification standards.

Increased Supreme Court Scrutiny (cont.)

- Two key recent rulings on class certification
  - *Wal-Mart Stores, Inc. v. Dukes,* 131 S. Ct. 2541 (2011)
    - Reversed Ninth Circuit *en banc* certification of a class of 1.5 million female Wal-Mart employees alleging discrimination.
    - The Supreme Court concluded that in evaluating class certification motions, the trial court must conduct a "rigorous analysis" of the Federal Rule of Civil Procedure 23 requirements, which "[f]requently . . . [will] entail some overlap with the merits of the plaintiff's underlying claim."
  - *Comcast Corp. v. Behrend,* 133 S. Ct. 1426 (2013)
    - Reversed Third Circuit certification ruling because plaintiffs did not present a classwide theory of damages that matched the accepted theory of liability.
    - Reiterated the "rigorous analysis" requirement and made clear that it also "govern[s] Rule 23(b)."

Increased Supreme Court Scrutiny (cont.)

- In theory, *Dukes* and *Comcast* were great news for defendants.
  - The Court recognized the exceptional nature of representative litigation and that Rule 23 is not a mere pleading standard.
  - Plaintiffs must affirmatively meet their burden of demonstrating that the prerequisites are met.

Application in the Circuit Courts of Appeal

- Even though the Supreme Court has toughened the standards, application in the appellate courts has been mixed.
- Class actions seemingly fraught with individualized issues sometimes still get certified.
- Counsel must be familiar with relevant decisions in the applicable jurisdiction.
  - Some circuits have become more certification friendly, for example the Sixth, Seventh and Ninth Circuits.
  - As a result, plaintiffs may try to focus litigation efforts in these jurisdictions.

A Few Examples

- The Sixth and Seventh Circuits expressly declined to alter pre-*Comcast* decisions in cases remanded from the Supreme Court. Both cases involved allegations related to problems with various models of front-load washing machines.
  - *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 722 F.3d 838 (6th Cir. 2012)
    - Supreme Court vacated certification, remanded and directed the circuit court to reconsider in light of *Comcast.*
    - On remand, the Sixth Circuit declined to alter its prior conclusion that the class was properly certified.
    - The court gave short shrift to *Comcast*, noting that this case was different because "[h]ere the district court certified only a liability class and reserved all issues concerning damages for individual determination; in *Comcast Corp.* the court certified a class to determine both liability and damages. Where determinations on liability and damages have been bifurcated . . . the decision in *Comcast* . . . has limited application."
    - Yet, the case did involve individual issues with respect to injury and, in fact, most class members were not injured at all.

A Few Examples (cont.)

- *Butler v. Sears, Roebuck and Co.*, 727 F.3d 796 (7th Cir. 2013)
  - Supreme Court remanded to determine whether *Comcast* "cut the ground out from under" the certification decision.
  - The Seventh Circuit did not alter its prior holding, finding there was a single, central and common issue of liability and other noncommon issues, such as damages, could be resolved individually through the use of issue classes.
  - "It would drive a stake through the heart of the class action device, in cases in which damages were sought . . . to require that every member of the class have identical damages."
  - Notably, on February 24, 2014, the Supreme Court declined to revisit the *Butler* and *Whirlpool Corp.* decisions by denying petitions for *certiorari* that had been filed in those cases.
- *IKO Roofing Shingle Prods. Liab. Litig.*, 757 F.3d 599 (7th Cir. 2014). Case involving roof shingle standards. Court vacated and remanded the lower court's decision declining to certify the class in part because the district judge improperly found that inevitable differences in consumers' experiences with the shingles prevented class certification.
- *Suchanek v. Sturm Foods, Inc.*, No. 13-cv-3843, 2014 WL 4116493 (7th Cir. Aug. 22, 2014), *pet. for reh'g en banc denied* (Sept. 22, 2014). Case involving pods used with Keurig coffee makers. Court unanimously reversed order denying class certification, holding that the lower court erred in its commonality and predominance analyses.
- *Hughes v. Kore of Ind.*, 731 F.3d 672 (7th Cir. 2013). Case involving ATM fees. Court ruled class should not be decertified due to minimal nature of damages.

A Few Examples (cont.)

- An interesting example in the Fifth Circuit addressed standing, *In re Deepwater Horizon*, 739 F.3d 790 (5th Cir. 2014), *pet. for reh'g en banc denied*, 756 F.3d 320 (5th Cir. 2014).
  - The Fifth Circuit affirmed the district court's order certifying the class action and approving settlement.
  - The court noted Judge Clement's opinion in an earlier ruling that classes cannot encompass members who are uninjured and therefore lack legitimate claims:
    - "Unless a claimant can colorably assert a loss, it lacks standing." (732 F.3d 326, 340 (5th Cir. 2013)).
  - Nonetheless, the court found that, at the certification stage, "it is sufficient for standing purposes that the plaintiffs seek recovery for an economic harm that they *allege* they have suffered." This is particularly true where the class is certified for settlement. This standard was met.
  - The court ruled that under *Dukes*, commonality may "be satisfied by an instance of the defendant's injurious conduct, even when the resulting injurious effects-the damages-are diverse."
  - In addition, the court found that *Comcast* had no "impact on cases such as the present one, in which predominance was based not on common issues of damages but on the numerous common issues of liability."
  - A petition for *certiorari* is now pending before the Supreme Court.

Key Takeaways

- *Dukes* and *Comcast* certainly do not guarantee denial of class certification.
- In fact, some federal courts seem to have avoided their holdings.
- Defense practitioners should be sure to assert all possible defenses against certification – it is not always clear what objection courts will find most persuasive.

Issue Classes

- Rule 23(c)(4) provides that "[w]hen appropriate, an action may be brought or maintained as a class action with respect to particular issues."
- Plaintiffs' attorneys have argued that this rule permits courts to identify particular questions that are common to a proposed class - such as whether a product has a design defect - and order classwide resolution only on those inquiries.
  - But in the context of Rule 23(b)(3), this could allow courts to authorize class actions even where the plaintiffs' claims also involve highly individualized questions that cannot be answered in a classwide setting based on common evidence.
- A split has developed over the propriety of issue classes.

Issue Classes (cont.)

- In *Butler*, the Seventh Circuit ruled that a class action limited to determining liability on a class-wide basis, with separate hearings to determine the damages of individual class members, or homogeneous groups of class members, "is permitted by Rule 23(c)(4) and will often be the sensible way to proceed."
- It is hard to reconcile this with *Comcast.*
  - *Butler* creates the risk that the certified class will be much broader than the actual number of injured individuals – the type of over-inclusiveness *Comcast* rejected.
  - If issue classes could solve the problem, the Supreme Court would have said so.
- Other circuit courts of appeal have found that a court may use Rule 23(c)(4) to certify an issue class regardless of whether the plaintiffs' claims as a whole satisfy Rule 23(b)(3)'s predominance requirement (see, for example, *In re Nassau County Strip Search Cases*, 461 F.3d 219 (2d Cir. 2006); *Valentino v. Carter–Wallace, Inc*., 97 F.3d 1227 (9th Cir.1996)).

Issue Classes (cont.)

- On the other hand, some circuits have rejected the use of issue classes for several compelling reasons. Issue classes:
  - **Create an end run around Rule 23(b)(3) predominance** (see, for example, *Castano v. Am. Tobacco Co.*, 84 F.3d 734 (5th Cir.1996); *Henke v. Arco Midcon, L.L.C.,* 10-cv-86, 2014 WL 982777 (E.D. Mo. Mar. 12, 2014); *City of St. Petersburg v. Total Containment, Inc.*, 265 F.R.D. 630 (S.D. Fla. 2010)).
  - **Are grossly inefficient** (see, for example, *In re Genetically Modified Rice Litig.*, 251 F.R.D. 392 (E.D. Mo. 2008) (refusing to certify issue class because it would "lead to procedural difficulties," "would not resolve any individual plaintiff's claims," and "would do little if anything to increase the efficiency of this litigation")).
  - **Violate the Seventh Amendment**, which bars a second jury from re-deciding issues resolved by a first jury - for example if the common trial phase were followed by individualized proceedings on remaining issues before different juries (see, for example, *In re ConAgra Peanut Butter Prods. Liab. Litig.*, 251 F.R.D. 689 (N.D. Ga. 2008)).
- Issues classes could render certification potentially meaningless to plaintiffs who invest significant resources in litigating the common-phase of the case with no damages award even if they "win" at trial.
- The net effect of increased use of issue classes could be a surge of suits by plaintiffs hoping to parlay "issue" certification into a settlement.

Growing Focus on Ascertainability

- Ascertainability means that the members of a certified class must be sufficiently definite, that is, that class members can be easily ascertained or determined using objective criteria.
  - Certification should be precluded where there is no objectively manageable way to identity class members.
- Although not a statutory prerequisite, recent cases support treating ascertainability with the same rigor as the Rule 23 requirements.

Growing Focus on Ascertainability (cont.)

- In *Carrera*, the Third Circuit held that a class is not ascertainable where class membership cannot be determined from sales records or receipts.
  - "A defendant has a . . . due process right to challenge the proof used to demonstrate class membership. . . ."
    - *Carrera v. Bayer Corp.*, 727 F.3d 300 (3d Cir. 2014), *pet. for reh'g en banc denied*, No. 12-cv-2621, 2014 WL 3887938 (3d Cir. May 2, 2014).
- Dissent from denial of rehearing *en banc: Carrera* threatens to end low-value consumer class actions.

Growing Focus on Ascertainability (cont.)

- Courts have relied on *Carrera* in rejecting class action proposals where there are no records of class membership.
  - *Sethavanish v. ZonePerfect Nutrition Co.*, No. 12-cv-2907, 2014 WL 580696 (N.D. Cal. Feb. 13, 2014) (finding "the reasoning of *Carrera* . . . persuasive," and denying certification where there was no accurate way to determine who had purchased nutrition bars underlying suit).
  - *Karhu v. Vital Pharm., Inc.*, No. 13-cv-60768, 2014 WL 815253 (S.D. Fla. Mar. 3, 2014) (relying on *Carrera* in denying certification where defendant did not have a record of individuals who purchased dietary supplement), *mot. for reconsideration denied.*

Growing Focus on Ascertainability (cont.)

- But lower courts in the Ninth Circuit are not all in accord.
- *McCrary v. Elations Co., LLC*, No. 13-vc-00242, 2014 WL 1779243 (C.D. Cal. Jan. 13, 2014): *Carrera* "eviscerat[ed] low purchase price consumer class actions in the Third Circuit."
- Several courts have agreed with *McCrary*
  - *Forcellati v. Hyland's, Inc.*, No. 12-cv-1983, 2014 WL 1410264 (C.D. Cal. Apr. 9, 2014) (defendants did not have a due-process right to challenge class membership because "[their] aggregate liability is tied to . . . total sales").
  - *Werdebaugh v. Blue Diamond Growers*, No. 12-cv-2724, 2014 WL 2191901 (N.D. Cal. May 23, 2014) ("in the Ninth Circuit[,] '[t]here is no requirement that the identity of the class members . . . be known at the time of certification'") (citation omitted).

Trends in Appellate Review of Class Certification Rulings

- Rule 23(f) governs appellate review of certification decisions. This rule was added in 1998 in part to reduce settlement pressure on defendants resulting from a decision granting class certification.
- Certification decisions are interlocutory, so appellate review is not guaranteed. A court of appeals has “unfettered” discretion to grant or deny a motion seeking appeal of a certification ruling.
- A petition for permission to appeal must be filed within 14 days after the certification order is entered. Notably, the appeal does not stay proceedings in the district court unless the district court or court of appeals so order.

Trends in Appellate Review of Class Certification Rulings (cont.)

- Although there is some variation, in determining whether to grant permission to appeal, courts generally consider if:
  - Denial of certification effectively terminates the litigation because the named plaintiffs' claims are too small to justify the expense of litigation.
  - Class certification risks placing undue pressure on defendants to settle.
  - An appeal implicates novel or unsettled questions of law.
  - The appeal might facilitate development of the law on class certification.

Trends in Appellate Review of Class Certification Rulings (cont.)

- The courts of appeal recently have been significantly less receptive to interlocutory review of class certification rulings.
  - Less than 25% of petitions for interlocutory review filed between October 2006 and May 2013 were granted.
  - However, between 1998 and September 2006, 36% of petitions were granted.
- Decline may be due to:
  - Many more class actions in federal court do to CAFA.
  - Appellate courts have spoken on many class certification issues.

Trends in Appellate Review of Class Certification Rulings (cont.)

- Some courts are better bets than others:
  - **Fifth Circuit.** Most receptive to Rule 23(f) jurisdiction in recent years, granting 13 of the 29 petitions (46.4%) filed after October 20, 2006.
  - **Third Circuit**. Granted 24 of 67 petitions (35.8%).
  - **First, Eighth and District of Columbia Circuits.** Least friendly to Rule 23(f) petitions, with grant rates ranging from 5.4% in the First Circuit to 14.3% in the Eighth Circuit.
  - **Ninth Circuit.** Had the most Rule 23(f) activity of any circuit. More than 1/3 of petitions filed in the entire country, but only 19% of the petitions were granted.
- Most jurisdictions grant a higher percentage of appeals from defendants than from plaintiffs. For example, the Fifth Circuit granted 69.2% of defendants' petitions versus 28.6% of plaintiffs' petitions.

Trends in Appellate Review of Class Certification Rulings (cont.)

- When courts of appeal do accept these interlocutory appeals, the results are generally good for defendants, with some variation. Overall:
  - 67% of class certification grants are reversed.
  - 60% of certification denials are upheld.
- However, in light of the relatively low rate at which appellate courts are granting petitions at all, district courts may be receiving the signal that their decisions will not be reviewed, which could lead courts to push the boundaries of discretion.
- In addition, once a class has been certified there is enormous pressure to settle, particularly if appellate review is denied.
- Counsel should proceed with caution at the appellate level, and continue to focus efforts on soundly defeating certification at the initial stage.

Removal Under the Class Action Fairness Act

- In an effort to decrease forum shopping, CAFA expanded federal diversity jurisdiction over most class actions and mass actions (28 U.S.C. § 1332(d)).
- CAFA:
  - Increased the amount in controversy for class actions from $75,000 to $5 million, and allowed that threshold to be met by aggregating the sum of each individual plaintiff's claims (28 U.S.C. § 1332(d)(2), (6)).
  - Relaxed the requirement that all plaintiffs be diverse from all defendants to allow jurisdiction where at least one plaintiff is diverse from at least one defendant (28 U.S.C. § 1332(d)(2)).
- CAFA also relates to "mass actions," or cases in which the claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact (28 U.S.C. § 1332(d)(11)(B)(i)).
- Although CAFA is nearly 10 years old, parties continue to test boundaries.
- Where a class or mass action is filed in state court, defense counsel should be ready to remove.

CAFA: Attempts to Avoid the Jurisdictional Threshold

- The Supreme Court struck down plaintiffs' attempts to avoid CAFA by stipulating to less than the $5 million statutory threshold for federal jurisdiction (*Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345 (2013)):
  - "[A] plaintiff who files a proposed class action cannot legally bind members of the propose class before the class is certified."
- The Ninth Circuit has interpreted *Knowles* as abrogating the "legal certainty" standard for proving the amount in controversy under CAFA (*Rodriguez v. AT&T Mobility Servs.*, 728 F.3d 975 (9th Cir. 2013)).
- In many jurisdictions, CAFA's amount in controversy is satisfied if the damages *could* exceed $5 million (see *McDaniel v. Fifth Third Bank*, 568 Fed.Appx. 729 (11th Cir. 2014); *Raskas v. Johnson & Johnson*, 719 F.3d 884 (8th Cir. 2013); *Lewis v. Verizon Commc'ns, Inc.*, 627 F.3d 395 (9th Cir. 2010); *Spivey v. Vertrue, Inc.*, 528 F.3d 982 (7th Cir. 2008)).
- Notably, in *Dart Cherokee Basin Operating Co. LLC v. Owens*, the Supreme Court will decide whether removing defendants must include evidence supporting federal jurisdiction in the notice of removal, or whether it is enough to allege the required "short and plain statement of the grounds for removal."

CAFA: Attempts to Avoid the Jurisdictional Threshold (cont.)

- Another tactic to avoid federal jurisdiction is to artificially divide plaintiffs into several cases. This keeps each action under the 100-plaintiff threshold required for mass actions under CAFA, even where, in the aggregate, more than 100 plaintiffs are suing based on the same claim.
- The courts are divided on this issue.

CAFA: Attempts to Avoid the Jurisdictional Threshold (cont.)

- The Tenth and Eleventh Circuits have remanded.
  - *Scimone v. Carnival Corp.*, 720 F.3d 876 (11th Cir. 2013)
    - Two lawsuits, one on behalf of 56 plaintiffs and the other on behalf of the remaining 48, included word-for-word identical claims against the defendants for negligence and intentional torts.
    - CAFA did not strip plaintiffs of their "ordinary role as masters of their complaint" and did not "allow defendants to treat separately filed actions as one action regardless of plaintiffs' choice."
  - *Parson v. Johnson & Johnson*, 749 F.3d 879 (10th Cir. 2014)
    - 702 plaintiffs from 26 different states and Puerto Rico filed twelve nearly identical product liability actions against the defendants in the same state court before the same judge.
    - The Tenth Circuit remanded, holding that "neither the plaintiffs, nor the state court, have 'proposed' a 'joint trial' within the meaning of the statute."

CAFA: Attempts to Avoid the Jurisdictional Threshold (cont.)

- The Seventh and Eighth Circuits have reached the opposite conclusion.
  - *In re Abbott Laboratories, Inc.,* 698 F.3d 568 (7th Cir. 2012)
    - Several hundred plaintiffs filed ten separate state court cases against the defendant in several different counties.
    - While the plaintiffs were careful not to propose that the cases be tried jointly, the Seventh Circuit determined that their conduct constituted such a proposal where "the assumption would be that a single trial was intended."
  - *Atwell v. Boston Scientific Corp.,* 740 F.3d 1160 (8th Cir. 2013)
    - Groups of plaintiffs filed product liability actions, which concededly involved common questions, in the same state judicial circuit.
    - Although the plaintiffs disavowed a desire to consolidate the cases for trial, the Eighth Circuit nonetheless held that removal was proper in light of the plaintiffs' actual objectives.

CAFA: Attempts to Avoid the Jurisdictional Threshold (cont.)

- The Ninth Circuit is still open.
  - *Romo v. Teva Pharmaceuticals USA, Inc.*, 731 F.3d 918 (9th Cir. 2013)
    - The court held that removal under CAFA was improper in a case in which plaintiffs had sought to coordinate more than 40 similar state actions.
    - Judge Gould offered a compelling dissent in which he found that:
      - "[T]his case fits CAFA removal like a glove under a reasonable assessment of what is a proposal for joint trial."
      - "[T]here are limits to how far plaintiffs may go in structuring their complaints to avoid federal jurisdiction."
    - On February 10, 2014, the Ninth Circuit granted *en banc* review.
    - On June 30, 2014, the Supreme Court denied *certiorari*.

CAFA: Attempts to Avoid the Jurisdictional Threshold (cont.)

- Companies that may be susceptible to mass tort litigation, such as products liability cases, are particularly at risk of being named as defendants in multiple state court actions each with less than 100 plaintiffs suing for the exact same alleged misconduct.
- Until the Supreme Court resolves this issue, counsel should be prepared to rely on the cases emphasizing the underlying purposes of CAFA and the reality of how the actions will actually move forward.

Settlement Strategy

- Unlike other types of settlements, class action settlements must be approved by the court under Rule 23(e) as being fair, reasonable, and adequate.
- However, once a class is certified, defendants can be under enormous pressure to settle rather than proceed to trial and face the prospect of a large jury verdict.
  - Although plaintiffs' lawyers might be quick to agree to settle and collect their fees, counsel should be careful about how the terms of the settlement will really benefit absent class members.
- Congress and courts are scrutinizing the more inventive ways of getting to a settlement.

Settlement Strategy (cont.)

- ***Cy Pres* awards**. Practice of distributing unclaimed funds to charitable organizations, rather than having those funds revert to the defendant or increase the pro rata share to the remaining claimants.
  - These awards count toward recovery and therefore inflate attorneys' fees, even though plaintiffs are not receiving any direct benefit.
  - A growing number of courts have criticized these types of awards (see *In re Baby Prods. Antitrust Litig.*, 708 F.3d 163 (3d Cir 2013)).
  - Notably, Chief Justice Roberts spoke directly to the use of *cy pres* awards.
    - In *Lane v. Facebook, Inc.*, 696 F.3d 811 (9th Cir. 2012), the Ninth Circuit affirmed approval of a $9.5 million settlement of a privacy lawsuit.
    - $3 million in attorneys' fees, administrative costs and incentive payments to the class representatives; absent class members received no direct monetary award.
    - Remaining $6.5 million was to go to a newly established charity dedicated to online privacy received most of the funds.
    - Although the Supreme Court denied *certiorari*, Justice Roberts wrote separately to note the "disconcerting" features of the settlement and that in "a suitable case," the Court may need to "clarify the limits on the use of" *cy pres* practice (134 S. Ct. 8 (2013)).

Settlement Strategy (cont.)

- **Coupon settlements.** Plaintiffs receive coupons or other promises for services instead of cash, yet attorneys receive cash for their services.
  - CAFA specifically addresses coupon settlements and regulates its effect on attorneys' fees (28 U.S.C. § 1712).
  - It also requires the court to independently scrutinize a coupon settlement to ensure it is "fair, reasonable, and adequate," and make a written finding to this effect (28 U.S.C. § 1712(e)).
  - Under CAFA, unclaimed coupons may be donated to charitable or government organizations, but this portion of the coupon award may not be used to calculate attorney's fees (28 U.S.C. § 1712(e)).
- If counsel enters into a coupon settlement, approval may be more likely where the plaintiffs are given more flexibility and/or longer expiration dates, or where the settlement is combined with cash.

Settlement Strategy (cont.)

- In general, any class member may object to a proposed settlement agreement (Rule 23(e)(5)).
- Objections usually address either process defects or other issues that would result in the settlement failing to meet the fair, reasonable and adequate standard. Common reasons for objecting include:
  - Defective notice.
  - An unreasonable *cy pres* award.
  - Unreasonable fees and counsel expenses.
  - Improper allocation of settlement funds among subclasses.
  - Conflicts of interest.
- Objections are becoming more frequent and more successful.

Settlement Strategy (cont.)

- In particular, courts have become more critical of settlement agreements that give illusory benefits to class members while awarding counsel fees.
  - *In re Baby Prods. Antitrust Litig.*, 708 F.3d 163 (3d Cir. 2013) (vacating class settlement where many class members would only be entitled to $5.00, far less than their out-of-pocket losses).
  - *In re Dry Max Pampers Litig.*, 724 F.3d 713 (6th Cir. 2013) (reversing settlement providing that defendant would refund up to one box of Pampers per household, add information to its label and website and contribute $300,000 to a pediatric resident training program and $100,000 to the American Academy of Pediatrics to fund a program "in the area of skin health").
  - *Eubank v. Pella Corp.*, 753 F.3d 718 (7th Cir. 2014) (vacating settlement involving allegedly defective windows because, *inter alia*, "the settlement did not specify an amount of money to be received by the class members as distinct from class counsel. Rather, it specified a procedure by which class members could claim damages" – a procedure that was "stacked against the class").

Questions

Relevant Practical Law Resources Available with a *Free Trial* to Practical Law

- Class Actions: Overview
- Class Actions: Certification
- Class Action Certification: Case Tracker
- Class Action Toolkit

About the Speakers

John H. Beisner, ***Skadden, Arps, Slate, Meagher & Flom LLP***

John Beisner is the leader of Skadden's Mass Torts, Insurance and Consumer Litigation Group. He focuses on the defense of purported class actions, mass tort matters and other complex civil litigation in both federal and state courts. He also regularly handles appellate litigations and has appeared in matters before the U.S. Supreme Court. Over the past 35 years, he has defended major U.S. and international corporations in more than 650 purported class actions filed in federal courts and in 40 state courts at both the trial and appellate levels. Those class actions have involved a wide variety of subjects, including antitrust/unfair competition, consumer fraud, RICO, ERISA, employment discrimination, environmental issues, product-related matters and securities.

Mr. Beisner is a frequent writer and lecturer on class action and complex litigation issues. In 2013, he received the Burton Award for Legal Achievement, which recognizes excellence in legal scholarship. Mr. Beisner also has been an active participant in litigation reform initiatives before Congress, state legislatures and judicial committees. He has testified numerous times on class action and claims aggregation issues before the U.S. Senate and House Judiciary Committees (particularly with respect to the Class Action Fairness Act of 2005) and before state legislative committees. For his integral role in crafting the Class Action Fairness Act, Mr. Beisner was recognized with the 2011 Research and Policy Award by The U.S. Chamber Institute for Legal Reform.

About the Speakers

Sarah Heckman Yardeni, *Practical Law Litigation*

Sarah Heckman Yardeni joined Practical Law from Skadden, Arps, Slate, Meagher & Flom LLP, where she was a senior litigation associate representing clients on a wide range of matters. Prior to joining Skadden, she clerked for the Honorable Debra Freeman in the Southern District of New York. Before that, she was a litigation associate at Moses & Singer LLP. She also is an Adjunct Professor of Legal Writing at Fordham Law School.