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Class actions: Getting your class certified

The first of a two-part primer on class actions

Typically, when you decide to proceed with a case with good liability and great damages, you are pretty optimistic about the success of that case. You simply litigate the matter until the defendant or its insured feels that they have paid the defense lawyers enough or they are faced with a trial date. In class-action litigation you may have that same feeling of great liability and damages – however that is not enough. The fact that hundreds, if not thousands, of people have suffered from the same improper conduct – and you want to vindicate the rights of *all* of those damaged by such conduct – will require several additional procedures and steps – welcome to class-action litigation.

To be a successful class-action litigator, your first and most important decision will be whether you have a case that warrants your efforts and expense and, if so, if it is an appropriate case for class-action treatment.

The first question involves a qualitative analysis that usually takes years of experience to master and an understanding of the time and expense involved (also referred to as a "gut check" or "your pain tolerance").

The second question has been answered by the evolution of class action litigation and dozens of decisions by both state and federal courts throughout the years.

The class action

As the California Supreme Court recognized in *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 469 [174 Cal.Rptr. 515], "class actions serve an important function in our judicial system." The class action serves as a vehicle whereby "the claims of many individuals can be resolved at the same time." (*Ibid.*) "The class suit both eliminates the possibility of repetitious litigation and provides small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual litigation." (*Id.* citing *Eisen v. Carlisle & Jacquelin* (2nd Cir. 1968) 391 F.2d 555, 560.)

In the last few years, the class-actions device has been employed with increasing frequency. New class action cases filed in or removed to federal court increased 72 percent between 2001 and 2007. (Emery G. Lee III & Thomas E. Willging, The Impact of the Class Action Fairness Act of 2005 on the Federal Courts, Federal Judicial Center, April 2008, at 1 & Appendix B.) The largest increases have been seen in the labor and consumer protection/fraud practice areas.

Class actions are a creature of both case law and statute. A basic understanding of class-action law is imperative to properly evaluate whether your case can be successfully litigated as a class action. Generally, a class suit is appropriate "when numerous parties suffer injury of insufficient size to warrant individual action and when denial of class relief would result in unjust advantage to the wrongdoer." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385 [134 Cal.Rptr. 393]; see also *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 808 [94 Cal.Rptr. 7960].)

Class certification represents a critical juncture in the litigation of class claims. Eighty-nine percent of certified class actions settle. (Thomas E. Willging & Shannon R. Wheatman, An Empirical Examination of Attorneys' Choice of Forum in Class Action Litigation, Federal Judicial Center, 2005, at 50.) In cases where class certification was denied, the cases were dismissed by a court, settled on an individual basis, or voluntarily dismissed ninety-seven percent of the time. (*Ibid.*) As such, "the dichotomy between certified and noncertified cases could hardly be clearer. A certification decision appears to mark a turning point, separating cases and pointing them toward divergent outcomes." (*Ibid.*)

This article will address the statutory and common law requirements for class actions with an emphasis on the class certification motion to provide you with a basic understanding of the practices and procedures surrounding class certification.

Prerequisites to class certification in California State Court

Section 382 of the California Code of Civil Procedure authorizes class suits when "the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." (Code Civ. Proc., § 382.) To obtain certification, a party must establish the existence of both an ascertainable class and a well-defined community of interest among the class members. (*Richmond v. Dart Industries, Inc.*, *supra*, 29 Cal.3d at 470; *Vasquez*, *supra*, 4 Cal.3d at 809.)

Whether a class is "ascertainable" "is determined by examining the class definition; the size of the class; and the means available for identifying the class members." (*Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1271 [242 Cal.Rptr. 339, 344].) In *Harper v. 24 Hour Fitness, Inc.* (2008) 167 Cal.App.4th 966, 977 [84 Cal.Rptr.3d 532, 541], the California Court of Appeal determined that a class is ascertainable where it "identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself as having a right to recover based on the description." (As such, in assessing whether a case can be properly brought as a class action, a good

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starting point is to determine whether the class members can be located with reasonable efficiency.

The community of interest requirement involves three factors: "(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Richmond v. Dart Industries, Inc.*, *supra*, 29 Cal.3d at 470.) Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing. (See *Blue Chip Stamps*, *supra*, 18 Cal.3d at 386-387.)

Cases alleging violations of the Consumer Legal Remedies Act (CLRA) can avail themselves of the simpler class certification requirements provided by statute. When seeking class certification under Civil Code section 1781, the following elements must be met: it is impracticable to bring all members of the class before the court (Civ. Code, §1781 subd.(b)(1)); the questions of law or fact common to the class are substantially similar and predominate over the questions affecting the individual members (Civ. Code, §1781 subd. (b)(2)); the claims and defenses of the representative plaintiff are typical of the claims or defenses of the class (Civ. Code § 1781 subd. (b)(3)) and the representative plaintiff will fairly and adequately protect the interests of the class (Civ. Code, § 1781 subd. (b)(4).).

Prerequisites to class certification in federal court

Under federal law, there are four requirements concerning the class and its representative which must be met before a court can grant certification. First, the class must be so numerous that joinder of all members as individual parties is impracticable. (Fed. Rules Civ.Proc., rule 23(a)(1).) Second, there must exist questions of law or fact common to the class. (Fed. Rules Civ. Proc., rule 23(a)(2).) Third, the class representative's claims must be typical of those of the class members she seeks to represent. (Fed. Rules Civ.Proc., rule 23(a)(3).) Fourth, the class representatives – and typically their counsel – must be able to represent the class adequately. (Fed. Rules Civ.Proc., rule 23(a)(4).)

Additionally, in order to be certified the case must meet one of the Federal Rules of Civil Procedure, rule 23(b) categories. Federal Rule of Civil Procedure, rule 23(b) provides for class actions where: individual actions create a risk of inconsistent adjudication or dispose of the absent, nonparty interest (Fed. Rules Civ. Proc., rule 23(b)(1), 28 U.S.C.); or where the party opposing the class has acted or refused to act on grounds applicable to the class (Fed. Rules Civ. Proc., rule 23(b)(2), 28 U.S.C) or where common questions predominate and class action is superior to other methods of adjudication. (Fed. Rules Civ. Proc., rule 3(b)(3), 28 U.S.C). Class actions have two additional doctrinal requirements – common issues must *predominate* and class adjudication must be *superior* to other forms of resolution.

Ensuring your class representative(s) is the appropriate person to represent the class

An early and thorough evaluation of your potential class representative from a defense attorney perspective can save time and resources by staving off mistakes which can occur when a class representative has not been properly vetted. Basically, the class representative, through qualified counsel, must be capable of "vigorously and tenaciously" protecting the interests of the class members. (*Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 846 [199 Cal.Rptr. 134, 142].) "Whether the named plaintiffs will fairly and adequately protect the class frames an issue that rests in the discretion of the trial court." (*La Sala v. American Savings & Loan Assn.* (1971) 5 Cal.3d 864, 871 [97 Cal.Rptr. 849] citing Moore, Federal Practice ¶23.50 (2d ed. 1969).)

California law requires that a proposed class representative be a member of an ascertainable class united by a common interest. (*City of San Jose v. Superior Court* (1974) 12 Cal.3d 447 [115 Cal.Rptr. 797].) A class representative's claim cannot be inconsistent with the claims of other members of the class. (*J.P. Morgan & Co., Inc. v. Sup. Ct.* (2003) 113 Cal.App.4th 195, 212 [6 Cal.Rptr.3d 214, 226].) However, the interest of the class representative need not be identical with those of the class. (*B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, (1987) 191 Cal.App.3d 1341 [235 Cal.Rptr. 228].) Rather, as long as the named plaintiff's claim is typical of *some* members' claims, a subclass may be created for the other class members' claims and an additional named plaintiff joined if necessary to provide adequate representation. (*Aguiar v. Cintas Corp. No. 2* (2006) 144 Cal.App.4th 121, 137 [50 Cal.Rptr.3d 135, 147].)

Evaluating your class representative

Defense counsel routinely attack the class representative in their class certification oppositions. Common attacks center on the standing of plaintiff to bring suit and/or the typicality of the class representative's claims in relation to the claims of the class members. At the inception of the litigation, take time to evaluate your class representative and the facts of his/her case to determine:

- Whether there are any defenses specific to the claims of the representative which are not shared with the class? (Plaintiff's claim is not "typical" if it is subject to "factually intensive or legally complex unique defenses that pose a *significant risk of diverting attention* from class issues." (*Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1091 [56 Cal.Rptr.3d 861].);
- Is your class representative a class member? ("A class representative must be part of the class and 'possess the same interest and suffer the same injury' as the class member." (*East Texas Motor Freight Sys. Inc v. Rodriguez* (1977) 431 U.S. 395, 403 [97 S.Ct. 1891]);
- Do the interests of the class representative conflict with the interests of the class? (A conflict that goes to the subject matter of litigation could defeat representative status. (*Richmond, supra* 29 Cal.3d at 470);

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• Does your class representative have standing to sue? (Standing is typically treated as a threshold issue, in that without it no justiciable controversy exists. "As a general principle, standing to invoke the judicial process requires an actual justiciable controversy as to which the complainant has a real interest in the ultimate adjudication because he or she has either suffered or is about to suffer an injury...." (*Holmes v. California Nat. Guard* (2001) 90 Cal.App.4th 297, 314-315 [109 Cal.Rptr.2d 154].) "Without standing, there is no actual or justiciable controversy, and courts will not entertain such cases." (*Clifford S. v. Superior Court* (1995) 38 Cal.App.4th 747, 751 [45 Cal.Rptr.2d 333]);

• Do the claims of the class representative arise from same common question as those of the class members?

Ensure that the class representative is willing to pursue the case as a class action, meaning that he or she is willing to give up his individual claim. Also, ensure that there are no conflicts of interest which exist due to a familiar or business relationship between the class counsel and class representative (discussed *infra*).

Another important determination to make at the inception of the case is whether one class representative will be sufficient. Multiple class representatives can help establish a pattern of defendant's conduct and provide protection in event of death or relocation of the class representative. Additionally, if the class is divided into subclasses each subclass may require a named representative. Finally, some statutes contain a minimum requirement (i.e. the requirement that the complaint name 100 plaintiffs prior to class certification if a class claim is brought under the Magnusson Moss Act).

In re Tobacco II requirement

California's Unfair Competition Law (Cal. Bus. & Prof. Code, § 17200 *et seq*., the "UCL") is a popular class-action statute that authorizes plaintiffs to sue for conduct deemed unlawful. The unfair competition law "permits violations of other laws to be treated as unfair competition that is independently actionable" (*Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 949 [119 Cal.Rptr.2d 296]), "fraudulent" (conduct that is "likely to deceive" reasonable consumers), and "unfair." "It governs 'anti-competitive business practices' as well as injuries to consumers, and has as a major purpose 'the preservation of fair business competition.'" (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180 [83 Cal.Rptr.2d 548] (citations omitted).)

In the specific context of unfair business practices actions, plaintiffs who were not members of the class were previously permitted, by statute, to bring class actions on behalf of the general public. (Bus. & Prof. Code, § 17204.) In November 2004, the voters approved Proposition 64, which changed this statute. Now, an individual or entity may bring an unfair business practices class action only if that individual is a member of the class injured by the practice. (Bus. & Prof. Code, § 17204.)

The Proposition 64 amendments spawned extensive litigation over whether plaintiffs must establish reliance and causation to pursue private UCL claims**.** In *In re Tobacco II* (2009) 46 Cal.4th 298 [93 Cal.Rptr.3d 559]) the California Supreme Court held that Proposition 64's heightened standing requirements only apply to the named plaintiffs asserting claims under the UCL, *not* to absent class members. The Court held," a class representative proceeding on a claim of misrepresentation as the basis of his or her UCL action must demonstrate actual reliance on the allegedly deceptive or misleading statements, in accordance with well-settled principles regarding the element of reliance in ordinary fraud actions." *Id* at 305 fn.2. As to the absent class members, "it is necessary only to show that "members of the public are likely to be deceived.'" (*Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 951 [119 Cal.Rptr.2d 296].)

Although *Tobacco II* was largely a victory for the plaintiff's bar, two recent Court of Appeal cases have given UCL defendant's ammunition in their battle to defeat class certification. In *Cohen v. DIRECTV, Inc.* (2009) 178 Cal.App.4th 966 [101 Cal.Rptr.3d 37] the Court of Appeal addressed the impact of *Tobacco II* on the analysis of commonality. In *Cohen* the Court of Appeal affirmed the denial of class certification on the grounds that the plaintiff could not show that common issues of law or fact would predominate. The court distinguished *Tobacco II* on the grounds that *Tobacco II* dealt with the issue of standing, not commonality. The Court of Appeal noted, "we see no language in *Tobacco II* which suggests to us that the Supreme Court intended our state's trial courts to dispatch with an examination of commonality when addressing a motion for class certification" *Id* at 981.

Again, in *Kaldenbach v. Mutual of Omaha Life Ins. Co.* (2009) 178 Cal.App.4th 830 [100 Cal.Rptr.3d 637], the Court of Appeal affirmed the denial of class certification in a case involving a UCL claim. In so doing, the Court of Appeals looked to the "myriad other individualized issues" identified by the trial court that went to whether there was in fact an unfair business practice and found that plaintiff could not meet the commonality requirement. (*Id* at 848.)

Implications of CAFA and dealing with removal

The passage and institution of the Class Action Fairness Act of 2005 ("CAFA") altered class-action practice in state and federal courts throughout the United States. CAFA changes the rules for federal diversity jurisdiction and removal, enabling most large class cases to be filed in, or removed to, federal court. Further, CAFA restricts the practice of coupon settlements, and transforms the procedures for settling class actions in federal courts. Congress's intent was, in part, to shift some class action litigation from the state.

Basically, CAFA *expands* jurisdiction for diversity class actions by creating jurisdiction for classes with *more than 100 class members if:*

• at least one class member is diverse from at least one defendant; and

• more than $5 million in total is in controversy, exclusive of interest and costs.

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(28 U.S.C. § 1332(d)(2).) CAFA also provided for such class actions to be removable to federal court. (See 28 U.S.C. § 1453(b).)

The removing party bears the burden of establishing federal jurisdiction. (*Abrego Abrego v. Dow Chem. Co.* (9th Cir. 2006) 443 F.3d 676, 685.) The First Circuit has held that a defendant removing a case from state court to federal court under the Class Action Fairness Act must establish that there is a "reasonable probability" that the amount in controversy will exceed $5 million. (*See Amoche v. Guarantee Trust Life Ins. Co.* (1st Cir. 2009) 556 F.3d 41, 48-49.) Similarly, the Eighth Circuit requires that the party seeking removal establish the jurisdictional amount in controversy by a preponderance of the evidence regardless of whether the complaint alleges an amount below the jurisdictional minimum. (*Bell v. Hershey Co.*, (8th Cir. 2009) 557 F.3d 953, 958.) These decisions create tension, if not direct conflict, with decisions in the Ninth and Third Circuits that suggest that, where a plaintiff expressly pleads that less than $5 million is in controversy, the defendant must show "to a legal certainty" that this is incorrect. (See e.g., *Lowdermilk v. U.S. Bank Nat'l Ass'n*. (9th Cir. 2007 479 F.3d 994, 1000; *Morgan v. Gay*, (3d Cir. 2006) 471 F.3d 469, 474.) In diversity cases that fit within the jurisdictional requirements of CAFA, any defendant, including in-state defendants can remove even if all defendants do not consent. (28 U.S.C. § 1453.)

Managing the class action through both pre-certification and post-certification

The proponent of class certification must demonstrate that the proposed class action is manageable. This requires the trial court "to carefully weigh the respective *benefits and burdens* of a class action, and to permit its maintenance only where substantial benefits will be accrued by both litigants and the courts alike." (*Reyes v. San Diego County Bd. of Supervisors* (1987) 196 Cal.App.3d 1263, 1275 [242 Cal.Rptr. 339, 346].)

"Managing" your class action case is probably the most important aspect of successful class action litigation. While most will agree that certifying your case as a class action is the "most important" part of the case, in fact it is essential for survival, without effective case management you may never get to class certification and, if your matter is certified, you could lose such certification.

There are several essential components of effective class-action litigation management. Pre-certification, there are certain aspects of the matter which must be coordinated and organized in order to properly present your motion for class certification. For example, estimates of class size and damages must be compiled. Much of this information can be gathered through the traditional discovery devices. However, much of the necessary information can be obtained using readily available information – not requiring the defendant to respond (and as is typical, object and delay) – such as public filings, company generated documents and other information easily accessible through Freedom of Information Act requests and even the Internet.

Compiling the necessary information and organizing it for future use is the type of "management" necessary to be able to present the most effective class certification motion possible.

The following are suggested areas of "management":

- Information gathering, organization and maintenance:

  As to the experiences of putative class members – Establishing that the experiences are common to all. Freedom of Information Act requests, blogs and Web sites can serve as invaluable tools in assembling evidentiary support of a shared experience.

  As to the defendant's conduct and defenses – Establishing that the defendant treated all class members essentially the same way.

  As to the damages suffered by the class – While the nature and extent of the damages do not have to be identical for each class member, the damages should be of a similar nature.
- Find putative class members that can substantiate your claims (in appropriate cases);

  Review and analyze the gathered information and documents.

  Determine who will best exemplify the common facts you intend to rely upon.

  Determine which documents you will use to support your declarant's testimony.

  Contact and interview those who you determine would be suitable declarants and review all documents to be relied upon.

  Draft, with the declarant's involvement, the declarations you intend to reply upon as part of your certification motion.
- Obtain sufficient information to establish damages on a class-wide basis.

What are adequacy, typicality, commonality?

Adequacy

The adequacy of representation requirement is met by fulfilling two conditions: plaintiff must be represented by counsel qualified to conduct the litigation; and plaintiff's interests cannot be antagonistic to those of the class. (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450 [131 Cal.Rptr. 482].) The interest of the representative and the class need not be identical. (*BWI Custom Kitchen v. Owens-Illinois, Inc.*, *supra* 191 Cal.App.3d at 1341.)

Typicality

The typicality requirement is met when the claims of the representative plaintiff arise from the same course of conduct that gives rise to the claims of the other class members, and where the claims are based upon a similarity of legal theories. In *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46 [92 Cal.Rptr. 914], the California Court of Appeal found that "[t]he only requirements are that common questions of law and fact *predominate* and that the class representative be *similarly* situated." It has long been established that class certification under section 382 does not require simultaneous or identical injuries. (*Ibid*.) "Factual difference will not render a claim atypical if the claim arises from the same event or practice or course of con-

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duct that gives rise to the claims of the class member, and if it is based on the same legal theory." (Newberg on Class Actions §33.15 (5th ed. 2008).)

Commonality

As discussed above, the commonality inquiry centers upon "whether there are issues common to the class as a whole sufficient in importance so that their adjudication on a class basis will benefit both the litigants and the court." (*Vasquez v. Superior Court*, *supra* 4 Cal.3d at 811.)

Establishing that you are competent to act as class counsel

General

The Court has an obligation to closely scrutinize the qualifications of counsel to assure that all interests, including those of as yet unnamed plaintiffs are adequately represented. "This is because in certifying a class action, the Court confers on absent persons the status of litigants and creates an attorney-client relationship between those persons and a lawyer or group of lawyers." (*Cal Pak Delivery, Inc. v. United Parcel Service, Inc*. (1997) 52 Cal.App.4th 1, 12 [60 Cal.Rptr.2d 207, 213] (citations omitted).)

As the Manual for Complex Litigation observes:

> …unlike other civil litigation, many class-action suits do not involve a client who chooses a lawyer, negotiates the terms of the engagement, and monitors the lawyer's performance. Those tasks, by default, fall to the judge, who creates the class by certifying it and must supervise those who conduct the litigation on behalf of the class.
>
> (*Manual for Complex Litigation* §21.27 (4th ed. 2004). The judge must ensure that the lawyer seeking appointment as class counsel will fairly and adequately represent the interests of the class. (Fed. Rules Civ. Proc., rule 23(g)(1)(B), 28 U.S.C.). If the certification decision includes the creation of subclasses reflecting divergent interests among class members, each subclass must have separate counsel to represent its interests. (Fed. Rules Civ. Proc., rule 23(g)(1)(A), 28 U.S.C.) (committee note).)

Courts take into account several factors in evaluating adequacy such as:
counsel's prior experience in handling class actions, other complex litigation, and claims of the type asserted in the action;
an attorney's ethics in handling class action to date;
counsel's knowledge of the applicable law; and
counsel's capacity to handle the case, including the resources counsel will commit to representing the class.

Manual for Complex Litigation §21.271 (4th ed. 2004). When more than one class action has been filed and consolidated or centralized, or more than one lawyer seeks the appointment, the judge must select counsel.

The court has inherent power to disqualify class counsel at any stage of the proceedings. Most disqualification motions are based on a conflict of interest with the class members. (See *Cal Pak Delivery, Inc. v. United Parcel Service*, *Inc.*, *supra*, 52 Cal.App.4th at 11–12; *see also Reich v. Club Universe* (1981) 125 Cal.App.3d 965, 971 [178 Cal.Rptr. 473, 476] (class counsel disqualified for being percipient witness to important facts).)

Relationship between class counsel and the class representative

Courts generally refuse to permit class attorneys, their relatives, or business associates from acting as the class representative. The policy justification for such refusal stems from the possible conflict of interest resulting from the relationship of the putative class representative and the putative class attorney. "Since possible recovery of the class representative is far exceeded by potential attorneys' fees, courts fear that a class representative who is closely associated with the class attorney would allow settlement on terms less favorable to the interests of absent class members." (*Susman v. Lincoln American Corp.* (7th Cir. 1977) 561 F.2d 86, 90-91 (fns. omitted) (finding that an attorney's brother could not serve as a class representative); see also *Apple Computer Inc., v. Superior Court* (2005) 126 Cal.App.4th 1253 [24 Cal.Rptr.3d 818] (disqualify law firm representing class representative, who was member of law firm).

The test is "whether there exists a genuine likelihood that the status or misconduct of the attorney in question *will affect the outcome of the proceedings* before the court." (*Cal Pak Delivery, Inc. v. United Parcel Service*, *Inc.*, *supra*, 52 Cal.App.4th at 11 (emphasis added; internal quotes omitted).)

Evaluating defendant's opposition to your motion for class certification

In evaluating the opposition, separate the arguments that have teeth from the kitchen sink arguments. Attacks on the competency of counsel typically will not hold much weight with the court, while issues relating to the manageability of litigating the action as a class action will prove more problematic. Typically, the most effective arguments defense counsel can raise are those that expose issues in establishing commonality, manageability, or the adequacy of the class representative.

Further, you should determine which, if any merits-based issues may be implicated. While arguments on the merits are generally improper at the class certification stage, (*Eisen v. Carlisle & Jacquelin, supra,* 417 U.S. 157-158), there is an emerging trend to allow increased merit based arguments. This trend is evident in the Third Circuit Court of Appeal's disposition of plaintiff's motion for class certification in *In re Hydrogen Peroxide*. (*In re Hydrogen Peroxide* (3rd Cir. 2008) 552 F.3d 305, 318.) In *Hydrogen Peroxide* the Court of Appeals noted, "in reviewing a motion for class certification, a preliminary inquiry into the merits is sometimes necessary to determine whether the alleged claims can be properly resolved as a class action." In fact, merits-based inquiries may require the use of expert testimony. As the court held in *Hydrogen Peroxide*, "weighing conflicting expert testimony at the certification stage is not only permissible; it may be integral to the rigorous analysis Rule 23 demands." (*Id.* at 323.)

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Conclusion

Understanding the fundamentals of class certification is essential to a successful class action practice. However, because the class certification isn't the end of the litigation, Part II of this article which will appear in a future issue will discuss issues which arise in the wake of the class certification motion.

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