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on Class Actions**

October 23-24, 2014
theWit Hotel
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18th Annual National Institute on Class Actions

October 23-24, 2014 | theWit Hotel | Chicago, IL

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Agenda

Day 1: Thursday, October 23, 2014

11:30 a.m. -
1:30 p.m.
(Optional)

“Second to None.” Class Actions 101!

Speakers: Daniel R. Karon, Andrew J. McGuinness

What better way to kick off the ABA’s National Institute on Class Actions than with a course on, well, class actions. Join us for a primer on Federal Rule 23 as together we’ll study its elements. We’ll then bring Rule 23 to life by applying it to real-life situations, together discussing whether class certification is suitable or not. So whether you’re new to the class-action stage or you’re a class-action veteran, while this course might not be ready for prime time, it’s still something that you’ll definitely not want to miss.

1:55 p.m. -
2:00 p.m.

Welcome to the Windy City!

2:00 p.m. -
3:00 p.m.

“Holy Cow! This Year the Courts Said What?!”

A Mighty Swing at the Year in Class-Action Jurisprudence

Speakers: Professor John C. Coffee, Jr., Professor Alexandra D. Lahav

As usual, this past year involved plenty of class-action action. Back by popular demand, Professors Coffee and Lahav will kick off the Institute with a review of this year’s important class-action developments—developments that you’ll need to appreciate if you want to serve your class-action clients properly and stay atop your class-action game.

3:00 p.m. -
4:00 p.m.

“The Process that Works.” Class-Action Mediation LIVE!

Speakers: Michael J. Flannery, Eric D. Green, Adam J. Levitt, Kara McCall, Martin Quinn

Moderator: Donald R. Frederico

You like the White Sox they favor the Cubs. You enjoy thin-crust; they demand deep-dish. You prefer mustard; they (heaven forbid!) fancy ketchup. When fundamental disagreements like these prevent litigants from closing the gap and achieving compromise, a skilled mediator is often required. But if participants can only witness one side of the mediation equation, how can they properly appreciate and maximize their mediation experience? Wouldn’t participants benefit from knowing what happens on *both* sides of this process? Don’t participants deserve to know precisely how mediators influence the parties, including understanding mediators’ goals, expectations, and persuasive techniques? Our program will first feature insights from two highly regarded mediators. It will then apply these perspectives to a mock mediation involving plaintiffs’ and defense lawyers in real mediation rooms. During this exercise, we will consider when mediation makes sense, examine how to choose a mediator, and explore how to use mediation not only to settle a case but to get a settlement approved. Because whether litigating in the City of Big Shoulders or elsewhere, all too often mediators must capably take the parties’ seemingly insoluble disputes upon theirs.

4:00 p.m.

Break

4:15 p.m. -
5:15 p.m.

SHOWCASE PROGRAM “Weigh in Early.” A Town Hall Meeting with the Rule 23 Subcommittee of the Advisory Committee on Civil Rules

Speakers: John M. Barkett, Elizabeth J. Cabraser, Professor Edward H. Cooper, Honorable Robert M. Dow, Jr., Professor Robert H. Klonoff, Professor Richard Marcus

Chicago has a rich tradition of encouraging inclusion in the political process. Well, this year the Institute will offer guests the extraordinary chance to participate in the Institute’s *very own* political process. Mindful that the Advisory Committee on Civil Rules is considering changes to Rule 23, members of the Advisory Committee’s Rule 23 Subcommittee—the group tasked with recommending to the Advisory Committee changes to Rule 23—will join us to describe the scope of their group’s charge. Then, even better, they will open the floor to *us*, so we may weigh in on *our* Rule 23 concerns, compliments, and criticisms. They will then consider our remarks—since we’re the people who know class actions—as they formulate their recommendations to the Advisory Committee. Talk about an opportunity to make a difference. Even Rahm Emanuel would be jealous!

5:30 p.m. -
7:30 p.m.

“My Kinda Town!” Cocktail Party in Phoenix Lounge at theWit

Please join us for a cocktail party at the stylish ROOF on theWit. In a casual atmosphere, you can network, meet new friends, and get to know our faculty. This relaxed event in the heart of Chicago promises to wrap up day one of the Institute with a bang.

Agenda

Day2: Friday, October 24, 2013

9:00 a.m. -
10:00 a.m.

“Who Needs *The Second City*?” Class Certification from A(ykroyd) to (Lovit)Z: A Three-Act Play

Speakers: Bruce D. Greenberg, Sondra A. Hemeryck, Honorable Virginia M. Kendall, Michelle A. Reed

Moderator: Daniel R. Karon

We all know that in class-action lawsuits, the class-certification process steals the show. But at the Institute, instead of featuring the *entire* class-certification process, we’ve tended to stage discrete parts of it, whether textual (like examining ascertainability, factual predominance, or standing), case-specific (such as debating *Comcast*, *Dukes*, or *Concepcion*), or practical (for instance, presenting mock oral arguments, relating new case developments, or describing thin slices of Rule 23). Never have we cast the *whole* class-certification drama—blending it into a cohesive production and studying precisely how plaintiffs’ lawyers analyze new case ideas, with an eye toward obtaining class certification; defense lawyers critique plaintiffs’ cases, with the goal of scuttling class certification; and the parties present competing class-certification scripts to a federal judge. So we invite you to pack the house for our three-act play as we assemble these important pieces of the class-certification puzzle in a way that the Institute has never before attempted. And who knows, in the process maybe one of us will be discovered!

10:00 a.m. -
11:00 a.m.

“Never a Day Off.” Understanding and Managing Economic Risks for Lawyers on Both Sides of the “v.”

Speakers: Bryan L. Bleichner, Charles B. Casper, Jason Shaffer

Moderator: Fred B. Burnside

Landing the lead-counsel role in defending and prosecuting class actions involves skillfully balancing risks and rewards. Far from “voodoo economics,” securing leadership is part science and part art. And if defense lawyers think that pure “hourly . . . hourly . . . hourly” billing still exists: “it’s over, go home.” Sophisticated and principled clients (like Abe Froman and others) demand competing bids from a slew of firms based on case phases, complete with capped fees per phase, rollover agreements, and shared-risk proposals tied to various success measures. Overbid and you lose the work. Underbid and you lose your shirt. In this manner, defense lawyers must now think like plaintiffs’ lawyers, who face their most competitive market ever, particularly when a major claim arises and the inescapable MDL ensues. And given this challenging climate, just how do plaintiffs’ lawyers ensure (if even possible) that their hard work and novel theories won’t be stolen—by other plaintiffs’ lawyers?! How do plaintiffs’ lawyers successfully navigate the management roles of lead counsel, work delegation, and continued cost-effective representation when their cases often last for years or sometimes decades? Sure, everything “might seem peaceful from 1,353 feet,” but our faculty will grab the baton and zoom into strategies necessary to both sides for landing the case, minimizing risk, and promoting client alignment and ethics compliance. “Because if you think about it, this practice moves pretty fast. If you don’t stop to understand your options, you could miss it.”

11:00 a.m.

Break

Agenda

11:15 a.m. -
12:15 p.m.

“Playing in the Not-So-Friendly Confines.” Offensive and Defensive Strategies for Litigating Privacy and Data-Breach Class Actions in this Season’s High-Tech e-Commerce Game

Speakers: Katrina Carroll, Honorable John W. Darrah, Danielle C. Gray, Paul G. Karlsgodt, Professor Jay Tidmarsh

Moderator: Sabrina H. Strong

Without a doubt, one of this season’s hottest class-action plays involves consumer-privacy and data-breach cases. The recent Target and Neiman Marcus data-breach lawsuits easily demonstrate this, with plaintiffs and their lawyers swinging for the fences. But are these cases a grand slam for plaintiffs, a strikeout for defendants, or do they slide someplace in between? Due to this litigation’s popularity, how has the privacy and data-breach playing field evolved particularly now that consumers have (presumably) begun paying attention to how merchants use or disclose their personal information—and what do players in both dugouts need to know about this evolution? What are the most significant challenges and opportunities to plaintiffs and defendants for winning these cases, and how do general class-action developments affect each side’s odds? Our team will take a swing at these and other curveballs in what promises to be a lively and important discussion for anyone involved—or who wants to run—in the privacy and data-breach field. So avoid the “Curse of the Billy Goat,” settle into our program, and we’ll help you to win the pennant for your clients.

12:15 p.m.

Lunch at ROOF on theWit

1:30 p.m. -
2:30 p.m.

“Navigating Menacing Waters.” Presenting Class-Certification Experts, Maneuvering *Daubert* Challenges, and Tackling Trial Testimony

Speakers: Honorable Chief Judge Ruben Castillo, Joseph Goldberg, James T. McClave, Barbara T. Sicalides

Moderator: Vincent J. Esades

Committed to making Chicago our nation’s Midwestern hub, in 1887 the Illinois General Assembly decided to reverse the flow of the Chicago River. How did they do this? They hired experts—experts who were prepared for whatever challenges lay ahead. But if these experts thought *they* had it tough, welcome to *our* world! While class-action lawyers hire experts too, of late, courts’ inspection of experts has deepened as experts’ roles in the class-certification enterprise have soared. Although class certification has always been a watershed event, it seems finally to have turned into an endeavor that judges experts on the merits. But just what’s the right procedure for considering and evaluating experts at class certification? And if plaintiffs can no longer meander through class certification, does this mean they must batten down the hatches for a full mini-trial? Precisely what’s required of experts—on *both* sides. We invite you to enjoy our one-hour tour of these and other issues, promising that you’ll return with a better understanding of how to prepare *your* expert, whichever side you’re on. Because in today’s tumultuous class-action waters, if your expert sets sail unprepared, you can surely expect that your opponent will lower the boom.

2:30 p.m. -
3:30 p.m.

“Big Shoulders and High Standards.” Can Plaintiffs Scale the Third Circuit’s New Ascertainability Wall?

Speakers: Cameron Azari, Gina Intrepido-Bowman, Mary Ellen Hennessy, Honorable John Z. Lee, Gary E. Mason, Steven Weisbrot

Moderator: Melissa H. Maxman

Daniel Burnham, Chicago’s urban designer and master architect, had high standards when he designed the city’s first and most prolific skyscrapers. As an architect, he knew what was attainable. Some lawyers and commentators have condemned the Third Circuit’s recent *Carrera v. Bayer* opinion as flouting this “attainable” standard by propelling Rule 23’s implicit ascertainability requirement to soaring new and *unattainable* heights. Others have applauded it as embracing ascertainability’s “true” textual foundation. But because many consumer class actions don’t involve the verifiable record of class members’ purchases that *Carrera* requires, does *Carrera* spell the end for these sorts of cases? Or do traditional notice techniques remain available to satisfy *Carrera*’s lofty requirement? Our lawyers, federal judge, and competing notice experts will combine to discuss and debate *Carrera*, its scope, and our collective fate on account of it. Because like it or not, *Carrera*’s high standard has summoned a towering new challenge that could Trump many others, and class-action lawyers who want to remain relevant in today’s ever-challenging class-action times must blueprint their cases to account for it.

3:30 p.m.

Break

3:45 p.m. -
4:45 p.m.

Issue Classes: Two Thumbs Up or Two Thumbs Down?

Speakers: Suzanne E. Bish, Professor Elizabeth Chamblee Burch, Michael A. Caddell, Cari K. Dawson, Honorable Gary Feinerman, Professor Laura J. Hines

Moderator: Andrew J. McGuinness

It’s no secret that more and more courts have elevated previously anticlimactic class-action requirements like commonality and classwide damages to leading roles. As a result, some courts have begun panning Rule 23(b)(3) class actions, banishing them to the cutting-room floor. At the same time, courts and plaintiffs have begun to focus on issue classes under Rule 23(c)(4). But does this slumbering section provide class-action plaintiffs an opportunity to steal the show from their harshest critics? Do issue classes provide an effective plot device for courts to resolve widespread disputes? Or when considering the issue-class dialogue close up, are issue classes only good in theory but not in practice? Enjoy a front-row seat as we start by adopting Siskel & Ebert’s famous format, pairing two sets of professors and lawyers to debate whether issue classes can be used to demonstrate predominating common issues, whether the threat of an issue class trial can encourage class settlement, and whether the issue class drama provides a means for plaintiffs’ counsel to get paid. We will then showcase these themes in a mock courtroom drama for everyone’s enjoyment. Because come final curtain, the question really is whether issue classes are finally coming of age or whether they are just a flash in the pan.

4:45 p.m.

“Planes, Trains, and Automobiles.” We’re adjourned!



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