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**16<sup>th</sup> Annual National Institute  
on Class Actions**

October 24-25, 2012  
Hotel Sax Chicago  
Chicago, IL

**ABA**  
AMERICAN BAR ASSOCIATION



# 16<sup>th</sup> Annual National Institute on Class Actions

October 24-25, 2012 | Hotel Sax Chicago | Chicago, IL

## Attendees of the program will:

- Gain practical knowledge on how judges view class-action lawsuits
- Review class-action lawsuits in the Supreme Court
- Learn trial techniques to sharpen their skills as class-action litigators

## Who should attend?

- Attorneys who litigate class-action lawsuits
- In-house counsel and litigators interested in learning about the current state of class actions, including recent Supreme Court class-action decisions
- Lawyers who litigate class-certification motions

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**\*Fred B. Burnside**

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*U.S. District Court for the  
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**Prof. John C. Coffee, Jr.**

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*Lewis & Clark Law School*  
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Los Angeles, CA

# Agenda

## Wednesday, October 24, 2012

11:30 a.m. – **“Second to None.” Class Actions 101**  
1:30 p.m. **(American Bar Association, 21st Floor)**

**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 . . . class actions! Join us for a primer on Federal Rule 23 as together we'll learn its elements and how to apply them. We'll then bring Rule 23 to life by applying it to real-life situations, discussing whether class certification is appropriate or not. If you're a new lawyer or just a lawyer new to class actions, this is a course that you definitely don't want to miss.

**Register for Class Actions 101 only at a discounted rate. See registration form for details.**

6:30 p.m. – **“Welcome to the Windy City!” Cocktail Party at Hotel Sax**  
8:30 p.m. **Chicago's Crimson Lounge**

Please join us for a cocktail party at Hotel Sax's stylish Crimson Lounge. In a casual atmosphere, you can network, meet other Institute guests, and get to know our faculty. This relaxed event in the heart of Chicago promises to start the Institute with a bang.

## Thursday, October 25, 2012

9:00 a.m. – **“Holy Cow! This Year the Courts Said What?!” A Brief History of**  
10:00 a.m. **this Year's Developments in Class Action Jurisprudence**

**Speakers:** Prof. John C. Coffee, Jr., Prof. Alexandra Lahav

As usual, this past year involved plenty of class-action action. Back by popular demand, Prof. Coffee – this time alongside Prof. Alexandra Lahav, with whom he recently co-authored his highly respected Annual Class Action Litigation Report – will kick off the Institute with a wrap-up of this year's important class action developments – developments that everyone must appreciate if they want to serve their class-action clients properly and stay atop their class action game.

10:00 a.m. – **“The Class Definition That Works . . . or Does It?” Strategies for**  
11:00 a.m. **Pleading and Attacking Class Definitions – The Most Basic and Most Ignored Step in a Class-Action Lawsuits Success or Failure**

**Moderator:** Daniel R. Karon

**Speakers:** Hon. James G. Carr, Prof. Dean Robert Klonoff, Sabrina H. Strong, Renae D. Steiner, Bart D. Cohen, Donald R. Frederico  
For plaintiffs, crafting the proper class definition means the difference between a trial court granting or denying class certification. For defendants, identifying weaknesses in the plaintiffs' class definition means the same thing. Both parties must mind the class definition's geographic, temporal, and product scope and must consider ascertainability, choice-of-law, and failsafe (meaning where plaintiff must prove liability to demonstrate class membership) issues. Moreover, neither side can ignore the unavoidable considerations that competing classes may have alleged in multiple similar lawsuits, especially in today's climate of MDL non-consolidation and transfer. And come settlement, both sides must ensure consistency between their settlement class and plaintiffs' pleaded class, mindful of objectors' aim to seize on any basis to scuttle the parties' deal. Our program will discuss these essential issues. It will describe how plaintiffs can design their class definitions to avoid these pitfalls, how defendants can use poorly drafted class definitions to defeat a proposed class, and how the parties can collaborate to maintain a suitable class definition for settlement.

11:00 a.m. **Break**

11:15 a.m. – **“Don't Blame Mrs. O'Leary's Cow!” Rule 23(b)(3) Classes Under**  
12:15 p.m. **Fire and Rule 23(b)(2)'s Emerging Importance**

**Moderator:** Jeffrey A. Leon

**Speakers:** Hon. Joan B. Gottschall, David S. Stellings, E.K. Cottrell, Robert J. Axelrod

Make no mistake about it, Rule 23(b)(3) classes remain under fire. Given this ever-increasing scrutiny, should plaintiffs' class action lawyers begin looking to Rule 23(b)(2) classes as a way to avoid the increasing difficulty of certifying 23(b)(3) classes, such as, for example, attempting 23(b)(2) classes to declare class-wide remedies or to employ injunctive disgorgement of alleged ill-gotten gains? Our program will discuss plaintiffs' and defendants' perspectives concerning the viability of this 23(b)(2) alternative. We will consider recent 23(b)(2) certification decisions as well as the impact, if any, of the U.S. Supreme Court's remarks in *Dukes v. Wal-Mart* concerning potential limitations on 23(b)(2) classes. In the words of the Bard, “(b)(2) or not (b)(2), that is the question.”

12:15 p.m. **Lunch**

1:30 p.m. – **“Sifting Through All the Big Shoulders.” Litigating Class Actions  
Alongside Opt-Outs – Free-Riding or Riding Shotgun**

2:30 p.m.

**Moderator:** Vincent J. Esades

**Speakers:** Hon. Lee H. Rosenthal, Prof. Geoffrey Parsons Miller,  
Joseph R. Saveri, David C. Eddy

When the MDL Panel centralizes multi-district, class-action lawsuits for pretrial purposes, it also centralizes individual plaintiffs’ cases – sometimes called “opt-outs.” Although the MDL process is intended to produce efficiency, it can enhance the complexity of these lawsuits by spawning difficult issues on matters such as how to coordinate discovery, allocate litigation expenses, conduct settlement efforts, and distribute plaintiffs’ attorneys’ fees. These difficulties are only enhanced when opt-out plaintiffs file their cases years after the class action has already begun. Our program will join class action and opt-out lawyers with a prominent federal judge who together will discuss how lawyers must understand these shared and competing interests in order to manage their litigation effectively and successfully.

2:30 p.m. – **“My Kind of Case, Pri-va-cy Claims.” The Hottest New Trend in  
Class-Action Litigation**

3:30 p.m.

**Moderator:** Fred B. Burnside

**Speakers:** Jay Edelson, Hon. Lucy H. Koh, Stephen M. Rummage

With Congress, the U.S. Supreme Court, and lower courts continuing to limit the areas suitable for class-action lawsuits and defense work, it’s more important than ever to recognize the hottest class-action trends. With the threat of statutory damages and attorneys’ fees combined with massive putative classes and plentiful opportunities to defend against these possibilities, consumer-data-privacy class actions are the next big thing. Whether encouraging or limiting plaintiffs’ claims or whether promoting or defeating class certification, this program will have it all. We promise to showcase all the latest issues concerning this newest trend in class-action litigation making this program a “must” for all lawyers interested in growing their practices, particularly in today’s challenging class-action times.

3:30 p.m. **Break**

3:45 p.m. – **“Preparing Early and Often.” State-of-the-Art Strategies for  
Managing Class Action Experts**

4:45 p.m.

**Moderator:** Andrew J. McGuinness

**Speakers:** Mary Jane Fait, Dr. Janet S. Netz, Laurie A. Novion,  
Hon. Gerald E. Rosen, Dean Edward A. Snyder

Given the increasingly remote and uncertain opportunities for appellate review of class-action lawsuits’ make-or-break class-certification rulings, the role of class-action experts has grown considerably. In most cases, when faced with the key issue of whether common or individual issues predominate, many district courts are holding evidentiary hearings focused on competing experts’ testimony and reports. These experts strive either to explain the class-wide application of plaintiff’s liability theories or to demonstrate the countless complexities involved in doing so. But district and circuit courts often wrestle with the evidentiary and substantive standards that apply to this exercise, as illustrated by the Third Circuit’s *Hydrogen Peroxide Antitrust Litigation* decision, the Seventh Circuit’s *American Honda v. Allen* opinion, and of course the Supreme Court’s *Dukes v. WalMart* ruling. Join us as we explore the best strategies and techniques for winning the class-expert war. After all, class certification – or not – may depend on it!

4:45 p.m. **Closing Remarks and Adjourn**

# 4 Easy Ways to Register



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## Attire

Business casual attire is appropriate for all activities.

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Cancellations received five business days or more before the program will receive a full refund, less a \$50 cancellation fee. No refunds will be provided for cancellations after that date; however, substitute registrants are welcome at any time. To cancel your registration or substitute another individual, please call the ABA at (800) 285-2221 or fax your request to (312) 988-5850. Registrants who do not cancel within the allotted time period and who do not attend the program will receive a copy of the program course materials after program completion.

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Please provide printed course materials on-site for \$50. **Enter your \$50 fee on line 2E.**

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ABA Section of Litigation Membership Enrollment (from Step 1)	2D	\$ + _____
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