



Section of Litigation

# The 15th Annual National Institute on Class Actions

**Friday,  
October 14, 2011**

Eventi Hotel  
New York, NY



Presented by  
**The American Bar Association  
Section of Litigation and the  
Center for Continuing Legal  
Education**

**Register Online at [ambar.org/cac2011](http://ambar.org/cac2011)**

# Program Highlights

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## Attend the 15th Annual National Institute on Class Actions to learn:

- What happened this year with class-action cases in the Supreme Court.
- What is class action practice's current state and what techniques exist for remaining viable as class-action litigators?
- How to try class-action cases and how trial techniques can make you a better class-action lawyer.
- How objectors affect the class-action practice and whether they deserve the opportunities they currently have.
- How *Concepcion* and *Dukes* affect your class-action practice from the lawyers who actually litigated these cases.
- Just what is the Consumer Financial Protection Bureau and how should class-action lawyers expect to work with it.

## Who should attend?

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- **All attorneys** who litigate and settle class-action cases.
- **In-house counsel** and **litigators** interested in learning about the present state of class actions, including the Supreme Court's recent class-action decisions.
- **New and seasoned practitioners** who litigate class-certification motions.
- **Attorneys** interested in learning how judges view class-action cases.

## Sponsors

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This National Institute is presented by the Class Actions and Derivative Suits Committee, the Mass Torts Committee, the Products Liability Committee, and the Consumer and Personal Rights Committee of the ABA Section of Litigation.

The Planning Committee invites all attendees and their colleagues to join one or more of our sponsoring committees. Membership in up to three committees is free to all members of the ABA Section of Litigation. Go to [www.americanbar.org/groups/litigation/committees.html](http://www.americanbar.org/groups/litigation/committees.html) and enroll online today. Membership in committees allows you to keep an eye on emerging issues in your areas of practice. No time commitment is necessary.

# National Institute Faculty

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## Institute Chair

### **Daniel R. Karon**

*Goldman, Scarlato & Karon, PC*  
Cleveland, OH

## Institute Planning Committee

### **Fred B. Burnside**

*Davis Wright Tremaine LLP*  
Seattle, WA

### **Vincent J. Esades**

*Heins Mills & Olson, P.L.C.*  
Minneapolis, MN

### **Jeffrey A. Leon**

*Freed & Weiss, LLC*  
Chicago, IL

### **Andrew J. McGuinness**

*Andrew J. McGuinness, Esq.*  
Ann Arbor, MI

## Institute Faculty

### **Honorable Nancy F. Atlas**

*United States District Court for the Southern District of Texas*  
Houston, TX

### **F. Paul Bland, Jr.**

*Public Justice*  
Washington, DC

### **J. Philip Calabrese**

*Squire, Sanders & Dempsey LLP*  
Cleveland, OH

### **Professor John C. Coffee, Jr.**

*Columbia Law School*  
New York, NY

### **James Donato**

*Shearman & Sterling, LLP*  
Palo Alto, CA

### **Ted Frank**

*Center for Class Action Fairness LLC*  
Washington, D.C.

### **Professor Brian T. Fitzpatrick**

*Vanderbilt University Law School*  
Nashville, TN

### **David M. Gossett**

*Consumer Financial Protection Bureau*  
Washington, DC

### **Derek G. Howard**

*Minami Tamaki LLP*  
San Francisco, CA

### **James D. Kole**

*Illinois Attorney General's Office*  
Chicago, IL

### **Michael Mallow**

*Loeb & Loeb, LLP*  
Los Angeles, CA

### **Honorable Colleen McMahon**

*United States District Court for the Southern District of New York*  
New York, NY

### **Darrell Palmer**

*Law Offices of Darrell Palmer*  
Solana Beach, CA

### **Honorable Benita Y. Pearson**

*United States District Court for the Northern District of Ohio*  
Cleveland, OH

### **Mark A. Perry**

*Gibson Dunn & Crutcher, LLP*  
Washington, D.C.

### **Andrew J. Pincus**

*Mayer Brown LLP*  
Washington, D.C.

### **Peter M. Ryan**

*Cozen O'Connor*  
Philadelphia, PA

### **David Sanford**

*Sanford Wittels & Hiesler, LLP*  
Washington, D.C.

### **Edmund W. Searby**

*McDonald Hopkins, LLC*  
Cleveland, OH

### **Jonathan D. Selbin**

*Lieff Cabraser Heimann & Bernstein, LLP*  
New York, NY

### **Joseph M. Sellers**

*Cohen Milstein Sellers & Toll, PLLC*  
Washington, D.C.

### **Lawrence W. Schonbrun**

*Law Office of Lawrence W. Schonbrun*  
New York, NY

### **Thomas M. Sobol**

*Hagens Berman Sobol & Shapiro LLP*  
Cambridge, MA

### **Honorable Jack B. Weinstein**

*United States District Court for the Eastern District of New York*  
New York, NY

# Program Agenda

## Thursday, October 13, 2011

### 6:30 p.m. **New York, New York! Welcoming Soiree**

Join us in the Eventi Hotel's fourth floor Verdi Room to meet and mingle with other Institute guests and faculty members in a casual setting, make new business acquaintances, and hopefully make a few new friends.

## Friday, October 14, 2011

### 8:00 a.m. **Registration**

### 8:55 a.m. **Welcoming Remarks**

### 9:00 a.m. **Supremes in the City: A Brief History of this Year's Developments in Supreme Court Class-Action Jurisprudence**

This past year was an unusually active one for the U.S. Supreme Court with respect to class-action decisions. The Supremes decided cases affecting class-action arbitration, state law rights, and class certification. We will kick off this year's Institute with a wrap-up of these important developments and more, all of which you must appreciate if you want to serve your class-action clients properly.

**Speaker:** **Professor John C. Coffee, Jr.**

### 10:00 a.m. **The Practice That Never Sleeps: Reexamining the Class-Action Practice and Considering Where It — Indeed, We — Go from Here**

Despite class actions' original intention — whether described as necessary to affect societal change or to redress injuries unremedied by governmental regulatory action — it seems that an enhanced scrutiny of them has arisen recently. In particular, the Class Action Fairness Act, *Twombly*, *Iqbal*, *Hydrogen Peroxide*, *Canadian Car*, *DeBeers*, *Concepcion*, and *Dukes* support such adjustments as limiting the scope of consumer class actions, enhancing the pleading standard, adjusting litigation and settlement class certification standards, and legalizing class-action waivers. But what's led to this scrutiny, and is this attention unnecessary, perfectly reasonable, or somewhere in between? Our program will examine these important issues in an innovative talk-show format. While describing and debating today's practical, realistic, and honest class-action landscape, our program will draw upon our collective experience to propose and discuss techniques for addressing these and future similar issues. So please join our respected array of lawyers, federal judges, and an esteemed academic for this timely and vital discussion about our practice's history, current experience, and potential future. Since a well-developed and valuable dialogue on these important topics will best benefit from everyone's ideas and input, come prepared to share your thoughts, outlooks, and fears.

**Host:** **Daniel R. Karon**

**Guests:** **Honorable Colleen McMahon**  
**Honorable Benita Y. Pearson**  
**Professor Brian T. Fitzpatrick**  
**J. Philip Calabrese**  
**Derek G. Howard**  
**Peter M. Ryan**

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

### 11:15 a.m. **If I Can Make It There, I Can Make It Anywhere: Lessons from Class-Action Trials for the Rest of Us**

We all know that class actions never go to trial, right? Well, not quite! A few *have* gone all the way, with verdicts going both ways. But with virtually no appellate jurisprudence examining these trials' class-action-related rulings, meager counsel exists regarding important topics like these:

- How should the jury be instructed as to absent class members? As to named plaintiffs?
- What class-related points are permissible in the opening statement? Closing argument?
- What defense strategies hold the most promise for persuading the judge to decertify the class?
- What can and should the parties do to develop a record for quite possibly the only appellate review of the trial court's decision to certify a class?
- How can plaintiff's counsel best develop the case at trial for possible pre/post-verdict settlement?

Only after gaining insight into these and other related questions can we properly prepare our class-action cases for trial, even if trial never occurs. So please enjoy our faculty of class-action trial lawyers, a prominent federal judge, a moderator (who, like most of you, hasn't tried a class-action case either, yet wants to) as they explore how class-action trials can inform and enhance our everyday class-action practice. Your trial-management plans and class-certification briefs will never be the same!

**Moderator:** Andrew J. McGuinness

**Panelists:** Honorable Jack Weinstein  
James Donato  
David Sanford  
Edmund W. Searby  
Thomas M. Sobol

## 12:15 p.m. Lunch at Eventi Hotel's Bar Basque

### 1:30 p.m. Melee in Manhattan! Class-Action Objectors — Are They Protectors of Absent Class Members or Merely Gadflies?

The last decade has seen an explosion in the number of lawyers objecting to class-action settlements. Some of these lawyers are known as professional objectors: lawyers who, as a matter of practice, object to class-action settlements on behalf of individual class members. Depending on an objector's perceived inspiration or motivation, class-action lawyers, defense counsel, and judges sometimes describe objectors as a tax on the legal system, purely seeking fees or worse. But objectors insist that they serve an important purpose in protecting the class by presenting issues involving fees and fairness that neither the class nor defense counsel will raise. Our panel, which will include a federal judge and three experienced class-action settlement objectors, will discuss the role of objectors in class-action settlements, CAFA and whether Rule 23's amendments have affected their role, and the bench's view of them.

**Moderator:** Vincent J. Esades

**Panelists:** Honorable Nancy F. Atlas  
Ted Frank  
Darrell Palmer  
Lawrence W. Schonbrun

### 2:30 p.m. New Kid on the Block — The Consumer Financial Protection Bureau: What Is It, How Will It Work, and How Will It Affect Us?

Despite *Concepcion*, the Consumer Financial Protection Bureau (CFPB) may have the final word on mandatory-arbitration clauses as well as a host of other issues impacting consumer class actions. Attend this program and learn more about the new CFPB and how we can expect it to affect class-action litigation practice. Because whatever the eventual scope and impact of the CFPB's rule-making authority, one thing is certain: the CFPB will serve a crucially important role in class actions, and lawyers — particularly, class-action lawyers — need to know how the CFPB works, understand its directive, and appreciate how to cooperate with it.

**Moderator:** Jeffrey A. Leon

**Panelists:** David M. Gossett  
James D. Kole  
Michael Mallow  
Jonathan D. Selbin

## 3:30 p.m. Break

### 3:45 p.m. The Empire Cases — *AT&T Mobility v. Concepcion* and *Wal-Mart Corp. v. Dukes* from Those Who Made Them Happen

The two most significant class-action decisions from the Supreme Court in the past 10 years came out this term. What do these cases mean, what happens next, and what changes do they portend for class-action litigators on both sides of the "v."? Join us for commentary and predictions from the lawyers involved.

**Moderator:** Fred Burnside

**Panelists:** *Concepcion* F. Paul Bland, Jr.  
Andrew J. Pincus

*Dukes* Mark A. Perry  
Joseph M. Sellers

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

# National Institute Information

## PROGRAM TUITION

**Standard Rates** (After September 14, 2011)

**\$890** for the General Public

**\$740** for ABA Members

**\$550** for Section of Litigation Members

**\$570** for Government/Academic/NonSection Member

## ABA Section of Litigation

Become an ABA Member, and join this dynamic section when registering for this program at the cost of only \$55. Save up to **\$125** on this program tuition!

## Group and Other Discounts

Register three or more people at the same time to receive an additional \$50 reduction on each program tuition. Larger group discounts and special rates for full-time law students, academics, and government employees are also available. **For more information, contact Dan Becker at 312.988.5140.**

## Course Materials

Course materials for this ABA-CLE National institute will be provided and distributed via flash drive as part of your registration fee. Hard copy course materials are available for \$50 upon request. Please select the option to purchase hard copy course materials when registering for this program.

## MCLE

ABA programs ordinarily receive CLE credit in AK, AL, AR, AZ, CA, CO, DE, FL, GA, GU, HI, IA, ID, IL, IN, KS, KY, LA, ME, MN, MS, MO, MT, NH, NM, NV, NY, NC, ND, OH, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, VI, WA, WI, WV, and WY. These states sometimes do not approve a program for credit before the program occurs. This course is expected to qualify for 6.00 CLE credit hours in 60-minute-hour states, and 7.20 credit hours in 50-minute-hour states. This transitional program is approved for both newly admitted and experienced attorneys in NY. For more information about CLE accreditation in your state, visit [www.ambar.org/cac2011](http://www.ambar.org/cac2011).

## SCHOLARSHIPS

Scholarships to defray tuition expense for National Institutes are available upon application. Preference will be given to public interest lawyers, government lawyers, and law professors. **For more information on scholarships, visit [www.americanbar.org/groups/cle/scholarship](http://www.americanbar.org/groups/cle/scholarship).**

## SERVICES FOR PERSONS WITH DISABILITIES

If special arrangements are required, please contact Courtney Anderson at 312.988.6210. Reasonable advance notice is requested.

## IN-PERSON REGISTRATION

If you plan to register in person, please call the ABA at least 24 hours in advance to confirm that the program is being held as scheduled and that space is available. Cash payments will **not** be accepted.

## CANCELLATIONS

Cancellations received five business days or more before the program will receive a 100% 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 Service Center 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 the program.

## PROGRAM CONFIRMATION

Confirmation of your registration will be sent to you upon receipt. Please bring it with you to the National Institute as proof of registration. If you do not receive the confirmation notice prior to the presentation, please call the ABA at 800.285.2221 at least 24 hours in advance to confirm that your registration was received and that the program is being held as scheduled.

## HOTEL INFORMATION

Eventi Hotel

851 Avenue of the Americas (Sixth Avenue)

New York, NY 10001

P: 212.564.4567

Rate: Single/Double \$329

Hotel Deadline: **September 19, 2010**

All room rates are subject to city occupancy and sales tax. One night's deposit is required for reservation. Unclaimed rooms will be released September 19, 2011, after which the hotel will accept reservations on a space-available basis. **Mention this ABA meeting to receive the special discounted rate.**

## AIRLINE INFORMATION

Discounted fares are available from ABA Orbitz for Business including ABA negotiated discounts on American and United. To book online, go to [americanbar.org/travel](http://americanbar.org/travel), and click under the Orbitz for Business logo at the top of the page; then click on the appropriate link in the Travel Paid by Staff box. For assistance with online or offline reservations, call toll free 1.877.222.4185.

Discounts can also be obtained directly from the carrier. American Airlines: Call 800.433.1790, code A1911SS; United Airlines: Call 800.521.4041, code 578IG.

## STANDING COMMITTEE ON CONTINUING LEGAL EDUCATION

Under the guidance of the Standing Committee on Continuing Legal Education, the Center for Continuing Legal Education administers and produces national institutes, videolaw seminars, teleconferences, other technology-based products, and written course materials to assist lawyers with continuing legal education efforts.

**David W. Hilgers**, Chair  
*Brown McCarroll, LLP*  
Austin, TX

## ABA CENTER FOR CONTINUING LEGAL EDUCATION

**Jill Eckert McCall**, Director  
**Dan Becker**, Deputy Director

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 **Online:** Visit our secured Web site at [ambar.org/cac2011](http://ambar.org/cac2011) (credit card only)

 **Phone:** 800.285.2221 and Select Option "2"  
or 312.988.5522 (credit card only)

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### Standard Tuition (Valid after September 14, 2011)

- \$690** for the General Public
- \$740** for ABA Members (Save \$150)  
ABA # \_\_\_\_\_
- \$550** for Section of Litigation Members  
(Save \$340) ABA # \_\_\_\_\_
- \$570** for Government/Academic NonSection Member
- Please provide the course materials in a printed book (**\$50 additional**)

### ABA Membership

- I am interested in becoming a member of the American Bar Association. Please send me information and membership forms.
- I am an ABA member but want a further reduction on my tuition for this program. Please enroll me in the Section of Litigation. I've enclosed a separate check for **\$55**.

### Product Order Form

- Send me the **Class Actions Audio CD-ROM Package, CEN1CACCCDR** (Audio CD-ROM and course materials), available approximately three weeks following the program (General Public, \$500; ABA Member, \$460; Section Member, \$435). Domestic shipping and handling cost is \$12.95.
- Send me the **Class Actions Course Materials, CEN1CACCCOR** (General Public, \$225; ABA Member, \$210; Section Member, \$200).

*Illinois residents add 9.75% sales tax; District of Columbia residents add 6% use tax before including domestic shipping and handling charges. Price is subject to change after 10/14/2011.*

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To Register or for additional Information:

**Call 800.285.2221 and select option "2"  
or visit our Web site at  
[ambar.org/cac2011](http://ambar.org/cac2011)**



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