Weil

Class Action Monitor

Comcast Corp., et al. v. Behrend, et al.

By Yvette Ostolaza, David R. Singh, and Alison Bain-Lucey

In This Issue

Weil News

Introduction

Currently pending before the United States Supreme Court is *Comcast Corp., et al. v. Behrend, et al*., an antitrust monopoly case in which the Court is considering whether a district court may certify a class under Federal Rule of Civil Procedure (FRCP 23) without deciding whether the plaintiff has introduced evidence that would be admissible at trial, including expert testimony, to show that the case is susceptible to awarding damages on a classwide basis.[1] The Supreme Court heard oral argument in this case on November 5, 2012.

Background

In 2003, six non-basic cable television services customers filed a class action suit against Comcast Corporation (Comcast) alleging unlawful monopolization and attempted monopolization in violation of the Sherman Act.[2] The plaintiffs allege that Comcast's swaps and transactions, known as clustering, in the relevant geographic markets eliminated competition resulting in increased prices for basic cable subscribers, including the entire putative class.[3]

The plaintiffs sought certification of a class comprised of all cable television customers who subscribed at any time since December 1, 1999 to video programming services other than just basic cable from Comcast in the so-called Philadelphia cluster. Comcast opposed this motion for class certification, disputing that the adequacy, typicality, predominance, and superiority requirements of FRCP 23 had been satisfied, and emphasizing that the putative class included cable customers who were subject to different cable charges, depending on the local cable franchise provider, and that the franchise areas were too dissimilar to satisfy the requirements of Rule 23.[4] On May 2, 2007, the District Court for the Eastern District of Pennsylvania granted the plaintiffs' motion for class certification.[5]

After the court issued its class certification order, however, the Third Circuit issued an opinion in *In re Hydrogen Peroxide Antitrust Litigation* clarifying the standard of review that a district court should apply in deciding a class certification motion.[6] Specifically, the Third Circuit held that the "rigorous analysis" necessary when a district court decides whether to certify a Rule

23(b) class "may include a preliminary inquiry into the merits,"[7] that a district court "errs as a matter of law when it fails to resolve a genuine legal or factual dispute relevant to determining the [Rule 23] requirements,"[8] and that "[f]actual determinations necessary to make Rule 23 findings must be made by a preponderance of the evidence."[9] In addition, the Third Circuit made clear that "[r]esolving expert disputes in order to determine whether a class certification requirement has been met is always a task for the court – no matter whether a dispute might appear to implicate 'credibility' of one or more experts . . . ."[10] Arguing that the district court had failed to conduct the rigorous analysis required by *In re Hydrogen Peroxide Antitrust Litigation*, Comcast filed a motion to decertify the class.

The district court treated Comcast's motion as a motion for reconsideration and granted it with respect to the portion of the court's class certification order, finding that the plaintiffs had satisfied the FRCP 23(b) requirement that common questions predominate.[11] In particular, the court noted that it had previously found only that the plaintiffs' expert's report was sufficient to establish that common issues predominate, but that the court did not previously require the plaintiffs to show the factual basis of their expert's opinions by a preponderance of the evidence and did not make specific credibility determinations.[12] The court granted leave for the plaintiffs to file an amended motion for class certification, as it pertains to the FRCP 23(b) issue of the predominance of the common issues of (1) antitrust impact and (2) methodology of damages, and the plaintiffs filed such an amended motion for class certification.[13]

The district court held a four-day evidentiary hearing on the plaintiffs' amended motion for class certification.[14] To support their argument that common issues of law and fact predominate over individualized issues, the plaintiffs proffered, among other things, expert reports and testimony purporting to establish a methodology for proving classwide damages.[15] In turn, Comcast submitted rebuttal expert reports and testimony critiquing the plaintiffs' experts' methodology.[16] Following the hearing, the court issued a series of questions related to antitrust impact and damages methodology, and entertained additional argument regarding those questions.[17]

In 2010, the court granted the plaintiffs' amended motion for class certification.[18] Articulating the standard of review established by FRCP 23 and *Hydrogen Peroxide*,[19] the court explained that its review asked whether " . . . based on all relevant evidence and arguments presented by the parties the evidence more likely than not establishe[d] each fact necessary to meet the requirements of Rule 23."[20] Applying this standard to the damages evidence offered by the plaintiffs, the court rejected the critiques Comcast's rebuttal expert had offered regarding the flaws in the plaintiffs' damages model and concluded that common evidence was available to measure and quantify damages on a classwide basis.[21]

Comcast appealed the district court's order granting the plaintiff's amended motion for class certification, but the Third Circuit affirmed. In rejecting Comcast's arguments, the Third Circuit emphasized that it was not the role of the district court to determine whether the plaintiffs actually have proven antitrust impact, but instead to determine whether the plaintiffs "could prove antitrust impact through common evidence at trial."[22] The Third Circuit further emphasized that a district court may only engage in merits inquiries that are necessary and that anything more would run afoul of the Supreme Court's decision in *Eisen v. Carlisle & Jacquelin*.[23] In dissent, Judge Jordan of the Third Circuit indicated that he would have vacated the district court's class certification because the plaintiffs' experts' reports on classwide damages "fail the requirement of 'fit' because it is disconnected from Plaintiffs' only viable theory of antitrust impact . . . and thus, the proffered expert testimony cannot help the jury determine whether reduced overbuilding caused damages."[24]

Judge Jordan is not alone in questioning whether a district court may certify a class without first deciding that the plaintiff has introduced evidence that would be admissible at trial under Rule 702 and *Daubert* to prove that the elements of a claim may be established on a classwide basis. In fact, this issue has sharply divided the federal circuits in recent years. The Seventh Circuit, for example, has

held that a full *Daubert* analysis is appropriate at the class certification phase,[25] but other courts have held otherwise. In *In re Zurn Pex Plumbing Prods. Liab. Litig*., the Eighth Circuit declined to hold that a complete *Daubert* analysis is necessary when certifying a class, finding instead that district courts in the Eighth Circuit have never been required "to decide conclusively at the class certification stage what evidence will ultimately be admissible at trial."[26] This conflict also exists among district courts within the same circuit. In *Cholakyan v. Mercedes-Benz USA, LLC*,[27] for example, the District Court for the Central District of California held that *Ellis v. Costco Wholesale Corp*.,[28] a Ninth Circuit decision, had clarified that Daubert is properly applied to evidence offered at the class certification phase. Less than two months after the *Ellis* decision, however, the District Court for the Western District of Washington held that "[t]he Ninth Circuit . . . has not yet resolved whether a full analysis under Federal Rule of Evidence 702 and *Daubert* is required at the class certification stage," and chose to adopt the approach used by the Eighth Circuit in *Zurn* to address this issue.[29] In light of this conflict among and within the circuits, it is not surprising that the admissibility of evidence offered to support class certification, although mentioned only in the dissent of the Third Circuit's opinion, found its way before the Supreme Court.

Comcast's Petition for *Certiorari*

After the Third Circuit affirmed the district court's certification of the class, Comcast petitioned the Supreme Court for a writ of *certiorari*.[30] In its petition, Comcast focused on the Third Circuit's majority opinion and the merits review a court should conduct under FRCP 23 at the class certification phase. Comcast asserted that in *Wal-Mart Stores, Inc. v. Dukes*[31] the Supreme Court had disavowed the portion of its holding in *Eisen v. Carlisle & Jacquelin*[32] limiting a merits inquiry when certifying a class, but that the Third Circuit had nonetheless repeatedly relied on *Eisen*[33] in declining to consider the "merits arguments" relevant to the certification analysis in the case.[34] Comcast characterized the question at issue as "whether a district court may certify a class action without resolving "merits arguments" that bear on Rule 23's prerequisites for certification, including whether purportedly common issues predominate over individual ones under Rule 23(b)(3)."[35]

The Issue Before the Supreme Court

The Court granted *certiorari*, but reformulated the issue to focus instead on the admissibility of the evidence offered to support class certification, the issue raised by Judge Jordan's dissenting opinion.[36] Specifically, the Supreme Court granted review regarding the following question: "Whether a district court may certify a class action without resolving whether the plaintiff class has introduced admissible evidence, including expert testimony, to show that the case is susceptible to awarding damages on a class-wide basis."[37] After the Supreme Court granted review regarding this reformulated issue, Comcast recast the arguments in its appellate brief to focus on whether a district court, prior to certifying a class under Rule 23, must determine that the plaintiff has proffered adequate evidence that would be admissible at trial under FRE 702 and the standard of admissibility set in *Daubert* that damages may be measured and quantified on a classwide basis.[38]

Oral Argument

The Supreme Court heard oral argument on this issue on November 5, 2012.[39] During the argument, Comcast repeatedly attempted to bait the Supreme Court into addressing not only whether a district court must decide that the plaintiff has proffered adequate evidence that would be admissible at trial under FRE 702 and *Daubert*, but also whether the district court erred in not conducting more of a merits review. Justice Ginsburg, however, emphasized that the court had narrowed Comcast's argument to the admissibility review of evidence at the class certification stage.[40] And, although it was the Court itself that had crafted the question for review, the justices still expressed concern that Comcast had waived its opportunity to object to the admissibility of the evidence altogether.[41] Justice Sotomayor, for example, pointedly told Comcast's counsel: ". . . I think you really can't deny that you never raised the word 'Daubert' below until the very end."[42] Comcast's counsel grappled with the Court regarding this waiver issue at length. Chief Justice Roberts suggested that the Court could decide

the standard to apply to the underlying legal issue and remand the case for a decision on waiver.[43]

Potential Impact of the Court's Decision

If the Supreme Court decides that a district court must determine that the plaintiff has proffered adequate evidence that would be admissible at trial under Rule 702 and the standard for admissibility set in *Daubert* on a classwide basis at the class certification stage, it could have a significant impact on class action practice. Indeed, a holding that a district court must decide whether class certification evidence will be admissible at trial at the class certification stage could make it more difficult for plaintiffs to obtain class certification by forcing plaintiffs to adduce relevant and reliable expert evidence at the class certification stage showing that the plaintiff can prove quantifiable damages (and presumably other necessary elements of a claim) on a classwide basis. Such a holding appears to be a realistic possibility given that the Court seems to have gone out of its way to reformulate the issue initially proposed by Comcast to address the *Daubert* question and because dicta in the Court's holding in *Dukes* suggests that some of the justices believe that expert testimony at the class certification stage must pass muster under *Daubert*.[44]

Given the focus of questioning during oral argument, however, it is also possible that the Supreme Court could decide the appeal on narrower grounds, by, for example, finding that Comcast waived its *Daubert* objection and leaving open the question of whether district courts should or must determine at the class certification stage that the evidence proffered in support of class certification would be admissible at trial under FRE 702 and *Daubert*. This underscores the need for defense counsel to clearly raise Rule 702 and *Daubert* objections at the class certification stage.

Regardless of the outcome, both the plaintiffs' bar and defense counsel will be watching this case closely. Weil's Class Action Task Force will update you again after the Supreme Court issues its opinion.

1 509 U.S. 579 (1993).

2 *Behrend v. Comcast Corp.*, 245 F.R.D. 195, 196-97 (E.D.Pa. 2007).

3 *Behrend v. Comcast Corp.*, 655 F.3d 182, 187 (3d Cir. 2011).

4 *Behrend v. Comcast Corp.*, 245 F.R.D. 195, 203, 207 (E.D.Pa. 2007).

5 *Id*. at 212-13.

6 *Hydrogen Peroxide*, 552 F.3d 305, 316 (3d Cir. 2008).

7 *Id*. at 317.

8 *Id*. at 320.

9 *Id*.

10 *Id*. at 324.

11 Order Granting Defendant's Motion to Decertify Classes at 1, *Behrend v. Comcast Corp.*, 245 F.R.D. 195 (2007) (No. 03-6604).

12 *Id*. at 1 n.1.

13 *Id*. at 2.

14 *Behrend v. Comcast Corp.*, 655 F.3d 182, 188 (3d Cir. 2011).

15 *Id*.

16 *Id*.

17 *Id*.

18 *Behrend v. Comcast Corp.*, 264 F.R.D. 150 (E.D.Pa. 2010).

19 552 F.3d 305 (3d Cir. 2008).

20 *Behrend v. Comcast Corp.*, 264 F.R.D. at 154.

21 *Id*. at 181-91.

22 *Behrend v. Comcast Corp.*, 655 F.3d at 197.

23 *Id*. at 199-200 (citing 417 U.S. 156 (1974)).

24 *Id*. at 214-225 (citing 509 U.S. 579 (1993)).

25 See *American Honda Motor Co., Inc. v. Allen*, 600 F.3d 813, 814-15 (7th Cir. 2010) ("[T]he district court must perform a full *Daubert* analysis before certifying the class if the situation warrants.").

26 644 F.3d 604, 611-12 (8th Cir. 2011).

27 281 F.R.D. 534, 541-42 (C.D. Cal. 2012).

28 657 F.3d 970, 982 (9th Cir. 2011).

29 *Fosmire v. Progressive Max Ins. Co.*, 277 F.R.D. 625, 628-29 (W.D. Wash. 2011).

30 *Comcast Corp. v. Behrend*, On Petition for a Writ Of Certiorari to the United States Court of Appeals for the Third Circuit (Jan. 11, 2012).

31 131 S. Ct. 2541, 2551 (2011) (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 161 (1982)).

32 417 U.S. 156 (1974).

33 *Id*.

34 Petition for a Writ Of Certiorari to the United States Court of Appeals for the Third Circuit; Question Presented at 2, Comcast Corp. v. Behrend, 133 S.Ct. 24 (2012) (No. 11-864) 2012 WL 105558 at *i.

35 *Id*.

36 *Comcast Corp. v. Behrend*, 133 S.Ct. 24 (2012).

37 *Id*.

38 Brief for the Petitioners at 36-43, *Comcast Corp. v. Behrend*, 133 S.Ct. 24 (2012) (No. 11-864) 2012 WL 3613365 at *36-44 (citing 509 U.S. 579 (1993)).

39 Oral Argument Transcript, *Comcast Corp. v. Behrend*, 133 S.Ct. 24 (2012) (No. 11-864) 2012 WL 5387525.

40 *Id*. at 3:23-4:2.

41 *Id*. at 17:25-18:17; 22:7-13.

42 *Id*. at 22:10-12.

43 *Id*. at 32:2-6.

44 131 S. Ct. 2541, 2553-2554 (2011).

The Standard Fire Insurance Co. V. Knowles

The Supreme Court Limits Named Plaintiffs' Right to Stipulate Out of Subject Matter Jurisdiction

By Edward Soto and Edward McCarthy

On March 19, 2013, the Supreme Court of the United States issued its much-anticipated decision in *Standard Fire Insurance Co. v. Knowles*. Justice Breyer delivered the seven-page ruling for a unanimous Court. Based on the Court's rulings, named plaintiffs may not evade federal court jurisdiction by simply stipulating, prior to class certification, that their damages will fall beneath the $5 million threshold for federal jurisdiction set by the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d).

Knowles involves the trial courts in Miller County, Arkansas, "where a handful of local law firms have made almost $400 million in fees over the past seven years, all from class-action settlements that have been procured without a judge's ever having ruled that these cases are even worthy of class treatment, let alone meritorious."[1] Many "law blogs" and online circulars are tracking *Knowles*, and for good reason. As Weil's own Product Liability Monitor noted:

> The *Knowles* case is a very important case for defendants in preventing class action abuse prevalent in many state courts which frequently order extensive discovery prior to determining class certification issues. This tactic, which is incredibly burdensome and expensive to corporate defendants gives plaintiffs significant leverage in settlement negotiations.[2]

In light of *Knowles*' significance to class action lawyers and the clients they represent, we have prepared a brief overview of the case's history, the January 7th oral argument, and the March 19th Supreme Court decision.

On April 13, 2011, plaintiff Greg Knowles filed a state-court putative class action complaint in of Miller County, Arkansas against The Standard Fire Insurance Company ("Standard Fire") alleging that Standard Fire breached its contracts with members of the purported class by failing to provide full reimbursement for property damage covered under its homeowners insurance policies. *Knowles v. Standard Fire Ins. Co.*, No. 4:11–CV–04044, 2011 WL 6013024, Slip Copy (W.D. Ark. Dec. 2, 2011). The purported class included "hundreds, and possibly thousands, of individuals geographically dispersed across Arkansas." Arguing that Knowles fraudulently framed

the definition of the purported class in order to avoid federal court jurisdiction, the defendant removed under CAFA to the Western District of Arkansas. Plaintiff Knowles requested remand, asserting that as master of his complaint, he had the right to limit his claims. Knowles argued that he had expressly sought to avoid CAFA by executing a binding stipulation to limit the recovery he and his absent class members would seek, and he would not seek more than $5,000,000 in damages for the proposed class. *See id.*

Finding the plaintiff met his burden of showing "to a legal certainty that the aggregate damages claimed on behalf of the putative class shall in good faith not exceed the state court's jurisdictional limitation of $5,000,000," the district court granted remand. *Id*. The Eighth Circuit declined to hear an interlocutory appeal, and the Supreme Court of the United States granted certiorari. *Knowles v. Standard Fire Ins. Co*., No. 11–8030, 2012 WL 3828891 (8th Cir. Jan. 4, 2012); 133 S. Ct. 90, 183 L. Ed. 2d 730 (2012).

During the oral argument before the Supreme Court on January 7, 2013, Ted Boutrous, representing Standard Fire, began by focusing on Miller County, Arkansas and on past abuses of class action procedures that were the very reason CAFA protections were enacted. Nearly all of the Justices participated in the discussions raised during the argument, and both parties faced continued and often-demanding inquiry. In questioning Mr. Boutrous, for example, both the Chief Justice and Justice Kagan expressed concern with eliminating the "master-of-your-complaint rule" and noted that Standard Fire's argument, which focused on plaintiff's stipulation to limit damages, could easily stretch into an attempt to limit other ways in which a plaintiff may elect to build a case, including the plaintiff's decisions on which defendants to sue and what claims to bring. Similarly, in questioning David Frederick, representing Greg Knowles, the Justices expressed concerns over whether a named plaintiff may stipulate and bind absent members of the proposed class before the class is certified. Mr. Fredrick faced specific criticism from Chief Justice Roberts and Justice Breyer, which focused on some plaintiffs' use of loopholes and artificial classifications to skirt CAFA jurisdiction. Finally, on rebuttal, Mr. Boutrous once again focused the Justices on the purpose of CAFA and the abuses occurring in Miller County state courts, stating, "when a complaint claims one amount, the defendant can bring forth proof that it's a larger amount, that it exceeds the amount in controversy … not some jerry-rigged amount the plaintiffs came up with."

In its March 19th decision, the Supreme Court unanimously vacated the district court's remand order, holding that plaintiff Knowles' stipulation does not defeat federal jurisdiction under CAFA. *Standard Fire Ins. Co. v. Knowles*, 568 U. S. ____, No. 11-1450, slip op. 3-7 (Mar. 19, 2013). Justice Breyer, writing for a unanimous court, explained that a named plaintiff's stipulation does not make "a critical difference" in determining the amount in controversy under CAFA, and the "reason is a simple one: Stipulations must be binding." *Id*. at 3. Plaintiff Knowles failed in his attempt to reduce the value of the putative class members' claims, the Court found, because Knowles did not have authority to "stipulate" on behalf of unnamed plaintiffs until after class certification was granted. *Id*. at 3-4.

"To hold otherwise," the Court stated, "would, for CAFA jurisdictional purposes, treat a nonbinding stipulation as if it were binding, exalt form over substance, and run directly counter to CAFA's primary objective: ensuring Federal court consideration of interstate cases of national importance." *Id*. at 6 (internal quotations omitted). Upon remand, the Court concluded, the district court should ignore plaintiff Knowles' stipulation to limit the absent class members' damages in determining the amount in controversy under CAFA. *Id*. at 7.

1 Roger Parloff, *High Court Weighs Future of a Class-Action "Hellhole"*, Jan. 7, 2013, http://features.blogs.fortune.cnn.com/2013/01/07/supreme-court-class-actions/.

2 Keith Gibson, *Supreme Court Grants Cert in Case Where Plaintiff Attempts to "Stipulate" Around CAFA*, Sept. 6, 2012, http://product-liability.weil.com/class-action-law-suits/supreme-court-grants-cert-in-case-where-plaintiff-attempts-to-stipulate-around-cafa/.

Portfolio Media. Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Class Action MVP: Weil Gotshal's David Lender

By **Jess Davis**


David Lender

Law360, Dallas (December 19, 2012, 3:48 PM ET) -- Weil Gotshal & Manges LLP's David Lender in 2012 racked up major wins for Credit Suisse Group AG, Exxon Mobil Corp. and online ticketing giant StubHub Inc. against dozens of putative classes that sought billions from the companies, earning him a spot among Law360's Class Action MVPs.

Lender convinced a judge in March to toss the key putative class claims in a potential $24 billion suit against Credit Suisse and Cushman & Wakefield Inc., which were accused of swindling investors in four luxury resort communities in a loan-to-own scheme.

In June, he negotiated a $5 million settlement for Exxon in multidistrict litigation that combined 27 putative class actions seeking billions for claims alleging that it and other energy companies sold gas without revealing or accounting for temperature expansion.

And throughout the year, he has defended StubHub against a series of putative classes that allege the company wrongly allowed third-party sellers to scalp tickets to a Hannah Montana concert, duped consumers into paying more for Philadelphia Phillies baseball tickets and allowed fraudsters to sell fake San Francisco 49ers football tickets, in each case getting the class claims dropped.

Lender, co-head of the firm's litigation practice, is no stranger to bet-the-company litigation but says class actions, especially those seeking untold billions of dollars, bring tougher challenges as clients are under more pressure.

"Huge damage demands often make it much harder to settle and the stakes are higher," he said. "We develop a record that is trial-ready so when we're in the room negotiating, our adversaries know we don't fear trial — we embrace it," Lender said.

That strategy helped him settle the hot fuel MDL against Exxon without admitting liability — and, as Lender pointed out, at a much lower cost than taking those cases all to trial. U.S. District Judge Kathryn H. Vratil on Dec. 11 approved the settlement after initially rejected the agreement because of a provision that allowed Exxon to object to any fund payment of $10,000 or more, which Exxon then dropped.

Responding to investor allegations Credit Suisse and Cushman & Wakefield schemed to wildly inflate the values of four luxury resorts and saddle investors with crushing debt, Lender successfully argued most of the claims couldn't stand. U.S. District Judge Edward J. Lodge in March axed the putative class's claims of breach of fiduciary duty, unjust enrichment and Consumer Protection Act violations, as well as some fraud and negligent misrepresentation claims. Judge Lodge earlier permanently killed racketeering allegations that could have tripled the $8 billion the putative class is seeking.

And while Lender won dismissal for StubHub in its Phillies and 49ers suits in federal district court, he faced a tougher hurdle defending the company from angry Hannah Montana fans who paid more than face value for their tickets, when Weil joined the case after a North Carolina state judge held StubHub was not immune from liability. The trial court held StubHub waived immunity under the Communications Decency Act because its conduct "constituted an unfair and deceptive trade practice." But in a case of first impression in North Carolina's appellate courts, Lender successfully argued StubHub was not the ticket seller and didn't act as the seller's agent, and was insulated against liability for third-party actions.

Lender said 2012 was his busiest year yet — in addition to his class action work, he was lead attorney in four trials in 2012, one of which landed a $170 million win for General Electric Co. in a wind turbine patent suit against Mitsubishi Heavy Industries Ltd.

Weil Gotshal executive partner Barry Wolf said Lender drew attention at the firm even as a young associate, calling him a "recognized superstar from early on."

"He's probably been involved in more trials at age 42 than litigators at big firms see in a lifetime," Wolf said. "He has that ability to take very complicated fact patterns or legal issues and simplify them, which you can do only when you have your own extreme sort of brilliance and knowledge base."

Busy as 2012 was, Lender expects 2013 to be even busier. In January, he'll take on his first environmental suit, defending Exxon in a four-month trial in New Hampshire state court against claims the company contaminated the state's water. He is also working on a motion to defeat class certification in the Credit Suisse resort case and will defend StubHub against a fourth class action over its ticket prices.

--Editing by Katherine Rautenberg.

All Content © 2003-2013, Portfolio Media, Inc.

About Weil's Class Action Litigation Practice

Given the US Supreme Court's renewed focus on class action jurisprudence over the past several years, and the resultant evolution of the plaintiff bar's approach to litigating these cases, it is now more important than ever for corporations to be cognizant of not only extant class action threats, but also the tools available to address them head on.

Across the legal spectrum, Weil has established a reputation for and track record of success in sophisticated class action cases – including in the areas of antitrust, consumer financial services, consumer fraud, employment and labor, ERISA, insurance, product liability/mass torts, and securities.

We partner with our clients to understand their core business objectives, develop a comprehensive plan of attack to defend against complex, high-profile litigation, and mitigate and manage risk to better avoid class action litigation in the first place.

We are best known for:

- **Breadth of Practice:** We have achieved successful results for clients at every phase of the class action litigation process in both trial and appellate courts, in jurisdictions across the country. These successes include obtaining dismissals of class action complaints, defeating class certification, winning summary judgment motions, prevailing at trial or on appeal, and obtaining and negotiating highly favorable settlements.
- **Seamless Approach Across our Extensive Geographic Footprint:** We have litigators well-versed in class action litigation stationed in eight offices across the US. But rather than being compartmentalized by area or geography, our practices operate as an integrated group comprising lawyers with wide-ranging expertise. This cross-practice and cross-office "one-firm" approach allows us to undertake a coordinated analysis and readily manage complex class actions by bringing to bear the full breadth and strength of the firm to address our clients' needs.
- **Thought Leadership:** We strive to keep our clients up-to-date on the most current developments in the class action arena. In addition to frequent client communications, we regularly contribute to leading industry publications and participate in seminars and other speaking engagements to disseminate clear and constructive analysis of developments, risks, and strategies.
- **Award-Winning Litigators:** Though many firms have class action capabilities, few can offer the slate of highly recommended lawyers that we do in this space. As highlighted on the previous page, our litigators' approach, reputation, and successes are among the best-in-class.

For more information on Weil's Class Action practice, please visit our website.

Class Action Monitor is published by the Litigation Department of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, +1 212 310 8000, www.weil.com.

If you have questions concerning the contents of this issue, or would like more information about Weil's Class Action practice, please speak to your regular contact at Weil, or to the editors or authors listed below:

Editor:

Holly Loiseau (DC)	Bio Page	holly.loiseau@weil.com	+ 1 202 682 7144

Associate Editor:

David Singh (NY)	Bio Page	david.singh@weil.com	+ 1 212 310 8159

Contributing Authors:

Yvette Ostolaza (Dallas)	Bio Page	yvette.ostolaza@weil.com	+ 1 214 746 7805
Edward Soto (Miami)	Bio Page	edward.soto@weil.com	+ 1 305 577 3177
David Singh (NY)	Bio Page	david.singh@weil.com	+ 1 212 310 8159
Edward McCarthy (Miami)	Bio Page	edward.mccarthy@weil.com	+ 1 305 577 3240
Alison Bain-Lucey (NY)	Bio Page	alison.bain-lucey@weil.com	+ 1 212 310 8008

©2013 Weil, Gotshal & Manges LLP. All rights reserved. Quotation with attribution is permitted. This publication provides general information and should not be used or taken as legal advice for specific situations that depends on the evaluation of precise factual circumstances. The views expressed in these articles reflect those of the authors and not necessarily the views of Weil, Gotshal & Manges LLP. If you would like to add a colleague to our mailing list or if you need to change or remove your name from our mailing list, please log on to www.weil.com/weil/subscribe.html, or send an email to subscriptions@weil.com.