

Eighth Annual Judicial Symposium

CLASS ACTIONS AND AGGREGATE LITIGATION: Lessons Learned, Challenges Ahead

Presented by

NATIONAL FOUNDATION
FOR JUDICIAL EXCELLENCE

July 13–14, 2012
Swissôtel Chicago
Chicago, Illinois



PROMOTING EXCELLENCE AFFIRMING JUSTICE

A strong, independent, responsive judiciary adhering to the rule of law is one of the hallmarks of a democratic society. Although every citizen has an interest in the maintenance of an effective judicial system, as an officer of the court, the lawyer's obligation in this regard is of paramount importance.

It was with this in mind that DRI created the National Foundation for Judicial Excellence (NFJE) on October 7, 2004. NFJE is an independent, 501(c)(3) charitable foundation that provides judges with educational programs and other tools to enhance the rule of law and administration of justice.

For seven years, the NFJE has successfully produced a first-rate symposium hosting nearly 400 appellate court judges from 44 states.

Judges' responses to the programs have been universally enthusiastic, and many have expressed appreciation for the high caliber and balanced nature of the program. Comments include:

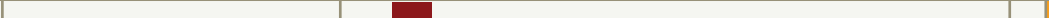
- This was a fantastic program—intellectually stimulating and thorough.
- The speakers were excellent and the topics were timely. I anticipate next year's symposium.
- Thanks to everyone for a great program. I already look forward to next year's program.
- This is one of the best organized and informative seminars that I have ever attended. Keep up the good work.
- The program and the entire experience were excellent. I encourage the Foundation to continue this long into the future.
- The program was well planned and of high intellectual caliber.
- Bravo! Keep up the good tradition for which you have laid a sound foundation.
- Thank you for providing us with an opportunity to get together and compare notes with judges from other states.



This Year's Symposium

This past year's United States Supreme Court term was a watershed one for class action law. The Court's decision in *Wal-Mart v. Dukes*, which arose from one of the largest employment class actions in American history, addressed the standard for certifying class actions under Rule 23. *AT&T Mobility v. Concepcion* wrestled with key federal preemption issues in the battle over arbitration agreements that prohibit class arbitration. Likewise, in *Smith v. Bayer*, the Supreme Court held that the Anti-Injunction Act prohibits a federal court from enjoining a state court from making an independent decision on class certification under state law.

The NFJE's annual symposium for appellate judges will use these decisions as touchstones for a discussion of class actions and aggregate litigation in state courts. State appellate courts will be confronted with a growing number of challenging and unique issues in the coming years. Among the topics on the agenda, state appellate judges will attend a blockbuster debate between nationally renowned experts moderated by a law school dean and will explore the role of attorneys general in consumer class action and aggregate litigation. State and federal due process issues, the monitoring role of state trial and appellate courts in overseeing the ethical and fiduciary duties of class action counsel, the use and consideration of expert testimony in class action certification review and the fight for state independence in light of the recent Supreme Court decisions are also on the agenda for this year's symposium. Join a nationally recognized panel of appellate lawyers and law school professors as we explore these important issues shaping class action and aggregate litigation decisions.



CLASS ACTIONS AND AGGREGATE LITIGATION: Lessons Learned, Challenges Ahead

Schedule of Events

Friday, July 13

4:00 – 5:30 p.m. Registration

5:30 – 6:30 p.m. **State Attorneys General: Champions of Consumer Protection**
Speakers: Victor E. Schwartz, *Shook, Hardy & Bacon, LLP, Washington, District of Columbia*
David A. Logan, *Dean, Roger Williams Law School, Bristol, Rhode Island*
Thurbert Baker, *McKenna Long & Aldridge, LLP, Atlanta, Georgia*
An expert panel discusses the trend of state attorneys general bringing collective actions on behalf of consumers to replenish state coffers, including theories of recovery, political implications, targeted industries, successes and failures and how these cases have fared on appeal.

6:30 – 7:30 p.m. Welcome Reception

7:30 p.m. Dinner on your own

Saturday, July 14

7:30 – 8:15 a.m. Continental Breakfast

8:15 – 8:30 a.m. **Welcome and Introductions**
Matthew Y. Biscan, *NFJE President*
Dan D. Kohane, *2012 Symposium Program Chair*

8:30 – 10:00 a.m. **Overview of Class Action Developments in the U.S. Supreme Court and the Independence of State Procedural Law**
Speakers: Samuel Issacharoff, *Reiss Professor of Constitutional Law, New York University School of Law, New York, New York*
Jessica Davidson Miller, *Skadden, Arps, Slate, Meagher & Flom, LLP, Washington, District of Columbia*
These panelists will present an up-to-date overview of the important recent U.S. Supreme Court decisions, including Wal-Mart v. Dukes, AT&T Mobility v. Concepcion, and Smith v. Bayer. Panelists Professor Samuel Issacharoff of NYU Law School and Jessica Davidson Miller of Skadden Arps will discuss the significance of these decisions on class action practice in state courts and identify cutting edge class action issues that may arise in the near future.

10:00 – 10:15 a.m.	Break
10:15 – 11:45 a.m.	<p><i>Due Process and Aggregate Litigation</i> Speakers: Mark A. Perry, Gibson, Dunn & Crutcher, LLP, Washington, District of Columbia Karen Barth Menzies, Robinson Calcagnie Robinson Shapiro Davis, Inc., Los Angeles, California</p> <p><i>This session will consist of a Lincoln-Douglas style debate – two experienced class action attorneys debate where the Constitutional floor, if any, lies in aggregate cases. They will address issues concerning what burden plaintiffs must meet before proceeding to merit discovery in aggregate litigation and achieving a balance between minimal allowable procedural safeguards versus unnecessarily high burdens on plaintiffs.</i></p>
11:45 – 1:00 p.m.	Luncheon
1:00 – 2:15 p.m.	<p><i>The Ethical and Fiduciary Duties of Court and Counsel in State Mass Tort and Quasi-Class Actions</i> Speaker: Francis E. McGovern, Professor of Law, Duke University School of Law, Durham, North Carolina</p> <p><i>Well-known expert in the field Professor McGovern will address developing rules and guidelines for the duties and responsibilities of counsel and trial courts in the evolving field of state court class action.</i></p>
2:15 – 3:30 p.m.	<p><i>Experts at the Head of the “Class”</i> Speakers: Adam L. Hoeflich, Bartlit Beck Herman Palenchar & Scott, LLP, Chicago, Illinois Judge Lorna E. Propes, Circuit Court of Cook County, Chicago, Illinois</p> <p><i>This panel will discuss what guidance appellate courts should provide to steer trial judges through their determinations about when, and whether, to require expert testimony at the class certification stage, what gatekeeping guidance should be provided and when this procedure may turn into a mini-trial on the merits.</i></p>
3:30 – 3:45 p.m.	Break
3:45 – 5:00 p.m.	<p><i>Speaker Panel</i> Moderator: Leslie C. Packer, Ellis & Winters, LLP</p> <p><i>All of our speakers will engage in a lively discussion of topics generated from the audience as well as among themselves.</i></p>
5:00 p.m.	<p>Closing Remarks Matthew Y. Biscan, NFJE President</p>
5:00 – 6:30 p.m.	Closing Reception
6:30 p.m.	Dinner on your own

Speakers



Attorney General Thurbert Baker is a partner in the Atlanta office of McKenna Long & Aldridge LLP. His practice focuses on corporate compliance and investigations, public policy and regulatory affairs, multi-state litigation, public sector procurements and regulatory matters. Attorney General Baker served as the attorney general for the State of Georgia for 13 years under three different governors. In addition to his impact on the state level in Georgia, Attorney General Baker also has a broad national network, having served as the president of the National Association of Attorneys General (NAAG) from 2006–2007.



Adam Hoeflich joined Bartlit Beck in Chicago in 1994 and represents major U.S. and international companies in mass torts, purported class actions, antitrust cases and other complex commercial matters in courts throughout the United States. He has been lead or national counsel in several high-profile multijurisdictional matters and has regularly appeared before the Judicial Panel on Multidistrict Litigation. A lecturer in law at the University of Chicago Law School, he teaches seminars on legal ethics and mass torts and complex class actions. Mr. Hoeflich clerked for Judge Meskill on the Second Circuit Court of Appeals and Judge Shadur on the U.S. District Court for the Northern District of Illinois.



Samuel Issacharoff is the Reiss Professor of Constitutional Law at New York University School of Law. His research deals with issues in civil procedure (especially complex litigation and class actions), law and economics, constitutional law, particularly with regard to voting rights and electoral systems, and employment law. He is one of the pioneers in the law of the political process and one of the co-authors of the seminal *Law of Democracy* casebook. His work on procedure includes serving as the reporter for the Project on Aggregate Litigation of the American Law Institute. Professor Issacharoff is a 1983 graduate of the Yale Law School. After clerking, he spent the early part of his career as a voting rights lawyer. He then began his teaching career at the University of Texas in 1989, where he held the Joseph D. Jamail Centennial Chair in Law. In 1999, he moved to Columbia Law School, where he was the Harold R. Medina Professor of Procedural Jurisprudence, before joining the NYU faculty in 2005. He is the author of more than 100 books, articles and other academic works. Professor Issacharoff is a fellow of the American Academy of Arts and Sciences.



Dan D. Kohane, is a partner in the Buffalo, New York, law firm of Hurwitz & Fine, P.C. where he heads the firm's Insurance Coverage and Extra Contractual Liability, Class Action and ADR practice groups. An adjunct professor of insurance law at his alma mater, the University at Buffalo Law School, he received his B.A. from the SUNY at New Paltz. Mr. Kohane has previously served as president of Federation of Defense & Corporate Counsel (FDCC), and a member of the Board of Directors for DRI and Lawyers for Civil Justice. He also served as chair of DRI's Technology Committee and program chair of the DRI 2010 Insurance Coverage and Practice Symposium.





David A. Logan has served as dean at Roger Williams University School of Law in Bristol, Rhode Island, since 2003. A graduate of the University of Virginia School of Law, Dean Logan clerked for a federal judge and practiced with a major Washington, D.C., law firm, where he represented Native American tribes. He was a member of the faculty of Wake Forest University School of Law from 1981–2003, where he won awards for his teaching of Torts, Media Law, and Professional Responsibility. His publications, focusing on the intersection of tort law and the First Amendment, have appeared in major journals, including the *Michigan Law Review* and the *Virginia Law Review*. He is an elected member of the American Law Institute, and served as an advisor to the Restatement (3d) of Torts. Dean Logan is a frequent commentator on legal issues, having appeared on television (*The O'Reilly Factor*, *Fox News*, *NBC Evening News*, and *Nightline*), radio (*Morning Edition*, *All Things Considered*, and *Marketplace*), and print media (*Time*, the *Wall Street Journal*, the *Washington Post*, the *New York Times*, and the *Financial Times*). Most recently, he has been widely quoted on the complex civil liability issues arising out of the BP oil spill in the Gulf of Mexico.



Francis E. McGovern is a professor of law at Duke University School of Law and also teaches at the University of California, Berkeley, School of Law. Professor McGovern has the unusual ability to integrate practical experience, abstract thinking and teaching. This has earned him the “triple crown” in the legal community as premier practitioner, scholar and teacher in the field of alternative dispute resolution and complex litigation. Professor McGovern has served as a court-appointed special master or neutral expert in over 70 complex cases and has developed solutions in many of the significant mass claim litigation cases in the U.S. and abroad, including the United Nations Compensation Commission, DDT toxic exposure litigation in Alabama, the Dalkon-Shield cases and silicone gel breast implant litigation. He is currently the special master in the Gulf of Mexico oil spill litigation. Professor McGovern is the author of over 30 law review articles and two books.



Karen Barth Menzies is a partner at Robinson, Calcagnie, Robinson, Shapiro & Davis with offices based in Los Angeles and Newport Beach, California. She focuses on plaintiffs’ pharmaceutical mass torts, in particular the SSRI birth defect cases (including Paxil, Zoloft, Effexor, Celexa/Lexapro and Prozac), and the Fosamax femur cases. Ms. Menzies has served on numerous MDLs in different roles including lead plaintiffs’ counsel, member of plaintiffs’ steering counsel and various MDL committees. She has also served as lead/liaison counsel in several state court coordinated actions. Ms. Menzies has testified three times before the FDA and also before the California State Senate regarding the risks of pharmaceutical drugs. She has published numerous articles and commonly speaks on preemption, social media, FDA and pharmaceutical drug risks to both legal and medical organizations in the U.S. and internationally. Ms. Menzies has been recognized for her advocacy work by *Lawyer’s Weekly USA* with a “Lawyer of the Year” award, “California Lawyer of the Year” by *California Lawyer* magazine, the *National Law Journal’s* “Top 40 Under 40” and she was named a *Consumer Attorney of the Year Finalist* by Consumer Attorneys of California.



Jessica Davidson Miller, of Skadden Arps in Washington, D.C., has broad experience in the defense of purported class actions and other complex civil litigation with a focus on product liability matters and multidistrict litigation proceedings. She regularly appears in both state and federal courts and has drafted numerous appellate and U.S. Supreme Court briefs. Ms. Miller has been involved in several major federal legislative efforts and has written extensively on class action and tort reform issues. She has served as a counselor to the U.S. Chamber of Commerce, the Civil Justice Reform Group and other organizations dedicated to civil justice reform. She played a major role in the passage of the Class Action Fairness Act of 2005.



Leslie C. Packer practices in the areas of civil litigation, focusing on product liability, medical malpractice and commercial litigation. Ms. Packer has been licensed in North Carolina since 1986 and was a founding partner of Ellis & Winters LLP in 2000. Ms. Packer obtained her undergraduate degree from Brown University (A.B., *Magna Cum Laude*, 1982) and her J.D. from the University of North Carolina (with *High Honors*, 1986). Ms. Packer serves on the board of the National Foundation for Judicial Excellence. She was inducted as a fellow of the American College of Trial Lawyers in 2007 and has served on the North Carolina State Committee of the American College since 2008.



Mark A. Perry is a litigation partner at Gibson, Dunn & Crutcher LLP in its Washington, D.C., office. His practice focuses on complex commercial litigation at both the trial and appellate levels. Mr. Perry serves as an adjunct professor of law at Georgetown University Law Center, where he teaches the upper-level course in Class Action Law and Practice, and *Chambers USA 2011* noted that “[h]e is particularly recommended for his experience in class-action cases.”



Judge Lorna Propes was appointed judge in the Circuit Court of Cook County in 2010. Prior to that, she was a partner in the Chicago firm of Propes & Kaveny LLC, where she was known as one of Chicago’s most successful plaintiffs’ personal injury and medical malpractice lawyers, having achieved numerous multi-million dollar verdicts and settlements. She practiced in that field for 28 years, following five years as a prosecutor. Retained by several major corporations to defend them in high stakes, mass tort product liability cases, she served, including as lead counsel for Dow Chemical Company in a New Orleans silicone breast implant class action.



Victor E. Schwartz is chair of the Public Policy Group in the Washington, D.C., office of the law firm of Shook, Hardy & Bacon, L.L.P. He created the “Iron Triangle Defense” in litigation, which combines his team’s talents in public relations, government relations, and litigation. He co-authors the most widely used torts casebook in the United States, *Prosser, Wade and Schwartz’s Torts* (12th ed. 2010). His scholarly articles have helped influence the development of tort law in both Congress and state legislatures. *The Legal Times of Washington* has named him one of the 30 Most “Visionary” Lawyers in Washington over the past three decades. The *National Law Journal* named him as one of the 100 most influential attorneys in the United States, and the *Washingtonian* magazine has named him one of the top government relations specialists in the nation’s capital.

Swissôtel Chicago: It's Happening in Chicago

There is no place more exciting than Chicago in the summer. The weather is ideal, the city's beautiful lakefront is a flurry of activity and there is an abundance of cultural, sporting, entertainment and dining offerings.

Located at the confluence of the Chicago River and Lake Michigan, the Swissôtel Chicago offers fabulous panoramic views of the city's lakefront. It is close to many Chicago attractions, including Navy Pier, Millennium Park and The Magnificent Mile.

Other nearby attractions include Willis Tower, the Art Institute of Chicago, the Theatre District and the Museum Campus featuring the Field Museum of Natural History, the John G. Shedd Aquarium and the Adler Planetarium.

Registration

To register:

Phone 312.698.6230
Fax 312.252.0593
Online www.nfje.net

Contact Information

First Name _____ Middle Initial _____ Last Name _____

Preferred Name _____ Title _____

Court _____

Street _____ Suite _____

City _____ State _____ Zip Code _____

Business Telephone _____ Fax _____ E-mail _____

Will a spouse or guest be traveling with you? Yes No If yes, please indicate his/her name.

If yes, will your guest attend the luncheon? Yes No _____

Hotel and Travel Arrangements

This program has limited attendance. Registration is on a first-come, first-served basis. Once NFJE receives your completed registration form, you will be sent an e-mail confirmation with instructions about making your hotel and travel reservations. If you do not receive an email confirmation within 48 hours, you will need to contact NFJE directly. Please be advised that you will need to secure your hotel reservations on or before June 13, 2012.

NFJE will pay for the cost of a classic room for the nights of Friday, July 13 and Saturday, July 14, 2012, as well as transportation (air, rail, ground) costs not to exceed \$500. When making your travel arrangements, please plan to arrive by 3:00 p.m., Friday, July 13. *If you would like to extend your stay at the hotel, you are welcome to do so at your own expense.*

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www.swissotelchicago.com

Cancellations

If you must cancel your attendance, please do so at least three weeks prior to the event so a judge on the waiting list may attend. All cancellations must be received in writing via fax (312.252.0593) or email (tcaldwell@dri.org).

**The Annual Judicial Symposium is a tuition-free program for state appellate court judges.
Transportation and hotel accommodations are provided at NFJE's expense.**



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