



April 3 – 4, 2017 | The Park Lane Hotel | NYC



ACI's 2<sup>nd</sup> Cross-Industry Interdisciplinary Summit on

## *Defending and Managing*

# CLASS ACTIONS

### LEARN FROM AND MEET:

Kacy Goebel  
The Home Depot

Robert M. Carmen  
AIG

Sarah Topy  
Procter & Gamble

Susan E. Dunnings  
Lockheed Martin Co.

Eric Spett  
Ocwen Financial Corporation

Lynne Bezikos LeBlanc  
Philips Electronics North America Corporation

Syeda Raza  
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Legal Sea Foods

Reginald Johnson  
Family Dollar Stores

William B. Sailer  
Qualcomm Incorporated

Alice Wang  
National Creditors Connection, Inc.

Jason J. Stephans  
DSM Nutritional Products, LLC and i-Health, Inc.

Thomas Graber  
CoreLogic

Jennifer Fease  
Equifax

Deborah Solmor  
Career Education Corp.

### SESSIONS INCLUDE:

- Class Action Development Round-Up by Key Industry
- Article III Standing and Class Certification Post-*Spokeo*
- The Use of Representative or Statistical Evidence to Substantiate Class Claims Post-*Tyson Foods v. Bouaphakeo*
- Strategies for Stopping Class Actions Before They Start
- Winning Arbitration Strategies for Class Action Litigators and the Future of Class Action Waivers in Arbitration Agreements
- Top Strategies for Securing Class Settlement Approval in the Face of Intense Judicial Scrutiny
- Approaching the Hot Button Issue of Class Action Ascertainability in Your Case and Defeating the "Fail Safe" Class Definition
- Examining the Potential Implications of the Supreme Court Decision in *Microsoft v. Baker*
- Effective Discovery Strategies in Class Action Litigation: Managing Data, Overcoming Challenges of E-Discovery, the Use of Survey Evidence and Beyond
- The Expanding Proliferation of Class Action Multi-District Litigation
- Tackling Unique Ethical Considerations in Class Action Litigation (1 Ethics Credit)

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O'Melveny & Myers, LLP

A. Craig Cleland  
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**ACI**, the company that brings you leading litigation events in the substantive areas of employment law, products liability, toxic tort, securities, consumer fraud, and civil rights now brings you its **2<sup>nd</sup> Cross-Industry and Interdisciplinary Summit on Defending and Managing Complex Class Actions**: This year's agenda has been designed to provide you with strategic advice, critical insights, and comprehensive updates, including discussion on:

- Class Action Development Round-Up by Key Industry
- Article III Standing and Class Certification Post-*Spokeo*
- The Use of Representative or Statistical Evidence to Substantiate Class Claims Post-*Tyson Foods v. Bouaphakeo*
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**DAY ONE**

**Monday, April 3, 2017**

7:30

Registration and Continental Breakfast

8:00

**Co-Chairs' Welcome Remarks**

Hannah Y. Chanoine

Counsel

**O'Melveny & Myers, LLP**

A. Craig Cleland

Shareholder

**Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**

8:05

**In-House Insights on Managing Class Actions from Start to Finish: Responding to Claims, Selecting Law Firm Counsel, Strategies for Managing Litigation Costs and Budgets, Adapting Key Defense Strategies, Key Settlement Considerations and Beyond**

**PANEL 1 (8:05 – 9:10)**

Kacy Goebel

Corporate Counsel

**The Home Depot**

Susan E. Dunnings

Vice President

**Lockheed Martin Co.**

Eric Spett

VP, Assistant General Counsel

**Ocwen Financial Corporation**

Lynne Bezikos LeBlanc

Senior Counsel

**Philips Consumer Lifestyle**

Syeda Raza

Vice President & Associate

General Counsel

**HMS Host**

Richard Heller

Senior Vice President and

General Counsel

**Legal Sea Foods**

Deborah Solmor

Vice President & Deputy

General Counsel, Litigation

**Career Education Corp.**

**Panel 1 & 2 Moderator:**

Michael Ferachi, **McGlinchey Stafford PLLC**

**PANEL 2 (9:10 – 10:15)**

Reginald Johnson

Assistant General Counsel

**Family Dollar Stores**

William B. Sailer

Senior VP, Legal Counsel

**Qualcomm Incorporated**

Alice Wang

General Counsel

**National Creditors**

**Connection, Inc.**

Jason J. Stephans

Senior Counsel

**DSM Nutritional Products, LLC and i-Health, Inc.**

Thomas Graber

Vice President, Deputy

General Counsel & Chief

Litigation Counsel

**CoreLogic**

Jennifer Fease

Associate General Counsel

**Equifax**

Sarah Topy

Counsel

**Procter & Gamble**

10:15

Morning Break

10:25

**Class Action Development Round-Up by Key Industry: Securities, Consumer Products, Wage & Hour/FLSA, Environmental, and Beyond**

James Langdon

**Dorsey & Whitney LLP**

Timothy Blood

**Blood Hurst & O'Reardon LLP**

- A comprehensive overview of the latest most notable class action developments across industries:
  - Securities / securities fraud
  - Consumer products
  - Wage and Hour / FLSA
  - Environmental class actions
  - Food and Beverage

11:15

**Article III Standing and Class Certification Post-Spokeo – New Legal Issues Sprouting Since the Decision, Lower Court Application and Interpretation, Addressing Unpredictable Standing Challenges and Key Class Action Defense Takeaways**

Robert M. Carmen

Complex Claims Director

**AIG**

P. Russell Perdue

**Locke Lord LLP**

Andrew J. Demko

**Katten Muchin Rosenman LLP**

- An examination of the aftermath of *Robins v. Spokeo* – what impact has been seen on class certification decisions?
- What trends are being seen in the lower courts' application of *Spokeo*?
- Injury-in-fact post-*Spokeo*
- Tangible vs. intangible injury under *Spokeo*
- Violations of statutes which provide for private causes of action after *Spokeo*
- What legal issues have sprouted from the decision?
  - Can an alleged statutory violation of a state statute alone suffice as a concrete injury in fact and confer Article III standing?
  - Lower court decisions addressing this issue
- What degree of risk of harm is sufficient to meet the concreteness requirement?
- When a case gets bounced out of federal court and refiled in state court, what *Spokeo* arguments are being used to get cases successfully dismissed from state court?
- Examining key class action defense takeaways 1 year after *Spokeo*

12:05

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**The Use of Representative or Statistical Evidence to Substantiate Class Claims Post- *Tyson Foods v. Bouaphakeo* – Examining the Fallout and Critical Nuances to Consider When Developing Your Litigation Strategy**

Michael McCluggage  
Eimer Stahl LLP

Gary Lynch  
Carlson Lynch Sweet & Kilpela LLP

Derek Ho  
Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C

- Examining the fallout of *Tyson* and the implications of the decision on proving damages in class actions, and FLSA collective actions
- How are parties using *Tyson* to help with damages theories and modeling? How is this impacting use of experts?
- How is this decision rippling through and impacting class actions?
- Defense strategies for taking the offensive and using plaintiffs' own sampling to defeat class allegations

12:55

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Networking Lunch for Speakers and Delegates

1:55

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**Strategies for Stopping Class Actions Before They Start: Establishing an Early Off-Ramp to the Class Action Lawsuit**

Michael Mallow  
Sidley Austin LLP

Mary Beth Buckley  
Sedgwick LLP

- What trends are being seen in consumer issues the plaintiffs' bar is focusing on in bringing class claims? How can defense lawyers strategically act to prevent such claims before they are filed?
- Documents and procedures that can allow for an early off-ramp to a class action lawsuit
- Contract clauses escalating dispute resolution provisions (requiring a chance for the corporate defendant to try and resolve a dispute before a lawsuit is filed)
- Setting up the argument that one person cannot fulfill that prerequisite for an entire class
- Strategies for avoiding or defending class claims through early motion practice; strategies for aggressive early motion practice on the class pleading before the merits issues

2:40

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**Winning Arbitration Strategies for Class Action Litigators, and the Future of Class Action Waivers in Arbitration Agreements Given the New Administration and the Recent Circuit Court Split on the Issue**

Anthony J. Laura  
Epstein Becker & Green, P.C.

Theane Evangelis  
Gibson, Dunn & Crutcher LLP

- The latest developments and trends in class action arbitration
- Assessing the benefits and risks of class arbitration
- Winning arbitration strategies for class action litigators – identifying the greatest challenges and how to overcome them
- Assessing the conflicting standards regarding the enforceability of class action waivers in arbitration agreements given the recent circuit court split on the issue – what does the future hold?
- Will the Trump administration set the anti-arbitration advocates and agencies back?

3:30

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Afternoon Break

3:40

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**Mock Settlement Exercise: Top Strategies for Securing Class Settlement Approval in the Face of Intense Judicial Scrutiny and Hurdles**

Hon. Anthony Mohr  
Superior Court Judge  
Calif. Sup. Ct., LA County

Tina Wolfson  
Ahdoot & Wolfson, PC

Douglas Weiner  
Lipman & Plesur, LLP

- Tips, best practices and key strategies for dealing with the court approval process of class settlements
- What are the biggest hurdles and challenges attorneys are facing in obtaining settlement approval? What are courts looking at to determine if a settlement is valid?
- Court examination of settlement proposition
- Rule 23 and notice requirements
- The claims process
- Procedural guidance for class action settlements and the issue of attorney's fees
- Preliminary approval and settlement administration
- Exclusions, objections and what a court can and cannot do with cy pres awardees

4:35

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**Strategically Approaching the Hot Button Issue of Class Action Ascertainability in Your Case, and Defeating the "Fail Safe" Class Definition: Crucial Insights from Seasoned Litigators Based on Real Life Case Scenarios**

Christopher Landgraaf  
Bartlit Beck Herman Palenchar & Scott LLP

Robert Rutherford  
Burr & Forman LLP

- The most persuasive arguments for ascertainability in the class certification phase



- The most strategic ways defendants are attacking ascertainability in the class certification phase
- Protecting the right to due process
- Examining the latest case law relating to the “fail safe” class definition
- Strategies for avoiding/defeating the creation of a fail safe class
- When are courts willing to permit revision of class definitions to remedy fail safe classes?

5:20

**Can Plaintiffs Force an Appeals Court to Reconsider a Class Certification Denial by Voluntarily Dismissing Their Claim with Prejudice? Examining the Potential Implications of the Supreme Court Decision in *Microsoft v. Baker***

Jennifer Quinn-Barabanov  
**Steptoe & Johnson PLLC**

P. Russell Perdew  
**Locke Lord LLP**

- Expert insights into the Supreme Court case of *Microsoft v. Baker*
- Can a party have standing to bring a claim in a class action suit in the absence of a recognized class of individuals harmed?
- What are the arguments?
- What have the circuit courts said?
- Is this a legitimate loophole in the law that makes it easier to bring class action lawsuits?
- What will the implications of this decision be?

6:05

Conference Adjourns



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**DAY TWO**

Tuesday, April 4, 2017

7:30

Continental Breakfast

8:00

**View from the Bench**



Hon. Alvin K. Hellerstein  
 U.S. Dist. Ct., S.D.N.Y.



Hon. Michael Baylson  
 U.S. Dist. Ct., E.D. Pa.



Hon. James Robart  
 U.S. Dist. Ct., W.D. Wash



Hon. David Hittner  
 U.S. Dist. Ct., S.D. Texas



Hon. Kurt D. Engelhardt  
 U.S. Dist. Ct., E.D. Louisiana



Hon. Paul Warner  
 U.S. Dist. Ct., D. Utah



Hon. Ruben Castillo  
 U.S. Dist. Ct., N.D. Ill.



Hon. Timothy Batten  
 U.S. Dist. Ct., N.D. Georgia



Hon. Anthony Mohr  
 Calif. Sup. Ct. LA County



Hon. Sarah Hicks Stewart  
 13th Jud. Circ., Mobile County, Alabama



Hon. Sean McPartland  
 Sixth Judicial District of Iowa

Moderator:

A. Craig Cleland  
 Shareholder

**Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**

9:40

Morning Break

9:45

**Effective Discovery Strategies in Class Action Litigation: Managing Data, Overcoming Challenges of E-Discovery, the Use of Survey Evidence, and Pursuing Discovery in the Most Efficient and Cost-Effective Way for Your Client**

Eva W. Cole  
**Winston & Strawn LLP**

Jonathan Gardner  
**Labaton Sucharow LLP**

- Pre-certification discovery
- Proportionality and discovery planning in a class actions
- Overcoming the challenges of e-discovery in class actions
- The impact of state and federal e-discovery rules
- Engaging legal and e-discovery class proceedings experts
- Taking the right steps to preserve data in the most cost-effective way
- Optimal strategies for limiting the scope of e-discovery
- Avoiding e-discovery traps set by plaintiffs
- The latest trends in the use of survey evidence in class actions; examining the benefits, challenges and implications

10:30

### The Expanding Proliferation of Class Action MDL's (Multidistrict Litigation) and Ways to Combat Plaintiffs' Strategic Filing of Multiple Federal and State Class Actions Based on the Same Alleged Problem

Michael B. Gallub David Marriott  
**Herzfeld & Rubin, P.C.** **Cravath, Swaine & Moore LLP**

- Combatting plaintiffs' strategies of:
  - Attempting to maneuver an MDL into a target venue by stacking multiple duplicative class actions
  - Attempting to maneuver an MDL to a desired judge through unreasonable pursuit of accelerated relief and court orders
  - Creating multiple battle fronts through targeted federal and state filings
  - Forum shopping in the state system, and creating state MDLs to compete with the federal MDL
  - Orchestrating the filing of individual (non-class) actions based upon the same controversy
  - Attempting to have the action treated as a "class action" at the pleadings and discovery stages
  - Pursuing unfounded and burdensome document and document preservation issues
  - Creating issues designed to increase the scope, cost and "stakes" of the litigation
  - Other strategies designed to impair defendants' procedural and substantive rights

11:10

### Tackling Unique Ethical Considerations in Class Action Litigation (1 ETHICS CREDIT)

Van H. Beckwith Hannah Y. Chanoine  
**Baker Botts LLP** **O'Melveny & Myers, LLP**

- Duty of loyalty
- Conflicts within cases
- Communications with class members
- State variations
- Looking at the differences among class members
- Preserving Privilege
  - Best practices for preserving privilege
  - Legal communications
  - Witness interviews

- E-communications
- Common interest privileges
- Joint defense privilege
- Common defense privilege
- Model rule review

12:10

### Conference Ends



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ACI's 2<sup>nd</sup> Cross-Industry Interdisciplinary Summit on

*Defending and Managing*

# CLASS ACTIONS

American Conference Institute  
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# CLASS ACTIONS

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