



THE 24TH ANNUAL  
CORPORATE LAW CENTER  
SYMPOSIUM

***The Principles  
and Politics of  
Aggregate  
Litigation***

***CAFA, PSLRA, and Beyond***

***April 1, 2011***  
***8:45 a.m. - 4:45 p.m.***

COLLEGE  
*of* LAW

6 hours of CLE credit have been applied  
for in Ohio and Kentucky. Approval is  
expected. This event will be webcast.

UNIVERSITY OF  
Cincinnati



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***The Principles  
and Politics of  
Aggregate  
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Aggregate litigation and its impact on business are hot-button issues for courts, policy makers, practitioners and academics. Calls for reform come from both critics and defenders of class actions, as courts work out implementation of Congress's recent efforts to rein in perceived abuses — the Private Securities Litigation Reform Act and the Class Action Fairness Act. Recently, the ALI Aggregate Litigation Project focused on the serious problems of management, costs, and risks of underrepresentation presented by large cases and sought to identify good procedures for handling aggregate litigation. Our panelists will present theory, empirical data and practical insights to explore various aspects of aggregate litigation from a variety of perspectives.



## ***Schedule of Events***

**8:45-**

**9:00 a.m.**

*Welcome:* Louis Bilionis, Dean and Nippert Professor of Law,  
University of Cincinnati College of Law

**9:00-**

**10:30 a.m.**

### **PANEL I: Class Actions**

*Moderator:* Darrell Miller, Associate Professor of Law,  
University of Cincinnati College of Law

**Robert H. Klonoff**, Dean, Lewis and Clark Law School

#### ***Reflections on the ALI Aggregate Litigation Project***

The recently completed ALI Aggregate Litigation Project focused on the serious problems of management, costs and the risks of underrepresentation presented by large cases and sought to identify good procedures for handling aggregate litigation. Dean Klonoff, Associate Reporter, reflects on the work of the Project and the paramount role of the late Professor Richard A. Nagareda, also Associate Reporter.

**Emery G. Lee III**, Senior Researcher, Federal Judicial Center and  
**Thomas E. Willging**, Senior Researcher (Retired), Federal Judicial Center

#### ***Disappearing (Class Action Fairness) Act: Class Certification and Settlement in the Federal Courts***

This study reports on empirical findings on class certification and settlement in a representative sample of class actions filed between 2003 and 2007.

**Laura Hines**, Professor of Law, University of Kansas School of Law

#### ***Reconsidering the Issue Class Action***

Although the Supreme Court recently declined an opportunity to weigh in on the propriety of the issue class action, the majority of federal courts of appeals and the ALI Aggregate Litigation Project have embraced such class actions. This paper will explore the evolving certification criteria, effect on settlement dynamics, and other unresolved questions regarding the issue class action.

**10:30-**

**10:45 a.m.**

Break

10:45 a.m. -

12:15 p.m.

## **PANEL II: Securities Class Actions**

*Moderator:* Lynn Bai, Associate Professor of Law, University of Cincinnati College of Law

**Michael A. Perino**, Dean George W. Matheson Professor, St. John's University School of Law

### ***Institutional Activism through Litigation: An Empirical Analysis of Public Pension Fund Participation in Securities Class Actions***

The PSLRA's lead plaintiff provision enlisted institutional investors to monitor class counsel in order to curb the agency costs endemic in securities class actions. This paper uses a sample of 731 settlements to examine the efficacy of this provision. It finds that, even when controlling for institutional self-selection of potentially easier or higher quality cases, cases with public pension lead plaintiffs have larger recoveries and lower fee requests and fee awards than cases with other lead plaintiff types. The paper also finds evidence consistent with the existence of a significant positive externality associated with public pension participation. Over time, fee requests and fee awards have on average declined significantly even in cases without such lead plaintiffs. These findings suggest that public pensions act as more effective monitors of class counsel than traditional plaintiffs and that the lead plaintiff provision has substantially reduced the transactions costs associated with securities class actions.

**Elizabeth Chamblee Burch**, Assistant Professor, Florida State University College of Law

### ***Optimal Lead Plaintiffs***

In securities class actions, Rule 23's adequate-representation requirement is often subsumed by the PSLRA's lead-plaintiff appointment process. Although Rule 23 aims to prevent conflicts of interest between the representatives and the class, courts define "interests" in terms of a widely shared desire to recover one's losses. This broad definition allows judges to certify securities class actions and thus promotes corporate accountability, but it also means that plaintiffs' attorneys can pursue an institutional lead plaintiff's interests at the other class members' expense. The "other class members" are principally small investors who need the class-action vehicle the most. Accordingly, Elizabeth Burch will discuss one answer to this conundrum: appointing a diverse lead-plaintiff group and linking diversity to class members' heterogeneous interests.

**Jennifer J. Johnson**, Jeffrey Bain Faculty Scholar, Lewis and Clark Law School

### ***Securities Class Actions in State Court: Down but Not Out***

This paper explores the remnants of securities class actions in state court in light of congressional efforts to preempt this field embodied in the Securities Litigation Uniform Standards Act of 1998 (SLUSA) and the Class Action Fairness Act of 2005 (CAFA). SLUSA precludes

both state and federal courts from adjudicating class actions based upon state statutory or common law, that allege a misrepresentation in connection with the purchase or sale of nationally traded securities. In combination, SLUSA and CAFA direct most remaining securities class actions to federal court. The paper will analyze data on state securities class action filings in the aftermath of SLUSA and CAFA to evaluate the impact of federal preemption and its wisdom as a policy choice.

12:15-

1:30 p.m.

#### **LUNCH SPEAKER:**

**Theodore H. Frank**, Center for Class Action Fairness

#### ***Beyond Coupons: Structuring CAFA Settlements to Maximize Attorneys' Fees***

One of CAFA's stated goals was to eliminate settlements where "counsel are awarded large fees, while leaving class members with coupons or other awards of little or no value." As such, statutory language was enacted requiring additional scrutiny of coupon settlements. But the incentive for class attorneys to negotiate high fees for themselves at the expense of class benefits has not disappeared. What other mechanisms are settling parties using to exaggerate the value of class settlements to rationalize disproportionate attorneys' fees? Mr. Frank, using examples from the Center's docket, will discuss the mechanisms class attorneys use, even after CAFA, to maximize attorneys' fee requests.

1:30-

3:00 p.m.

#### **PANEL III: Aggregate Litigation**

*Moderator:* Lydie Nadia Cabrera Pierre-Louis, Visiting Assistant Professor of Law, University of Cincinnati College of Law

**G. Robert Blakey**, William J. & Dorothy K. O'Neill Chair in Law, Notre Dame Law School

#### ***Some Thoughts about the 1995 Securities Fraud Exclusion from Civil RICO***

This paper reviews the legislative history, text, and misguided judicial interpretation of the 1995 exclusion of securities fraud from civil RICO, particularly in light of the events of 2007-08. It is one matter not to let civil RICO remedies displace securities fraud remedies; it is another matter entirely to learn that because of the exclusion, you cannot recover under either statute.

**Francis E. Mc Govern**, Professor of Law, Duke University School of Law

#### ***When Aggregate Litigations Conflict: Problems Involving Overlapping Compensation Systems***

This paper examines several instances when there are multiple aggregations of claimants implicating multiple, discrete, and overlapping compensation systems. Examples include the asbestos cases: workers' compensation, health and other insurance, governmental compensation, common law relief, bankruptcy trust funds; 9/11:

workers' compensation, health and other insurance, other collateral sources, statutory or other governmental compensation, common law remedies; oil spill: workers' compensation, health and other insurance, other collateral sources, Oil Pollution Act of 1990, other state statutory relief, and common law remedies.

**Linda S. Mullenix**, Morris & Rita Atlas Chair in Law, The University of Texas School of Law

***Of Dubious Doctrines: The Quasi Class Action***

This paper examines the concept of the *quasi* class action, articulated by Judge Jack Weinstein in the *Zyprexa* litigation, and the spread of this doctrine to other mass tort and MDL proceedings. Although the doctrine's critics have focused almost exclusively on the doctrine's impact on attorney fees, the judicial embrace of the *quasi* class action expands a new type of lawlessness in resolving large-scale aggregate litigation.

**3:00-**

**3:15 p.m.**

Break

**3:15-**

**4:30 p.m.**

**PRACTITIONERS' ROUNDTABLE**

A distinguished panel discusses cutting-edge issues that concern the bench and bar.

*Moderator:* Michael Solimine, Donald P. Klekamp Professor of Law, University of Cincinnati College of Law

**Paul M. De Marco**, Waite, Schneider, Bayless & Chesley

**Judge Patrick Fischer**, Ohio First District Court of Appeals

**Caroline H. Gentry**, Porter Wright

**Richard S. Wayne**, Strauss & Troy

**4:30-**

**4:45**

*Concluding Remarks:* Professor Barbara Black

# Registration Information

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### ***The Principles and Politics of Aggregate Litigation***

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April 1, 2011***

- ☐ Yes, I will be attending the **a.m. sessions** of the Corporate Law Symposium and *will not be staying for lunch*.
- ☐ Yes, I will be attending the **p.m. sessions** of the Corporate Law Symposium, which *does not include lunch*.
- ☐ Yes, I will be attending the **a.m. and p.m. sessions** of the Corporate Law Symposium, which *includes lunch*.

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Name

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Mailing Address

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Firm or Affiliation

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Please respond by faxing this card to **513-556-1236**  
or by sending your response via mail to: University of Cincinnati  
College of Law  
The Corporate Law Center  
PO Box 210040  
Cincinnati OH 45221-0040.

If you have questions, please contact Lori Strait at **lori.strait@uc.edu/513.556.0117**.



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