

A Class Action Primer  
By Bill Daniels

1. Class Actions Help Address Common Problems.

Class actions are a way for groups of people with common problems to seek a solution in a convenient format.

Class actions typically seek to solve simple questions that impact large number of people. Whether all of an insurance company's claims personnel are entitled to overtime or whether all of the bank's credit card customers were overcharged because of a single, unfair, interest calculation are good examples of problems that class actions best address.

2. Class Actions are a Unique Class of Case.

For purposes of news reporting, it is important to remember that a class action is a process that is unique unto itself. For example, a class action is different than a "mass tort," which tends to involve problems such as when a large number of people are injured in different ways by a single type of defective drug or product. Mass tort cases might involve one common element – generally a single defective product – that affects each affected individual in a unique manner.

Cases involving products like Vioxx or asbestos fall under the mass tort label. These cases are not generally prosecuted as class actions because, even though they involve a common product, the injuries each consumer suffers are individual to them. So, mass torts are generally litigated in systems such as the federal Multi-District Litigation system – where a single judge will preside over hundreds or thousands of individual cases coordinated for administrative purposes. While these systems allow large numbers of people with one common problem to have their claims resolved in an efficient fashion, they are not the same as class actions and make different demands on the reporter.

The point is, when reporting on a large action involving numerous individuals, always make sure that you know whether it is a class action, or some other legal mechanism that serves a similar, but different purpose. Then approach the story accordingly.

3. Understanding Class Action Procedure is Important in Covering the Story.

Class actions tend to be driven by legal procedure. Understanding the procedural steps is key to accurately capturing breaking class action stories.

Class actions can be brought in either state or federal court. State courts remain an important forum for class action litigation. Even so, recent federal legislation known as the "Class Action Fairness Act" has tended to make Class actions more of a federal

area than it has ever been before. The legislation was passed after years of effort by business interests and was intended to shrink the number of class actions filed across the country. Early reports indicate that during the first six months of the new legislation, there has been a “precipitous decline” in class action activity. Even so, class actions continue to make up an important part of legal landscape.

Unlike covering trials, class actions tend to take place mostly on paper. This can be both a blessing and a curse. It is blessing because, if a reporter is able to obtain a copy of an interesting case complaint or pleading at the time it is filed, it becomes relatively simple to write a story. On the other hand, trying to follow day-to-day activity in a class action can be quite difficult since legal filing generally take place at the clerk’s counter without notice or fanfare. Still, there are some constants in covering class action stories.

Class actions start with the filing of a complaint. Generally, the complaint will have specifics about what it is that the class actions seek to address and what kind of remedies the plaintiff class is looking for. The class plaintiffs named in the complaint seek to be representatives for the entire class, which may in turn total multiple thousands of people.

The fact that a class action complaint has been filed can in and of itself be a news event. Even so, a reporter needs to remember that the allegations and complaint are just that: they are the plaintiff’s counsel’s view of the best facts supporting their side of the argument and there are always two sides to every story.

After the complaint is filed, there will generally be some sort of paper work filed with the court attacking the complaint as deficient and asking the court to either knock the complaint out completely or require that it be amended. These pleadings are called demurrers and motions to strike in state court and motions to dismiss in federal court.

If the judge rules that the complaint is dismissed, then that could be a new story. On the other hand, if the judge says the complaint is sufficient, that fact might be of interest to a reporter following the story but may not prove newsworthy.

Two major events in a class action that are fertile fields for potential stories are motions for class certification and motions for summary judgment/adjudication.

A motion for class certification is one of the defining events in a class action, because simply filing a complaint does not by itself a class action make. In the class action process, the judge acts as a gatekeeper for the case being formally designated as a vehicle to resolve problems applying to an entire class, and counsel for the plaintiff must bring a motion asking that the class be certified as such.

The ruling on class certification is generally a newsworthy event where there is interest in the underlying case. Obtaining class certification is considered to a major victory in the process for the plaintiff’s side. Conversely, denial of certification is

generally seen as a major victory for the defense.

Either before or after class certification, a summary judgment/adjudication motion is likely. These motions ask the court to decide important parts of the case in favor of one side or the other.

For example, the plaintiff may ask the court rule that the defense is liable as a matter of law and that the only thing in dispute is damages. Or, the defense may ask the court to rule that the plaintiffs have no case as a matter of law and the thing should be thrown out in its entirety. Either way, rulings on summary judgment can generate news.

Just as important, the papers in support and in opposition to both summary judgment motions and certification motions can provide reporters with invaluable background information as they prepare their stories. Since the papers are part of the court file which is a public record, a reporter has a valuable resource available if there is time to review it.

#### 4. Reporter Resources for Class Action Reporting.

More and more court systems are making court filings available on the internet. Since class actions are so paper intensive, subscribing to such a service can save quite a bit of leg work. Even so, it may be days before a key filing is scanned into the court system and available for downloading. So, it is a good idea to contact the lawyers in the case early on and ask if they are willing to provide tips on when key filings will make their way into the public record.

As always, where a reporter is following a story regarding a class action, it is critical to develop outside sources that can help explain the details behind each step of the process. While attorneys on both plaintiff and defense side can be valuable sources, developing relationships with law school professors or experts in the area can give the reporter an important edge.

Organizations such as the Consumer Attorneys Association of Los Angeles or the Association of Trial Lawyers of America have resources both over the telephone and on the internet. Also, a Google search on the subject matter of the class action will often turn up leads for sources that are familiar with the case subject matter. As always, the internet is a powerful research tool.

Good hunting and, good luck!

N:\Attorneys\Daniels\ARTICLE - CLASS ACTION PRIMER\A Class Action Primer.wpd