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when you  
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Laissez les bons temps rouler!  
("Let the good times roll!")

## 19th Annual National Institute on Class Actions

October 22-23, 2015  
Le Meridien New Orleans  
New Orleans, LA

**ABA**  
AMERICAN BAR ASSOCIATION



# 19<sup>th</sup> Annual National Institute on Class Actions

October 22-23, 2015 | Le Meridien | New Orleans, LA

## Institute guests will learn the following critical things about today's class action practice:

- Invaluable, real, and practical information about the most important class action topics and trends
- How to grow your practice by recognizing class action opportunities, allowing you to better help your clients and make more money for your firm
- Where the practice is going for plaintiffs' and defense attorneys and how to protect your livelihood against efforts to extinguish it

## If you're serious about class actions, you should attend the Institute because:

- We will help you learn how to win at class certification
- We will help you to be the best, most informed class action lawyer in your firm
- We will help you to impress clients and grow your business

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# Agenda

## Wednesday, October 21, 2015

7:30 p.m.– **Vieux Carré Vinyasa.**

8:30 p.m.  
(optional) **Instructors:** Jennifer Hauge, Yoga at Work by Jennifer

**Location:** Pool Cabanas

An Institute first. If the present state of class action law has you not so present, just breathe and join us for evening yoga, taught by the Institute's resident yogi, Jennifer Hauge. It's the perfect way to bliss out before hitting Bourbon Street, then joining our krewe for two days of class action action. (**Important**, we can't provide yoga mats so please remember to bring your own).

## Thursday, October 22, 2015 “Where Y’at?” It’s Time for Day 1.

8:00 a.m.– **Yoga Lagniappe!**

9:00 a.m.  
(optional) **Instructors:** Jennifer Hauge

**Location:** Pool Cabanas

If you're up for a little something extra, something to sweeten the deal—like an extra beignet from Café Du Monde or some bonus Oysters en Brochette at Galatoire's—then join us for a.m. yoga . Jennifer will put us in the right state of mind for the two days that lie ahead.

11:30 a.m.– **“Who Dat?!” It’s the Return of Class Actions 101 . . .**

12:45 p.m.  
(optional) **Speakers:** Andrew J. McGuinness, Daniel R. Karon

Line the streets for this year's version of our instant classic—Class Actions 101. This class action primer will showcase Federal Rule 23 and will describe as many class action trends as we can handle. In doing so, we'll bring Rule 23 to life by applying it to real-life situations, examining whether class certification is appropriate. So if you're a new lawyer or simply a lawyer new to class actions, join us for a kickoff program that even the Saints can't rival.

12:45 p.m.– **. . . and the Introduction of Class Actions 201.**

1:30 p.m.  
(optional) **Speakers:** Donald R. Frederico, Deepak Gupta

Wait. There's more? For the first time, we'll follow Class Actions 101 with an advanced course—Class Actions 201. We'll take the concepts from Class Actions 101 and learn how to prepare a class certification packet, meaning a class certification brief, proposed trial plan, proposed class certification order, and opposition brief. We'll even throw in Rule 23(f) petitions and appellate briefing. Between these two programs, you'll be the creole deal, sure to impress your firm and its clients.

1:50 p.m.– **Welcome to *The Big Easy!***

2:00 p.m.– **“Bayou Review.” The Past Year in Class Action Jurisprudence.**

3:00 p.m. **Speakers:** Professor John C. Coffee, Jr., Professor Alexandra D. Lahav

Like the Krewe of Endymion barreling down Canal Street, the past year offered a boatload of class action excitement. So back by popular demand, Professors Coffee and Lahav will get us underway by announcing this year's important class action developments—developments that everyone must heed if they want to advise their class action clients properly and stay suitably perched atop their class action floats.

# Agenda

3:00 p.m.–  
4:00 p.m.

## **You Have a Choice, *Picayune*—“Consumer Rip-offs” or “No-Injury Class Actions.” Either Way, Does a Legal Claim Exist?**

**Speakers:** Honorable Nannette Jolivet Brown, Professor Alexandra D. Lahav, Jonathan D. Selbin, Andrew J. Trask

**Moderator:** Daniel R. Karon

What happens when a product is defective, but its defect hasn't manifested . . . yet? Or what if a product is defective, but it hasn't caused physical injury or property damage . . . yet? If a product hasn't demonstrated its defect, is this product even defective? Because what if manifestation never occurs? After all, who's to say that every unit will demonstrate a problem, whether affecting itself, people, or other property? For this reason, can a class action claim even exist before a defect presents? Need we wait until a product that seems inclined to fail actually does fail before injury-in-fact is considered to have occurred? Need we wait until someone is killed or maimed or someone's property is destroyed before our courts will support a claim? Is that sensible or just asking for trouble? We'll attack this jambalaya of jurisprudence, debating whether Article III standing exists in these cases or is merely voodoo.

4:00 p.m.–  
4:15 p.m.

## **Break**

4:15 p.m.–  
5:15 p.m.

## **King Cake or Po-Boy? Do Class Actions Offer Meaningful Compensation to Class Members, or do They Simply Rip Off Consumers Twice?**

**Speakers:** Warren T. Burns, Honorable John W. Lungstrum, Professor Brian T. Fitzpatrick, Robert J. Herrington

**Moderator:** Vincent J. Esades

*Beaucoup Crasseux!*—*Consumer Class Actions are under Attack!* Well, that should certainly come as no surprise. Of course, the principal charge against consumer class actions is that they offer little compensation to class members yet provide Fat City to plaintiffs' lawyers. But should consumer class actions be measured by their compensatory value or should they be judged by their deterrence value? And if we consider class actions' compensatory role, how do we define or gauge compensatory success? Do we focus on whether class recoveries deliver compensation commensurate to a significant portion of the class, or do we measure compensatory success by some other metric? If, as Judge Posner observed, “only a lunatic or a fanatic sues for \$30,” what do we call someone who sues for a million lunatics or fanatics? And while numerous empirical studies include data on the “face value” of class action settlements, scholars have found very little data on how much of this face value actually makes its way to class members. Despite unyielding efforts to inexorably hex consumer class actions, we will face this challenge and discuss what can be done to improve class actions for consumers and defendants.

5:15 p.m.

## **Adjourn**

5:30 p.m.–  
7:30 p.m.

## **Mardi Gras at Le Meridien!**

After having imbibed some good class action content, rechannel your attention and join us for a cocktail party at Le Meridien's stylish Gallery. In a casual atmosphere, you can network, meet other Institute guests, and get to know our faculty. This relaxed event in the heart of New Orleans promises to be a *beaucoup* ball!

# Agenda

## Friday, October 23 “Pass a Good Time.” It’s Day 2.

9:00 a.m.–  
10:00 a.m. **Rule 23(f) and Class Action Appeals. Is it *the Big Easy* for Plaintiffs or are Defendants Getting Their Just Deserts?**

**Speakers:** Professor Robert G. Bone, Charles B. Casper, Benjamin Gould

**Moderator:** Fred B. Burnside

Recent changes in some circuits seem to be a *gris gris* (voodoo good luck charm) for plaintiffs, arguably guaranteeing them the right to appeal denied class-certification motions simply by voluntarily dismissing their cases with prejudice, leaving defendants to exclaim, “Soc au lait!” (“What the?,” “Ouch!,” “Wow!”). But are plaintiffs really bypassing Rule 23(f), meaning that in some circuits Rule 23(f) now only applies to defendants? We will examine the circuit split on this important post-certification issue, so you can NOLA how best to prepare and defend class certification in district courts nationwide.

10:00 a.m.–  
11:00 a.m. **Are the Good Times Still Rollin’ for Defendants? The Latest Word on Ascertainability.**

**Speakers:** Honorable Jon S. Tigar, Lisa J. Rodriguez, Laura Shores, Davit Akman

**Moderator:** Melissa H. Maxman

The Third Circuit’s *Carrera v. Bayer* was a fais do-do (Cajun dance party, after the kids have gone to sleep) for defendants that left plaintiffs bellowing, “Throw me something, Mister!” But was the court’s requirement of verifiable records of class members’ purchases too much of a good thing? Perhaps so, because over the past year many district courts—including the Seventh Circuit, in *Mullins v. Direct Digital*—have chipped away at *Carrera*’s restrictive approach. So in this uncertain environment, how should we advise our clients and how must we craft our legal arguments to reflect the current state of ascertainability? Join our faculty, which includes the federal judge who wrote the first opinion questioning *Carrera*’s reasoning, as we analyze the past year’s jurisprudence and describe worthwhile approaches to considering ascertainability. Because in the law, as in life, the good times don’t last forever.

11:00 a.m.–  
11:15 a.m. **Break**

11:15 a.m.–  
12:15 p.m. **“It Don’ Madda . . . Does It?” When the Supreme Court Speaks, Does Anyone Listen?**

**Speakers:** Professor Spencer Weber Waller, Kathryn P. Hoek, Robert G. Eisler, Brian A. Troyer

**Moderator:** Donald R. Frederico

We pay rapt attention when the Supreme Court takes a case raising important class action issues. Whether the Court is considering the effect of class action waivers, commonality’s meaning, or use of an offer of judgment to moot a class action claim, we await the Court’s decisions with bated breath, either celebrating or mourning the outcomes. But is our adherence justified, or are the Court’s class action decisions—like *Concepcion*, *Wal-Mart*, and *Comcast*—just gumbo ya-ya (everybody talking at once)? Do federal judges feel bound by Supreme Court rulings they disagree with, or are some judges apt to march to their own drumbeats? Do the Supreme Court’s rulings set the direction for class action litigation, or are the Court’s rulings merely markers that lower courts allude to on the way to exercising their own decision-making? From the east bank to the west bank, our faculty will examine whether a Crescent City Connection exists between lower courts’ rulings and the Supreme Court’s key class action cases. After all, this insight is as valuable as a Zulu coconut on Fat Tuesday, if we want to be the best class action lawyers we can be.

12:15 p.m.–  
1:45 p.m.

### **Lunch at Le Meridian's LMNO Restaurant**

1:45 p.m.–  
2:45 p.m.

### **“Show Me the Doubloons! This Class Action Case is Going to Trial!”**

**Speakers:** Honorable Eldon E. Fallon, Professor Edward F. Sherman, Jonathan D. Selbin, William L. Isaacson, Robin L. Greenwald

**Moderator:** Andrew J. McGuinness

Remember when trying a class action case was as rare as a bad meal at Commander's Palace? But times seem to have changed. Given the raft of recent class action trials, has an important new trend emerged that we need to discuss? If so, just what has changed, and why are more and more class actions going to trial? Have plaintiffs become too greedy or defendants too stingy? Have defense lawyers discovered ways to alter the risks associated with trying class action cases? If so, how must plaintiffs' lawyers respond? Or maybe recent defense verdicts are simply a vindication of the class action device, like Judge Posner suggested in *Butler v. Sears*? So pull up a chair and watch our experts tackle these and related issues. What you'll learn will f'sho help you prepare your next class action case, whether it goes to trial or not.

2:45 p.m.–  
3:15 p.m.

### **Break, Raffle, and Announcements**

3:15 p.m.–  
4:45 p.m.

### **“Who Dat Say Dey Gonna Beat Dem Plaintiffs?” The Supreme Court's Consideration of Rule 68 Offers of Judgment and Whether These Offers Parade Plaintiffs Out of Court.**

**Speakers:** Professor Alan B. Morrison, Julia B. Strickland, Eric H. Zagrans, Deepak Gupta

**Moderator:** Sabrina H. Strong

Could beaucoup problems loom for all of us? The Supreme Court recently granted certiorari in *Campbell-Ewald v. Gomez*, where it will consider not only whether an offer of complete relief moots a plaintiffs' individual claim but also “whether the answer to [this] question is any different when the plaintiff has asserted a class claim under Federal Rule of Civil Procedure 23 but receives an offer of complete relief before any class is certified.” On this issue, there seems to be no neutral ground; the Circuits are split. And if the Court says f'sho to both issues, what would that ruling mean for our practice and our class action careers? So pull out your crystal ball as we try to understand how the Court's ruling could cause us either to prosper or parish.

4:45 p.m.–  
4:50 p.m.

### **“Meet Me in the Quarter!”**

The Institute will conclude with some brief closing remarks and the opportunity to connect with each other and our Institute faculty at our cash bar. Then, it's off to the French Quarter for a night of fun.

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