

THE GLOBALIZATION OF CLASS ACTIONS

**AN INTERNATIONAL CONFERENCE CO-SPONSORED BY
STANFORD LAW SCHOOL AND
THE CENTRE FOR SOCIO-LEGAL STUDIES, OXFORD UNIVERSITY**

**13 & 14 December 2007,
at the Centre for Socio-Legal Studies, Manor Road, Oxford OX1 3UQ, UK**

This major conference will bring together leading legal scholars, practitioners and judges from North and South America, Europe, Africa and Asia to examine and debate the global spread of class actions and other forms of representative and group litigation. The products of the conference will be:

- An edited volume based on conference contributions, providing the first comprehensive overview of a significant worldwide change in the nature of civil litigation, published in the Annals of the American Academy of Political and Social Science.
- A book containing the texts (in English) of statutes and rules providing for class actions and other forms of representative and group litigation, and analyses of how these legal vehicles operate in practice, the extent and variety of their uses to date, and projections for the future.
- A website with updates of the laws as they develop.

Overview

Around the world, individuals, non-profit organizations and other collective entities are turning to court systems for remedies to group harms: mass injuries caused by defective products or environmental exposure to toxic chemicals, mass financial losses resulting from violations of anti-trust, securities and other consumer protection statutes, and historical and contemporaneous civil rights and human rights abuses. What were once viewed as disputes between individuals, or between an individual and a corporation, are now viewed as group struggles against multi-national corporations and other global institutions.

In many respects, the United States has led the way in these developments. But today, in the United States, there is vigorous controversy over the costs and benefits of class litigation and efforts have been made at the federal and state level to rein in the litigation, by statute and court decision. Interestingly, at the same time, class actions and other mechanisms for collective action have gained support in other parts of the world. On virtually every continent, one or more nations -- including both common law and civil law regimes -- have adopted class action regimes. Canada's major provinces have all adopted class action statutes and the Canadian Supreme Court recently held that courts in all jurisdictions have inherent authority to authorize class actions. Australia adopted a federal class action statute in the early 1990s; England and Wales adopted a multi-party management rule in 1999; Indonesia and Sweden both adopted class action rules in 2002;

Israel adopted a class action rule in 2006. South Africa provides in its Constitution for class actions brought in the public interest. Germany, Italy, the Netherlands, South Korea and Taiwan provide a legal procedure for group litigation of securities fraud claims; Chile and Brazil provide for consumer class actions. And the number of countries considering adoption of class actions continues to rise.

While on the surface, the adoption of a class action procedure may appear to be a technical matter of interest only to lawyers, the social, economic and political consequences of permitting class actions – i.e. representative collective litigation - are vast. Because class actions empower individuals with relatively modest claims that would be impractical to litigate to band together to seek redress, these legal vehicles dramatically shift the power between legal “haves” and “have nots”. As a result, class actions and other forms of collective litigation have enormous potential to deter corporate and other institutional misbehavior. But collective litigation also may impose costs on economic actors that are larger than any benefits they create, thereby increasing social inefficiency. And collective litigation has the potential to change the balance of responsibility among legislative, executive and judicial branches of government and to reshape citizens’ views of the rule of law.

Policy debates over the adoption of these changes in legal regimes frequently reference the U.S. experience, which is often portrayed inaccurately, based on anecdotes that travel quickly over international borders. As more countries adopt procedures for class actions and other forms of collective litigation, more anecdotes and half-truths about their experiences are generated, which policymakers in other countries then rely on as they debate the virtues and demerits of facilitating collective litigation in their own legal systems. A remarkable transformation in national legal regimes is taking place without adequate knowledge about the short or long-term social, economic and political consequences of the change.

The last major international academic conference on group litigation was held in Geneva, Switzerland in 2000, before many of the developments cited above had occurred.¹ A handful of conferences have been held since but the more academically-oriented among them have focused on theory and normative issues, rather than generating empirical data, and the more practice-oriented have facilitated sharing of information but produced little in the way of reference documents. There is no single source of cross-national information on collective litigation legislation and procedural rules; more importantly, there is no systematic objective information about *how the collective litigation rules work in practice* (i.e. “the law in action” as opposed to “the law on the books”), *who is availing themselves of these procedures and for what ends*, and *what the economic, social and political consequences are for individuals, business, and the public interest*.

The conference on the Globalization of Class Actions, co-sponsored by Stanford Law School and the Oxford Centre for Socio-Legal Studies is intended to fill this information

¹ The 2000 conference was jointly sponsored by Duke University Law School and the Center for European Legal Studies, University of Geneva Faculty of Law. The proceedings were published in 11 *Duke Journal of Comparative & International Law* 157-421 (2001).

gap. The conference will bring together academicians, policy analysts and legal practitioners to systematically review the status of collective litigation in their respective regimes, and debate outcomes to date.

Organizers

The project and conference are organized by Prof. Deborah Hensler and Dr. Christopher Hodges. Hensler is the Judge John W. Ford Professor of Dispute Resolution at Stanford Law School and the former Director of the Rand Institute for Civil Justice, and a fellow of the American Academy of Political and Social Science. She is the lead author of *CLASS ACTION DILEMMAS: PURSUING PUBLIC GOALS FOR PRIVATE GAIN* (2000) and has written extensively about mass tort litigation. Hodges is an Associate Research Fellow at the Oxford Centre for Socio-Legal Studies and head of its research program on Civil Justice Systems. Prior to joining the Centre, Hodges was a partner at CMS Cameron McKenna, in London. He is the author of *MULTI-PARTY ACTIONS* (2001) and *EUROPEAN REGULATION OF CONSUMER PRODUCT SAFETY* (2005).

Conference

The conference will be held on 13 and 14 December 2007 at Oxford.

Rather than preparing the conventional disparate set of papers on the conference topic, Reporters from all major jurisdictions in the world that have class or collective actions remedies will be asked to respond to a Protocol on collective litigation rules and practices, case filings, case outcomes, and current debates within their respective regimes as to the application of collective litigation rules and their consequences. These “country reports” will be used as a basis for identifying cross-cutting problems and questions, to be used as the organizing framework for the conference.

At the conference, a series of sessions will cover cross-cutting topics. Each topic will be presented by a panel of contributors, drawn from the national Reporters and from others, chaired by a leading expert as interlocutor.

The products of the conference will be a volume of the *Annals of the Academy of Political and Social Science*, comprising the country reports and articles on cross-cutting problems and questions, and a web-based mechanism for maintaining and extending a global network of experts on developments in collective litigation and website for accumulating information about such developments.

Sponsors and costs

Major funding for the conference has been provided by the American Academy of Political and Social Science, Stanford Law School, and the Oxford Centre for Socio-Legal Studies. Additional support for the conference has been contributed by

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Organizers' Contact information

Professor Deborah Hensler, Stanford University, USA dhensler@stanford.edu

Dr Christopher Hodges, Oxford University, England christopher.hodges@csls.ox.ac.uk