



News Release

For Immediate Release

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DRI Testifies on Proposed Class Action Rule Changes

Sweeney and Holmstrand of DRI's Center for Law and Public Policy Deliver Washington Testimony

CHICAGO – (November 3, 2016)— Former DRI president John Parker Sweeney and Jeffrey A. Holmstrand of DRI's Center for Law and Public Policy provided testimony today before the Advisory Committee on Civil Rules in Washington. Hearings are being conducted in Washington, Phoenix, and Dallas on the Committee's proposed changes to Rule 23 of the Federal Rules of Civil Procedure regarding Class Actions.

Reinforcing his testimony provided before the House Judiciary Committee last year, Sweeney focused on the question of actual harm vs. potential harm in class action suits. "American businesses face many class actions brought by plaintiffs who cannot establish they have been injured, on behalf of a proposed class of similarly uninjured individuals...thus failing to meet Article III standing requirements." The plaintiff contends that the defendant committed widespread technical violations of some statute but fails to demonstrate actual harm to all of the proposed class. If the class is certified by the court, without immediate right of appeal, there is enormous pressure on defendants to settle claims that could never be successful if tried individually.

"DRI calls upon the Federal Rules Committee to initiate rulemaking that would preclude no-injury classes and assure that no one who has not been injured receives damages," concluded Sweeney.

Jeffrey A. Holmstrand, a member of the Center's Class Action Task Force, focused testimony on "right to appeal" and "ascertainability."

Under current judicial rules, if a district court certifies a class as plaintiffs in a class action law suit, a defendant has no automatic right of immediate appeal. Instead, defendants have two basic choices: settle a case in which they feel they have done no wrong or take a case to a "bet the company" trial with all its uncertainties. An appeal questioning the validity of the certification of the class, is allowable only after a verdict has been rendered. "DRI is therefore

urging,” said Holmstrand, “that the Rule provide for an automatic right to appeal certification decisions immediately after they are made.”

Regarding ascertainability, Holmstrand said that class actions are a judicially recognized exception to the traditional American model of individualized civil litigation between named parties. Under that model, the defendant knows who is suing it, the claims being sued upon, and all its available defenses. Because class actions substitute a representative plaintiff for individual ones, “it is profoundly important that the court and parties can objectively and reliably identify or ascertain the members of the putative class,” said Holmstrand. “DRI is asking that the rule make explicit what many courts already have found – that class members must be readily identifiable without individualized inquiry and adjudication of who belongs in the proposed class.”

Click on each name to view the complete testimony of [Mr. Sweeney](#) and [Mr. Holmstrand](#).

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