

Setting The Story Straight On Class Action Lawsuits

*Change Your Perspective,
Not The Channel*



MISSION: *Clarify personal injury law*

TODAY'S ASSIGNMENT: *Explain the class action lawsuit*

You've seen the commercials.

"If you or someone you know has taken [type of drug] and experienced [type of negative effect], you may qualify for a [type of claim] against [insert: drug company]. Call [insert: law firm] immediately for a free legal consultation. We will evaluate your case and see if you qualify for our class action lawsuit."

"We might be the [type of drug] law firm you're looking for to get compensation for alleged [type of negative effect]. Call [law firm] immediately."

Many people switch the channel or completely ignore these commercials, seeing the lawyers as swindling used car salesmen who are just trying to make a quick buck. If you hold this negative view of class action lawyers and lawsuits, it's probably just because you don't know much about this type of litigation.

Let's review the facts and set the story straight on what class action lawsuits really are. Hopefully, you'll experience a shift in your perception of this type of litigation.



What's A Class Action Lawsuit?

- A class action lawsuit is a **civil litigation device**. It is civil because it deals with private disputes and common, not criminal, law.
- Like other civil lawsuits, they can be filed in both state and federal courts.
- It involves a class or group of people who are claiming **similar injuries or damages** – physical, psychological, emotional or financial – **from the same company or organization**.
- **Rule 23 of the Federal Rules of Civil Procedure** provides detailed instructions for judges, attorneys, plaintiffs and defendants on conducting class action lawsuits.
- Rules of procedure **vary slightly from state to state**, but they all closely resemble Rule 23.

What Does Rule 23 Say?

Some of the main requirements for class actions under Rule 23 include the following:

1. Certification

The judge must certify the plaintiffs as a class. This requires that 1) the plaintiffs share a common complaint and 2) it's deemed impractical and inefficient, for both the plaintiffs and the court, for them to sue individually. Additionally, the defendants must share a similar defense for all plaintiffs.

Note: Only about 20-40% of lawsuits filed as class actions receive certification.

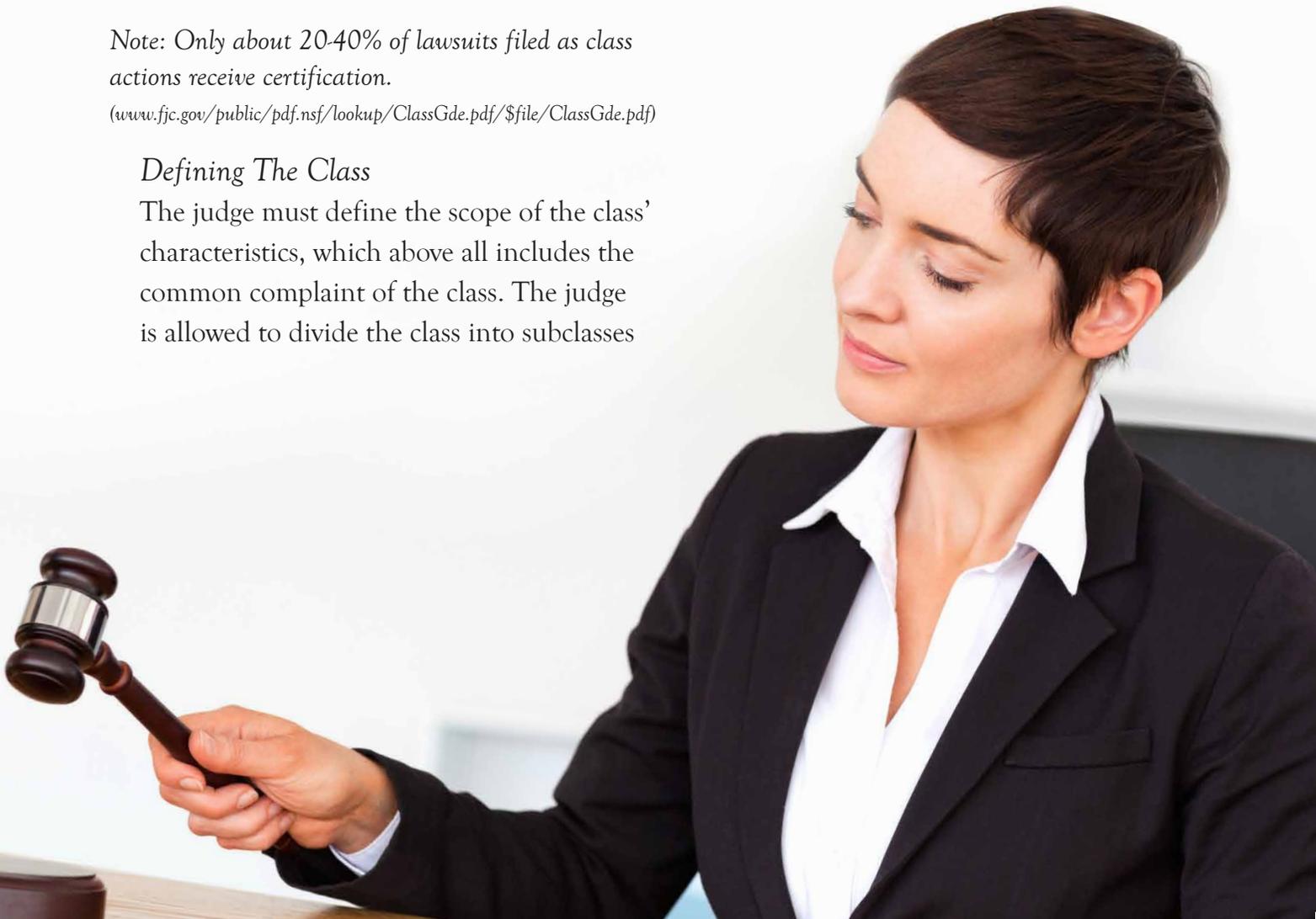
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Defining The Class

The judge must define the scope of the class' characteristics, which above all includes the common complaint of the class. The judge is allowed to divide the class into subclasses

when appropriate. According to the specifics of the case, it may also include the following:

- Certain time frame for taking a drug, undergoing a surgery, engaging in a financial transaction, purchasing a product or experiencing a breach of rights
- Specific geographic location or distance from a site or event



2. Notification

The judge orders that all potential plaintiffs be notified of the class action. Depending on how broad the scope of the class, this notification may come in the form of direct mail, email, newspaper advertisements or TV commercials.

3. Opting Out

If you fall within the defined scope of the class, then you are automatically included in the case and bound by the final judgment. However, if you prefer to file your own lawsuit, then you can opt out of the class action. If this is the case, you must give timely notice of your opt out to the class counsel or court.

4. Appointing Counsel

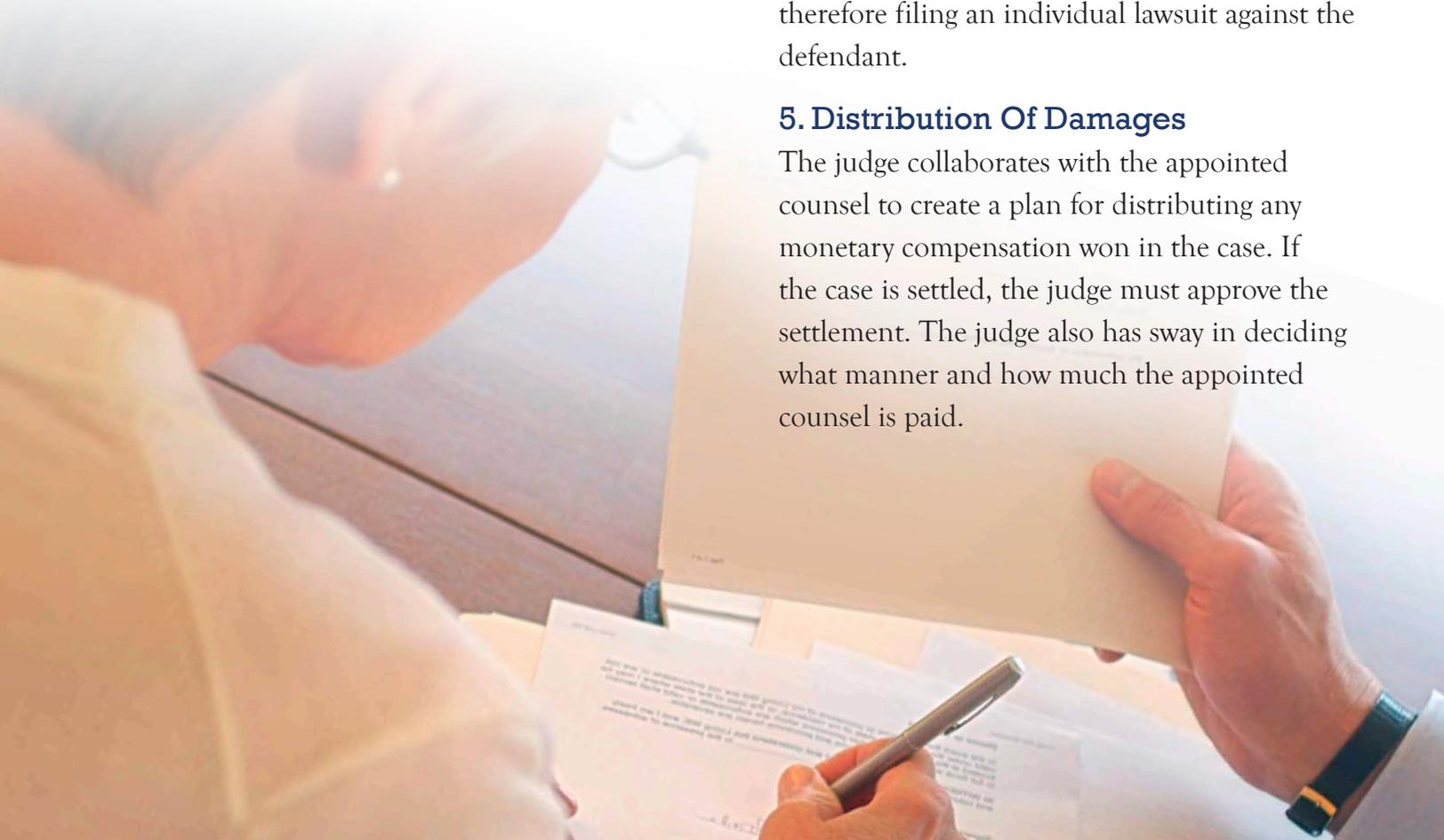
The judge selects representative counsel for the plaintiffs. In most cases, this is the lawyer who filed the case, but it's the judge's responsibility to ensure the following:

- The attorney is experienced in class action proceedings
- The attorney has extensive knowledge in the respective subject area
- The attorney is committed to fairly representing the class

A plaintiff can only use his or her own lawyer if he or she has opted out of the class, therefore filing an individual lawsuit against the defendant.

5. Distribution Of Damages

The judge collaborates with the appointed counsel to create a plan for distributing any monetary compensation won in the case. If the case is settled, the judge must approve the settlement. The judge also has sway in deciding what manner and how much the appointed counsel is paid.



What Are The Benefits Of Participating In Class Action?

Power In Numbers

Lawsuits are expensive, time-consuming and emotionally straining. This is what deters people from pursuing legal action, especially if their claim and possible damages are small. But with a class action lawsuit, a group of injured parties is able to receive just compensation even if their *individual* claims are small.

Equal Compensation

Individual lawsuits are handled on a first-come, first-served basis. Let's say a plaintiff files a claim for a complaint you have also experienced. If he or she obtains significant damages, then that company or organization might hit bankruptcy before you get a chance to stake your claim.

Experienced Attorney

The judge presiding over the class action must guarantee the appointed counsel is experienced and highly competent. Oftentimes, this is an attorney that an individual could not afford on his or her own.



What Are The Reasons To Opt Out?

If you receive a notice of the class action through a newspaper ad, letter, email or TV commercial, it means that – due to your possible connection with a common complaint – you are automatically a member of a class.

If you don't want to participate, you must actively opt out of the class action. The notice will include instructions for opting out – most likely calling a phone number or filling out a form online.

There is no real harm in being a part of a class action suit – it requires no real effort on your part. But the most common reason that people opt out is to file a personal claim. This may be because you believe you deserve more compensation than you'll obtain as part of the class, since damages are divided equally among participants. Another reason to opt out and file a personal claim is if the class has a different experience and set of interests than you.

What If I Haven't Been Notified, But Believe I Qualify?

If you believe you deserve to be part of the class action but have not been notified, it does not mean you don't qualify. To get your name added to the registry, you must contact the law office handling the lawsuit.

What Are Some Common Types Of Class Action Lawsuits?

- **Environment** such as pollution and poor water quality
- **Finance** such as breaches of securities law
- **Employment** such as disputes in wage and hour laws, sexual harassment, discriminatory practices and hostile work environments
- **Civil Rights** such as unfair treatment of people with disabilities and discrimination against gender or race
- **Product Defects** such as defective vehicles
- **Dangerous Drugs** such as defective pharmaceuticals, contraceptives and surgical materials

Class action lawsuits are an efficient and convenient way to win justice for the individual by leveraging the power in numbers. So next time, if you or someone you know has experienced [type of negative effect] from [type of drug], you may think twice about switching the channel.



To learn more about Howard B. Segal's unique approach to personal injury litigation – guiding you with clear instruction, professional expertise and compassionate support – visit him online at www.howardbsegal.com. To reach Howard directly or speak with a member of his firm, call 484.450.9660.