

As the New Normal Redefines Class-Action Litigation, Lawyers Need Novel Approaches

June 8, 2020



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DAILY BUSINESS REVIEW

As today's new normal redefines class-action litigation, lawyers interested in meeting the demand for quality legal representation are finding they must keep up with new products, issues, and trends. The future of class actions over the next decade will be shaped by industries that will require greater specialization, ability to stay abreast of cutting-edge products and services, and skill navigating uncharted territories.

Why? The cutting-edge growth companies destined to drive class-action litigation involve products and services in early stages of development that are introducing an evolving set of legal issues and ramifications. Specifically, these industries include:

- Video conferencing technology platforms such as Zoom and Microsoft Teams
- Online retail
- Food-delivery services
- Marijuana (CBD-based products for beauty, health and pain relief)
- Cyber currency (Bitcoin, Ethereum and currency exchanges)
- Vaping (e-cigarettes, nicotine and cannabis) and pharmaceuticals (which have issues related to compounding and adverse reactions, among others)

The legal industry has been struggling to stay up to speed with the ongoing developments and rapid evolution of new products and services, and how they impact the companies that deliver them, the investors who fund them, and the consumers who use them, as well as the laws that regulate them.

Consider:

- Business-interruption insurance: Over 150 class-action lawsuits already have been filed as insurance companies begin denying business-interruption claims related to COVID-19. With so much attention focused on "damage to property" requirements or pandemic exclusions, how will these contracts be written in the future for the next, perhaps deadlier pandemic?
- Cruise lines: Passengers are filing class actions against cruise lines for alleged misinformation related to COVID-19 safety. Questions from the Watergate era of "what did you know and when did you know it" become increasingly difficult to answer with precision when faced with a once-every-century pandemic.
- Securities and Exchange Commission: As the Securities and Exchange Commission (SEC) continues to bring forth new regulations, securities class actions like the Bitcoin Manipulation Suit based on new regulations will continue to be filed. Additionally, we can expect the filing of travel-related securities fraud class actions alleging failure to disclose potential COVID-19 impacts in their disclosures.
- Marijuana: An evolving set of problems with CBD-based products and false advertising will lead to continued claims.
- Drugs: We may see class-action litigation related to COVID-19 vaccines or those who administer them or compounders who prepare them, and the impact of legislation passed by state legislatures around the country to limit or eliminate liability.
- Vaping: Exploding e-cigarettes, health impacts of nicotine and cannabis will continue to be filed.

How can lawyers best prepare to work with clients in these dynamic new areas expected to represent the lion's share of class action litigation for years to come?

First, let's consider what differentiates the cases that defined class-action litigation during the past decade. A case in point: Our team's work on the largest automobile recall in history, which resulted in over \$1.5 billion for the owners and lessees of millions of cars nationwide with deadly, defective Takata airbags. While complex and high-profile, this case involved widely understood and well-established industries and products. In the next decade, we can expect to see additional class actions related to defective products in the automotive industry, as well as other industries, including:

- Climate change: We will continue to see a growth in lawsuits filed against major energy companies and other industry players as climate change issues and concerns continue to mount. Khatanga, Siberia, a town located well north of the Arctic Circle, recorded a temperature of 78 degrees on May 22. This situation is only going to get worse.
- Data privacy breaches: Introduction of everything from new technologies to new ways to hack them will continue to lead to class-action litigation. For months, online videoconferencing did not require passwords, thereby exposing personal information to the general population. The lack of security was so easily breached it gave way to a new term: "Zoom Bombing." Although solutions may be found along the way for these types of problems that will continue to arise, what will happen with the instant recording of video calls and getting consent from all participants to do so?

The challenges and complexities of filing major class-action litigation in these industries, although always significant, pale in comparison to filing suit in the array of new, innovative industries currently mushrooming throughout the United States and abroad. Handling class-action litigation in the new frontier will require:

- Shifting your mindset. Be prepared to embrace change. Recognize that you're going to have to study up on new products, industries and legal issues, and face some risk in tackling cases with more unknowns.

- Attending conferences and collaborating with leaders (virtually or otherwise) in the emerging industries. This is one of the best ways to learn while also developing a network of potential clients, referral sources and professional contacts within these new industries.
- Staying abreast of news surrounding the emerging industries. Beyond enabling you to learn the latest, this also will help you understand the perceptions of key stakeholders in class-action litigation, including the news media to the legal, regulatory and judiciary, as well as the public.

Although these strategies and tactics sound simple, they require significant time, effort and resources. Personal and firmwide commitment will be required.

The next decade of class-action litigation will bring to the legal industry a new set of complexities, but also a new set of opportunities. Attorneys who take the right steps will position themselves to seize the opportunities in providing the high-caliber representation clients need in the new normal and beyond.

Mark Heise and Patricia Melville are shareholders with litigation firm Heise Suarez Melville in Coral Gables. Contact them at mheise@hsmpa.com and pmelville@hsmpa.com