

Course Outline / Assignments
Tulane Law School
Complex Litigation
Fall 2015

Introduction: What is “Complex Litigation”?¹

- COMPLEX MANUAL (Fourth), Introduction, pp.1-3.
- COMPLEX MANUAL (Fourth) §§ 20, 20.11, 20.12 and 20.13, pp.217-219.
- COMPLEX MANUAL (Fourth) §§ 22.1, 22.2, 22.31, 22.311 and 22.312, pp.342-358.

Background: Traditional Joinder Provisions²

- FED. RULE CIV. PRO. 18, 19, 20, 21, 22, 24 and 42
- 28 U.S.C. §1367
- *Ford v. Bisanz Brothers*, 249 F.2d 22 (8th Cir. 1957).
- *Pulitzer-Polster v. Pulitzer*, 784 F.2d 1305 (5th Cir. 1986).
- (Discussion of BANKRUPTCY.)³

Background: Res Judicata⁴

- LA. REV. STAT. 13:4231 and 13:4232.
- *Tyus v. Schoemehl*, 93 F.3d 449 (8th Cir. 1996).
- *Tice v. American Airlines*, 162 F.3d 966 (7th Cir. 1998).
- *Oliver v. Orleans Parish School Board*, No.2014-329 (La. 10/31/2014), 156 So.3d 596.

Federal Jurisdiction under the “Class Action Fairness Act” (“CAFA”)

- 28 U.S.C. §1332(d)
- *Kaufman v. Allstate New Jersey*, 561 F.3d 144 (3d Cir. 2009).
- *Abrego v. The Dow Chemical Company*, 443 F.3d 676 (9th Cir. 2006).
- *Standard Fire v. Knowles*, 133 S.Ct. 1345 (2013).
- *Dart Cherokee Basin Operating Co. v. Owens*, 135 S.Ct. 547 (2014).⁵

Multi-District Litigation (“MDL”)⁶

- 28 U.S.C. 1407.
- COMPLEX MANUAL (Fourth) §§ 20.13, 20.131, 20.132, 20.133, pp.219-227.
- *Lexicon v. Milberg Weiss*, 523 U.S. 26, 118 S.Ct. 956 (1998).

¹ *Optional*: Marcus, Sherman & Erichson, COMPLEX LITIGATION: CASES AND MATERIALS ON ADVANCED CIVIL PROCEDURE (5th ed. 2010), 1-23.

² *Optional*: COMPLEX LITIGATION, pp.24-78.

³ *Optional*: COMPLEX LITIGATION, pp.713-735.

⁴ *Optional*: COMPLEX LITIGATION, pp.782-797.

⁵ *Optional*: See also, e.g., *State of Miss. ex rel. Hood v. AU Optronics*, 134 S.Ct. 736 (2014).

⁶ *Optional*: COMPLEX LITIGATION, pp.133-160.

- *Phillips Petroleum v. Shutts*, 472 U.S. 797, 105 S.Ct. 2965, 86 L.Ed.2d 628 (1985).
- *In re Propulsid*, 208 F.R.D. 133 (E.D.La. 2002).
- *In re Managed Care Litigation*, MDL 1334, 2000 U.S. Dist. LEXIS 15927 (J.P.M.L. Oct. 23, 2000).
- *In re Managed Care Litigation*, 246 F.Supp.2d 1363 (J.P.M.L. 2003).
- *In re MTBE Products Liability Litigation*, MDL 1358, 2005 WL 106936 (S.D.N.Y. Jan. 18, 2005).
- *Hamilton v. Atlas Turner*, 197 F.3d 58 (2d Cir. 1999).

Overview to Representative / Class Actions⁷

- FED. RULE CIVIL PRO. 23 (with Official Comments)
- LA. CODE CIV. PRO. ARTS. 591 - 597
- COMPLEX MANUAL (Fourth) § 21, pp.243-245.
- COMPLEX MANUAL (Fourth) § 21.221, pp.268-269.
- *Hansberry v. Lee*, 311 U.S. 32 (1940)
- Review *Standard Fire v. Knowles*
- *Amchem v. Windsor*, 521 U.S. 591 (1997)

Class Actions: Prerequisites⁸

- COMPLEX MANUAL (Fourth) § 21.222, pp.270-272.
- COMPLEX MANUAL (Fourth) §§ 31.3 and 31.31, pp.529-539.
- *Crosby v. Soc. Sec. Admin.*, 796 F.2d 576, 580 (1st Cir. 1986).
- *Zapka v. Coca-Cola*, 2000 WL 1644539 (N.D.Ill. Oct. 27, 2000).
- *Andrews v. Trans Union*
 - (a) Fourth Circuit Decision - No. 2004-2158 (La. App. 4th Cir. 8/17/2005), 917 So.2d 463 (paying particularly close attention to Judge Murray's dissent)
 - (b) Brief in Opposition to Writ Application to Louisiana Supreme Court (to be provided).
 - (c) La. Supreme Court Order - 926 So.2d 495 (La. 4/17/06).
- *Doe v. Southern Gyms*, 2012-1566 (La. 3/19/2013), 112 So.3d 822.
- *Wal-Mart v. Dukes*, 131 S.Ct. 2541 (2011).
- *General Telephone v. Falcon*, 457 U.S. 147 (1982)
- *Deiter v. Microsoft*, 436 F.3d 461 (4th Cir. 2006)
- *In re Diet Drugs*, 431 F.3d 141 (3d Cir. 2005).
- *In re Warfarin Sodium Antitrust Lit.*, 391 F.3d 516 (3d Cir. 2004).

⁷ *Optional*: COMPLEX LITIGATION, pp.210-227.

⁸ *Optional*: COMPLEX LITIGATION, pp.227-271.

Mandatory Arbitration⁹

- *Stolt-Nielsen v. Animal Feeds*, 130 S.Ct. 1758 (2010).
- *AT&T v. Concepcion*, 131 S.Ct. 1740 (2011).

Class Actions: Rule 23(b)(3) - Damages¹⁰

- *Blackie v. Barrack*, 524 F.2d 891 (9th Cir. 1975)¹¹
- *Castano v. American Tobacco*, 84 F.3d 734 (5th Cir. 1996)
- *Klay v. Humana*, 382 F.3d 1241 (11th Cir. 2004)
- *Gunnells v. Healthplan Services*, 348 F.3d 417 (4th Cir. 2003)
- *Ford v. Murphy Oil*, 703 So.2d 542 (La. 1997)
- *Banks v. New York Life*, 737 So.2d 1275 (La. 1999) (on rehearing).
- COMPLEX MANUAL (Fourth) § 21.23, p.272.

See also:

- *Comcast v. Bernard*, 133 S.Ct. 1426 (2013).

Class Actions: Rule 23(b)(2) - Injunctive Classes¹²

- Review *Wal-Mart v. Dukes*, 131 S.Ct. 2541 (2011).
- *Allison v. CITGO*, 151 F.3d 402 (5th Cir. 1998).
- *Robinson v. Metro-North*, 267 F.3d 147 (2d Cir. 2001).
- *Bratcher v. Monumental*, 365 F.3d 408 (5th Cir. 2004).
- *Thorn v. Jefferson-Pilot Life*, 445 F.3d 311 (4th Cir. 2006).

Class Actions: Rule 23(b)(1) - Limited Fund Classes¹³

- *Ortiz v. Fibreboard*, 527 U.S. 815 (1999).
- *Simon II Lit. v. Phillip Morris*, 407 F.3d 125 (2d Cir. 2005).

Class Actions: Rule 23(c)(4) - Issue-Specific Certification¹⁴

- COMPLEX MANUAL (Fourth) § 21.24, pp.272-274.
- Review *Castano*.
- Review *Gunnells*.
- *Augustin Jablonsky (In re Nassau County Strip Search Cases)*, 461 F.3d 219 (2d Cir. 2006).
- Review LA. CODE CIV. PRO. ARTS. 592(D) and 592(E)(5).
- See FED. RULE CIV. PRO. 23(c)(2)(B)(iii).

⁹ *Optional*: COMPLEX LITIGATION, pp.866-960.

¹⁰ *Optional*: COMPLEX LITIGATION, pp.305-349.

¹¹ *Optional*: See also, e.g., *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398 (2014); *Amgen Inc. v. ConnecticutRet. Plans & Trust Funds*, 133 S. Ct. 1184 (2013).

¹² *Optional*: COMPLEX LITIGATION, pp.292-305.

¹³ *Optional*: COMPLEX LITIGATION, pp.272-292.

¹⁴ *Optional*: COMPLEX LITIGATION, pp.349-359.

Complex Discovery ¹⁵

- FED. RULE CIV. PRO. 26, 34 and 37.
- See generally: COMPLEX MANUAL (Fourth) §§ 11.4 - 11.494, pp.49-110.
- *Zubulake v. UBS Warburg*, 217 F.R.D. 309, 316 (S.D.N.Y. 2003) (“*Zublake I*”)
 - 2003 U.S.Dist.LEXIS 7940 (S.D.N.Y. May 13, 2003) (“*Zublake II*”)
 - 216 F.R.D. 280 (S.D.N.Y. 2003) (“*Zublake III*”)
 - 220 F.R.D. 212 (S.D.N.Y. 2003) (“*Zublake IV*”)
 - 2004 U.S.Dist.LEXIS 13574 (S.D.N.Y. July 20, 2004) (“*Zublake V*”).
- *Lorraine v. Markel American Ins.*, 241 F.R.D. 534 (D.Md. 2007).

Federal-State Parallel Proceedings ¹⁶

- Anti-Injunction Act, 28 U.S.C. §2283.
- All Writs Act, 28 U.S.C. §1651.
- *Life-Link v. Lalla*, 902 F.2d 1493 (10th Cir. 1990).
- *In re Baldwin United Corp.*, 770 F.3d 328 (2nd Cir. 1985).

See also:

- *Shady Grove v. Allstate*, 130 S.Ct. 1431 (2010).

Settlement (and Fees) ¹⁷

- COMPLEX MANUAL (Fourth) §§ 21.6 - 21.635, pp.308-323.
- COMPLEX MANUAL (Fourth) §§ 22.91 and 22.92, pp.446-449.
- COMPLEX MANUAL (Fourth) §§ 21.7 - 21.727, pp.334-340.
- COMPLEX MANUAL (Fourth) § 22.927, pp.461-463.
- Review *Amchem*.
- Review *Ortiz*.
- Review *In re Diet Drugs*.
- *In re Prudential Sales Practices Lit.*, 148 F.3d 283 (3rd Cir. 1998).
- *In re Prudential Sales Practices Lit.*, 261 F.3d 355 (3rd Cir. 2001).
- *Wal Mart Stores, Inc v. VISA*, 396 F.3d 96 (2d Cir. 2005).
- *Central States v. Merk-Medco*, 433 F.3d 181 (2d Cir. 2005).
- 28 U.S.C. §1712
- *McLendon v. Continental Group*, 872 F.Supp. 142 (D.N.J. 1994).
- *Masters v. Wilhelmina Model Agency*, 473 F.3d 423 (2d Cir. 2007).

Review Session

¹⁵ *Optional*: COMPLEX LITIGATION, pp.506-576.

¹⁶ *Optional*: COMPLEX LITIGATION, pp.172-209, 406-419.

¹⁷ *Optional*: COMPLEX LITIGATION, pp.160-172, 370-389, 657-698 and 593-631.