
CHAMBERS GLOBAL PRACTICE GUIDES

Collective Redress & Class Actions 2025

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comparative analysis from top-ranked lawyers

**USA – Louisiana: Law and Practice
& Trends and Developments**

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USA – LOUISIANA



Law and Practice

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Kanner & Whiteley, LLC is an AV-rated national trial firm founded in 1981, based in New Orleans, which excels in handling class actions and complex litigation. Having secured historic recoveries on behalf of its clients for over 40 years, the firm is especially successful in consumer fraud, pharmaceutical, toxic torts and environmental litigation as well as first-party and long-term care insurance litigation. The seven attorneys are held in high regard for their persistence, preparation, attention to detail, ability to synthesise

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1. Policy Development of Collective Redress/Class Action Mechanisms

1.1 History and Policy Drivers of the Legislative Regime

Louisiana Code of Civil Procedure Article 591 currently provides the prerequisites for collective redress, referred to as “class actions” in Louisiana. Originally enacted in 1961, the Code of Civil Procedure provided the first statutory authority for class actions in Louisiana, which was primarily patterned on the US Federal Rules of Civil Procedure, Rule 23 governing class actions in US federal courts. However, given Louisiana’s liberal joinder and intervention rules, the Louisiana article recognised only “true” class actions (an action with a joint, common or secondary right to enforcement where the owner of the primary right does not enforce it and a class member becomes entitled to enforce it), rather than “hybrid” or “spurious” class actions recognised by Federal Rule 23 prior to the 1966 amendments.

Prior to 1961, Louisiana suits of a class nature were principally based in equity. The adoption of these articles codified the rules to be applied in future cases. Early class action, jurisprudence recognised a strict common interest requirement of the original Rule 23 “true” class action but over the years the Louisiana Supreme Court substantially liberalised the availability of class actions within district judges’ discretion, provided that each of the requirements of Federal Rule 23 (b) were met and due consideration of the relationship between the parties was given.

As its class action law developed, Louisiana saw a further divergence from these limitations. Courts began

to allow the class action device to be used to certify mass tort actions within judicial discretion, particularly in single-event disaster cases. This jurisprudence was later expanded to include multiple exposure cases.

However, in 1997, the Louisiana Supreme Court curbed this expansion. The court re-examined Louisiana law, taking into account recent federal Supreme Court and Fifth Circuit Court of Appeal decisions, and decertified a multiple incident, multiple location toxic exposure case that had been certified as a class action by the district court. Considering that Louisiana’s code articles were modelled on Federal Rule 23, promulgated before the increase of mass tort actions, and with the intent to recognise only “true” class actions, the court found a certification of this nature strayed too far from legislative intent. The court directed lower courts to specifically focus on whether the plaintiff’s and class members’ injuries truly arise from a common cause, and emphasised the inappropriateness of a class action device to resolve untested or novel theories of recovery. In 1997, the legislature amended C.C.P. Article 591, which now more closely tracks Federal Rule 23. In 2021, the legislature further amended C.C.P. Article 592.

1.2 Basis for the Legislative Regime, Including Analogous International Laws

The Louisiana Class Action code articles were originally patterned after the US Federal Rules of Civil Procedure Rule 23 but there have been statutory and jurisprudential divergences from the original language, intent and application of Rule 23, and the rules have been amended over time. Currently, a significant difference between Federal Rule 23 and La. C.C.P. Article 591 is found in Article 591 (A)(5), which legislatively

requires that a class must be defined “objectively in terms of ascertainable criteria” that cannot be “satisfied if it is necessary for the court to inquire into the merits of each potential class member’s cause of action to determine whether an individual falls within the defined class”. However, in practice, they have become more similar again, as a requirement for ascertainability, to a greater or lesser extent, has been read into the application of Federal Rule 23 in most of the federal circuit courts throughout the USA.

1.3 Implementation of the EU Collective Redress Regime

There is no applicable information in this jurisdiction.

2. Legal Framework

2.1 Collective Redress and Class Action Legislation

La. C.C.P. Articles 591–597 apply to class actions in Louisiana state courts. Article 591 and subsequent jurisprudence interpreting it primarily govern the certification of class actions. Like Federal Rule 23, Article 591 has two parts, the elements of which are largely the same as those in Rule 23.

Article 591 (A) contains the threshold requirements any proposed class must satisfy for certification:

- numerosity – the class is so numerous that joinder of all members is impracticable;
- commonality – common questions of fact or law exist and apply to all the class members;
- typicality – claims or defences of the representative parties are typical of those of the other class members;
- adequacy – the representative parties will fairly and adequately protect the interest of all class members; and
- ascertainability – the class is defined objectively to allow the court to ascertain the identity of the class members without having to conduct mini-trials or inquire into the merits of each class member’s claims.

Article 591 (B) provides additional requirements for three categories of classes. Thus, once the require-

ments of Article 591 (A) are met, the requirements for one of the three categories of classes identified in 591 (B) must also be met.

- Article 591 (B)(1) focuses on suits that should be brought as a class action to avoid prejudices that may result from individual suits. Two types of prejudice are covered by 591 (B)(1):

(a) 591 (B)(1)(a) looks to avoid prejudice to the defendant/party opposing the class due to the potential for resulting incompatible standards of conduct from individual actions – an example of this type of class is a trespass claim brought by multiple landowners against the same defendant that could subject the defendant to incompatible standards regarding his or her right to use the land if individual decisions are sought; and

(b) 591 (B)(1)(b) looks to avoid prejudice to other class members and is appropriate where individual actions would impair or impede the ability of other similarly situated individuals to protect their interests – an example here is a situation where many individuals have claims against a limited or common fund, such as an insurance policy.

Classes certified pursuant to Article 591 (B)(1) are mandatory classes. There are no opt-outs.

- Article 591 (B)(2) concerns injunctive or declaratory relief (the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole). Employment discrimination claims are an example of a 591 (B)(2) class, where the goal is to change the defendant’s conduct, as opposed to obtaining monetary damages. A class certified under Article 591 (B)(2) is also a mandatory class, but in this instance, notice to class members is not necessary.
- Article 591 (B)(3) is a damages class, where class members seek monetary damages as the result of a defendant’s conduct. The requirements for a monetary class focus on manageability – ie, questions of law or fact common to the members of the class predominate over any questions affect-

ing only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The article identifies a number of factors pertinent to this requirement:

- (a) the interest of the members of the class in individually controlling the prosecution or defence of separate actions;
- (b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
- (c) the desirability or undesirability of concentrating the litigation in the particular forum;
- (d) the difficulties likely to be encountered in the management of a class action;
- (e) the practical ability of individual class members to pursue their claims without class certification; and
- (f) the extent to which the relief plausibly demanded on behalf of or against the class, including the vindication of such public policies or legal rights as may be implicated, justifies the costs and burdens of class litigation.

Notice of class certification and an opportunity to opt-out are requirements of an Article 591 (B)(3) class. In addition, a class may be certified for settlement purposes pursuant to Article 591 (B)(3), even if the requirements of that subsection are not otherwise met.

2.2 Scope of Areas of Law to Which the Legislation Applies

La C.C.P. Article 591, et seq, governs the ability to use the class action procedure in Louisiana state courts for civil disputes that meet the criteria, other than those to which the courts or the legislature specifically do not allow private causes of action or class action treatment such as the Louisiana Unfair Trade Practices Act (LUTPA). Class actions under LUTPA are limited to enforcement actions brought by the Louisiana Attorney General for restitutionary recovery or injunctive relief. Another factor limiting consumer class actions is the Louisiana Products Liability Act (LPLA), which sets forth the “exclusive theories of liability for manufacturers for damages caused by their products” (La. Rev. Stat. Ann. Section 51:1409). Louisiana courts largely agree that the LPLA subsumes

all LUTPA claims involving products liability. However, the LPLA exclusivity provision does not expressly preclude class actions for redhibition claims for economic losses relating to a product.

The class action procedure is used in many areas of the law such as mass torts, environmental damage, securities, consumer protection, false or fraudulent advertising, design defects, antitrust, data breaches, pharmaceuticals, and digital and online privacy, among others.

2.3 Definition of Collective Redress/Class Actions

There is no statutory definition of “class actions” in Louisiana. However, Louisiana courts have defined a “class action” as a nontraditional litigation procedure that permits a representative with typical claims to sue or defend on behalf of, and stand in judgment for, a class of similarly situated persons when the question is one of common interest to persons so numerous as to make it impracticable to bring them all before the court. It is an alternative procedural device to the general rule for litigation to be conducted by and on behalf of individually named parties, and its purpose and intent is to adjudicate and obtain *res judicata* effect on all common issues applicable to persons who bring the action, as well as to all others similarly situated.

Louisiana also recognises settlement class actions, which must meet the same criteria in Article 591 other than the predominance and superiority requirements. Class notice is given to all class members of the proposed settlement class, and if approved the settlement is applicable to all class members who do not formally exclude themselves the settlement.

3. Procedure for Bringing Collective Redress/Class Actions

3.1 Mechanisms for Bringing Collective Redress/Class Actions

Unlike some states that have courts specifically designed to hear class actions and other complex matters, a class action can be brought in any Louisiana state district court of proper jurisdiction and

venue. An action brought on behalf of a class must be brought in a parish of proper venue as to the defendant. La C.C.P. Article 591 applies to all cases brought in any state court in Louisiana with common facts and legal issues.

However, in 2005, the US Congress passed the Class Action Fairness Act (CAFA), which significantly expanded federal jurisdiction over class actions, leaving only small, localised classes in state court. Thus, even if jurisdiction and venue are proper in state court as to all parties, most cases filed as class actions cases can be removed from state court to federal court. Thereafter, the federal rules of civil procedure apply to the action. State substantive law will continue to apply to the same extent as before the removal to federal court.

Class actions can also be filed directly in US federal courts in Louisiana if federal jurisdiction is available under CAFA, the rules of diversity jurisdiction or federal question jurisdiction. Federal Rule 23 applies to those cases.

3.2 Overview of Procedure

A class action can be brought in Louisiana state district court by filing a petition alleging facts that support the cause(s) of action, that those facts are common to a sufficiently numerous group of people and that each of the requisites for C.C.P. Article 591 can be met. Once the petition is filed and the parties are served, the plaintiff is required to file a motion for class certification within 90 days, in which further information supporting the plaintiff's allegations are set forth and are often supported by affidavits and/or declarations of the attorney bringing the case and/or experts who opine that the case is best litigated as a class action. Discovery as to class issues in the case is allowed before the class hearing. Opponents of the class action will file opposition papers, and after the briefing is complete, the court will hold a hearing to determine if the class should be certified, which may include expert testimony. A party opposing the order granting or denying class certification has a right to take a direct appeal to the governing appellate court challenging the decision.

Louisiana has five different circuit courts of appeal among which the district courts are divided regionally, and each appellate court is governed by the Louisiana Supreme Court. There can be differences in interpretation among each circuit as case law develops but Article 591, et seq, and the Louisiana Supreme Court's interpretation of its meaning is to be applied throughout the state. Any significant difference among the circuit courts will ultimately be resolved by the Louisiana Supreme Court.

3.3 Standing

A class action is a procedural mechanism that enlarges no substantive rights. Accordingly, to bring any action, regardless of class allegations, a plaintiff must first meet the standing requirements in the relevant jurisdiction. In federal court, a plaintiff must be able to plausibly allege that they suffered an actual injury (versus a hypothetical injury) that is fairly traceable to the conduct of the defendant, and that the court's decision in the matter is likely to remedy. Additionally, a class representative must also have first-hand knowledge or experience of the conduct at issue; a sufficient stake or interest in the litigation such that they will participate conscientiously; claims or defences that are typical of and not antagonistic to the claims of the class members so that they can fairly and adequately protect the other members of the class; and freedom from any conflicts that would affect any outcome to the class.

In Louisiana state court, however, the threshold standing requirement (termed "a right of action") is slightly different: an action can only be brought by someone who has a real and actual interest that he or she asserts in the action. Where a plaintiff's right of action is challenged, a Louisiana court will determine whether the plaintiff belongs to a particular class to which the law grants a remedy for the particular harm alleged in the plaintiff's petition.

3.4 Class Members, Size and Mechanism – Opting In or Out

A class must be defined so that class membership can be easily ascertained by using objective criteria without resorting to extensive fact-finding to determine whether the person is included in the class. If class membership is not evident from the class definition

itself, it can often be objectively determined based on public records or records held by the class members or the defendant. In class actions involving environmental concerns, a geographical boundary is often used to determine who was likely harmed and should be included in the class.

After certification of a class under La C.C.P. Article 591 (B)(3), the best practicable notice is required to be given to class members including individual notice when the class members can be identified through reasonable effort. This notice must be given promptly after certification with ample time for a class member to exclude themselves prior to the trial on common issues in the case. A class member can exclude themselves typically by sending in a form available with the class notice or otherwise follow the instructions given in the notice. The proponents of the class action usually bear the cost of the notice.

3.5 Joinder

Under Louisiana's liberal joinder rules, multiple parties can be joined in order to gain efficiencies through common discovery and motion practice while still preserving an individual's right to a specific determination on the merits of their case or the damages they believe are due to them. If a class is certified, there should be no need for joinder of other plaintiffs as the class representative will represent all interests.

3.6 Case Management Powers of Courts

District courts in Louisiana generally have broad discretion and authority to create management tools to streamline a case or create schedules that are more suited for the complex nature of a class action or multi-party suit. Specifically, under C.C.P. Article 592 (E) (5), courts are given the authority to issue case management orders governing discovery and other matters affecting the order of proceedings. Some judges have their own rules or case management orders that they implement, but many courts are receptive to the suggestions of the parties as to case management practices, and encourage the parties to work together to create a reasonable schedule that provides sufficient time for discovery and motion practice without undue delay.

Article 592 (D) specifically provides that a Louisiana court can certify a class as to a specific issue, or divide a class into sub-classes to be treated as a class if they meet the requirements of Article 591. Test cases or "bellwether" trials are frequently used in multi-district litigation (MDLs) for personal injury suits in state or federal courts, but a Louisiana class-wide trial cannot be held that is based on the individual proof, causation or damages of a particular class member.

3.7 Length and Timetable for Proceedings

Because of the multiple procedural protections that come with class actions, and pre-certification and post-certification discovery, this process can add months or even years to the typical timeframe of an individual case. This additional time to reach resolution is balanced by the efficiencies created by having all claims determined in one case. Often, months are spent drafting the appropriate case management order, on the limits of pre-certification discovery and the briefing of class certification. Having a case management order in place with a reasonable trial date is an effective way to keep all parties and the court on an appropriate schedule and can further aid in pre-trial resolution of the case.

3.8 Mechanisms for Changes to Length/Timetable/Disposal of Proceedings

As with other civil actions, defendants in class actions have the right to file dispositive motions (called "exceptions" in Louisiana) prior to answering the petition, which can result in dismissal of the case before class certification is determined. However, in many instances discovery begins at least in part, so that class certification can be determined quickly if the case is to proceed. Given liberal pleading requirements at the early stages of a case, many cases survive this early pleadings challenge and move towards limited class discovery and class certification motion practice.

In federal courts in Louisiana, courts may issue a Lone Pine order as a case management tool to handle complex class issues and ease discovery burdens. Such orders are issued under the wide discretion afforded to district judges under Fed. R. Civ. P. 16 for the management of discovery. Typically, Lone Pine orders require plaintiffs to make a prima facie showing of

causation, injury or exposure by a date certain – or face dismissal. Lone Pine orders can be issued prior to discovery to define the scope or later in litigation in furtherance of settlement negotiations.

3.9 Funding and Costs

In Louisiana, class actions are typically funded by the attorneys bringing the action, who pays for all costs in the case. These cases are brought on a contingency-fee contract basis with the representative clients, and the clients typically have no obligation to reimburse counsel. In exchange, a client will be required to pay a percentage of the recovery to counsel, the amount of which may depend on the stage of the case, as well as the case costs expended in the case. In the class action context, after a successful class verdict or class settlement, the attorneys who have been appointed by the court to represent the class can apply for the recovery of reasonable fees and costs from the common fund created by their efforts. These fees and costs must be approved by the court after notice has been given to the class.

Litigation funding is increasingly available throughout the USA, and with that increase has come regulation. Louisiana has recently enacted laws that limit litigation funding and require disclosure of information about such funding to the Louisiana Attorney General. Given the recent legislative developments, these laws and their application should be thoroughly reviewed prior to entering into any agreement that involves litigation funding of a civil action in Louisiana.

3.10 Disclosure and Privilege

Full discovery is allowed in class actions in Louisiana, as elsewhere in the USA, and pre-certification discovery (class discovery) and post-certification discovery (merits discovery) are specifically provided for in Louisiana class actions under Article 592. However, given the overlap between class and merits discovery, where to draw the line can be a crucial issue, and it is often left to the court to resolve.

Louisiana permits a broad scope of discovery. Specifically, La. Code C.C.P. Article 1422 permits parties to obtain any non-privileged information relevant to the subject matter of the action, or that appears reasonably calculated to lead to the discovery of admissible

evidence. Trial courts accordingly have expansive discretion in regulating discovery and may limit or tailor discovery through protective orders to prevent undue burden or oppression. In general, Louisiana's discovery framework mirrors federal practice but does not mandate automatic pretrial disclosures and continues to employ an expansive relevancy standard. In class actions, Article 592 ensures the parties a reasonable opportunity to obtain discovery on class certification issues (including expert evidence) before the certification hearing.

Experts are frequently used at the class certification stage to opine on whether the requirements for class certification can be met. Those experts are usually required to provide pre-trial and trial disclosures or expert reports. The experts can be deposed and can be subject to a pre-certification hearing to test their qualifications and methodologies in the same manner as they would be prior to trial. If qualified, their testimony can be used to support or oppose class certification. If the class is certified and set for trial, additional expert reports may be served, experts deposed, and qualification and methodologies tested to determine whether they may testify to a jury on the merits of the case at trial, with each proceeding governed by Louisiana civil procedure rules and evidentiary rules.

Typical rules of attorney-client privilege apply to the information produced in discovery, with strong protections given to confidences shared with the attorney and to the attorney's work product. While expert reports and extensive documentation can be required of an expert, absent exceptional circumstances a draft expert report does not have to be produced to the opposing party. However, facts and data upon which the expert relied or considered, including information coming from counsel or whether experts considered alternative approaches, are fair game for inquiry of the expert by the opposing party.

3.11 Remedies

With few exceptions, Louisiana law permits class action plaintiffs to seek the full array of remedies that would be available in individual suits. This includes monetary damages to compensate for injuries or losses suffered by class members. Class actions can aggregate claims for general and special damages

(eg, medical bills, lost wages or other quantifiable economic losses) on behalf of all class members, even if individual damage amounts vary. Each class member is entitled to recover their proven compensatory damages, and the class mechanism ensures these individual damage claims are resolved together.

Louisiana class actions also support claims for equitable relief on a class-wide basis. If a defendant has acted or refused to act on grounds generally applicable to a class, the court may grant class-wide injunctive relief or declaratory judgments benefitting the entire class. For example, a class of plaintiffs can jointly seek an injunction to halt unlawful practices affecting all class members, or a declaratory ruling to establish the parties' rights under a statute or contract that uniformly impacts the class. The Louisiana Code of Civil Procedure expressly contemplates such class actions for injunctive or declaratory relief, mirroring the approach of Federal Rule 23.

In addition, Article 595 of the Louisiana Code of Civil Procedure expressly allows courts to award the representative plaintiffs their litigation expenses, including attorney fees, out of a common fund or recovery obtained for the class.

However, Louisiana imposes important limitations on punitive or exemplary damages in civil litigation, including class actions. Punitive and exemplary damages are generally unavailable under Louisiana's civilian tradition unless expressly authorised by statute. Civil penalties that function as punishment (such as statutory fines or multiplied damages) are treated similarly and may be recovered only when a statute explicitly allows private plaintiffs to seek those penalties.

3.12 Settlement and ADR Mechanisms

Many courts require parties, through their local rules or during the case management process, to engage in informal or formal mechanisms to resolve class actions prior to extensive litigation or trial. This is typically done through a non-binding mediation led by a private mediator experienced in complex litigation and the issues involved in the particular case.

3.13 Judgments and Enforcement of Judgments

A final judgment on the merits in a Louisiana class action is binding on all members of the certified class, regardless of whether each member was individually named or present in court. La. C.C.P. Article 597 explicitly provides that a definitive class action judgment concludes all members of the class, whether joined in the action or not, as long as the class representatives fairly and adequately represented the class. Thus, the judgment has *res judicata* effect for the entire class, resolving the common issues and claims for all class members.

Importantly, class members who have been given proper notice of the class action and a right to exclude themselves will not be bound if they choose to exclude themselves or "opt out" from the settlement in a timely manner. For Louisiana class actions seeking money damages, analogous to Federal Rule 23 (b)(3) classes, constitutional due process requires that absent class members receive notice and an opportunity to opt out of the class before judgment. Any members who validly opt out are excluded from the class and not affected by the final judgment. Otherwise, all persons fitting the class definition and not opting out are treated as parties to the judgment.

After the court renders a final judgment in a class action, no special enforcement mechanism is required beyond the ordinary procedures that apply to any civil judgment. For example, if the judgment awards monetary relief, the defendant is legally obligated to pay, and the class representatives, through class counsel, can use standard enforcement tools such as executing on the judgment or establishing a claims process to ensure class members receive the relief. If the judgment grants injunctive or declaratory relief, it binds the defendant to the same extent as any court order, and the court can supervise compliance using its usual powers.

4. Legislative Reform

4.1 Policy Development

Adhering to standards set by the Louisiana Supreme Court and influenced by federal jurisprudence, more

recently Louisiana courts have been applying a rigorous analysis in class certification decisions. The state's high court has made it clear that trial courts must carefully ensure every requirement of Article 591 is satisfied before a class is certified, often necessitating examination of the merits insofar as they overlap with certification issues. For example, in a recent class action seeking tuition refunds after universities shifted to remote learning during the COVID-19 pandemic, a Louisiana appellate court reversed a trial court's class certification, reasoning that a multitude of individualised inquiries would be needed to determine the defendant's liability as to each student plaintiff. The outcome in the case suggests a jurisprudential policy not to permit class actions to proceed unless the class is clearly cohesive and the statutory criteria are satisfied after rigorous judicial scrutiny.

Significant federal developments, including CAFA, which continues to funnel many large multi-state class suits into federal court, and recent US Supreme Court decisions (such as those enforcing arbitration clauses to bar class claims and tightening standing for class members) inevitably influence Louisiana practitioners.

4.2 Legislative Reform

Louisiana has seen recent legislative efforts to reshape class action practice. In 2024, the legislature approved a new litigation financing disclosure law to curb undisclosed third-party funding of lawsuits. This law imposes additional transparency in all civil cases, including class actions, by requiring that any third-party litigation financing agreements be disclosed. It bars foreign or outside funders from controlling litigation, a safeguard ostensibly aimed at preventing manipulation of class suits.

In 2021, the Louisiana legislature overhauled the Code of Civil Procedure's class-certification provisions, with input from the Louisiana State Law Institute. Under the updated Article 592, a plaintiff seeking class treatment must move for certification within a fixed time, generally within 90 days of the responsive pleadings, or else the court may strike the class allegations absent

a showing of good cause. Courts are prohibited from certifying a class action until all named defendants have been served and parties have had a reasonable opportunity to conduct discovery on certification issues. The law further codified that the proponent of the class bears the burden of proving all the prerequisites of Louisiana's class action rule; and it now requires courts to issue written findings of fact and reasons when ruling on class certification, if requested in a timely manner. A party can take an immediate appeal as of right from an order granting or denying class certification, ensuring prompt appellate scrutiny of such decisions.

More recently, in 2025 the legislature passed House Bill 416, which would prohibit class action lawsuits against the Louisiana Department of Revenue and its Office of Debt Recovery in matters related to tax administration. This measure forecloses tax refund or tax policy challenges from being pursued as class actions against the state's revenue agency, reflecting a policy choice to channel such disputes into individual claims or other procedures.

5. Key Trends

5.1 Impact of Key Trends

The prevailing trend within Louisiana is a state-driven calibration of class action policy. Through amendments to its class certification provisions, targeted legislation such as new funding disclosure requirements, limits on certain public-sector class suits and recent state-court jurisprudence, Louisiana is actively shaping how and when class actions can be utilised while attempting to balance efficient collective redress with the need to prevent over-broad class litigation.

Trends and Developments

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Certification of Consumer Class Actions in Louisiana and US Federal Courts

Overview

Certification of consumer class actions has become increasingly difficult as legislatures and courts continue to restrict what was once a liberal application of the class action statutes, particularly in the context of cases involving consumer fraud. As a result, consumer class actions are less frequently certified, and those that withstand the heightened certification scrutiny are often narrowly defined.

The trend of limiting class certification in US federal courts and in many states, including Louisiana, has been building for years. The most consequential change came with the passage of the Class Action Fairness Act (CAFA) in 2005, which significantly expanded federal jurisdiction over class actions, in an attempt to apply more uniform rules to class actions nationally, leaving only small, localised classes in state courts. Other federal changes include the 2003 and 2018 amendments to Rule 23, increasing judicial oversight and specifying the criteria for evaluating class action settlements.

This article highlights some of the challenges faced by consumer class action practitioners in Louisiana and in the USA, where the ability to certify consumer class actions has increasingly narrowed.

Ascertainability's role in class certification

What is "ascertainability"?

Ascertainability in the class action context refers to the ability to identify the members of the class using objective criteria. If the class is not objectively defined, potential class members will be unable to determine

whether or not they are members of the class in order to protect their legal rights, and courts will not be able to determine who is bound by any judgment rendered in a case.

Louisiana has an explicit ascertainability requirement for class certification, requiring the class to be defined objectively in terms of ascertainable criteria (La. C.C.P. Article 591 (A)).

Unlike Louisiana, the federal class action rule, Rule 23, does not have an explicit ascertainability requirement. Instead, ascertainability is generally treated as an implicit requirement of Rule 23, requiring a proposed class to be sufficiently defined and class members appropriately ascertainable. Most federal appellate circuit courts consider the determination of whether the proposed class is sufficiently defined and class members are appropriately ascertainable as being encompassed within the explicit class certification requirements, such as the predominance, superiority or manageability considerations of Rule 23 (b). However, a minority of federal circuit courts treat ascertainability as a threshold requirement for class certification, and not only do these courts require the plaintiff to show an objectively defined class, but they also require the plaintiff to show a reliable, administratively feasible method for identifying class members – ie, one that does not require individualised fact-finding. This heightened ascertainability requirement adds to the difficulty of obtaining class certification of consumer class actions.

What is an objectively defined class?

There is no bright line governing ascertainability. Whether a class is objectively defined will vary from

court to court. However, there are certain characteristics of class definitions that courts generally agree do not constitute an objectively defined class, which includes class definitions that:

- are vague and ambiguous – Indiana Medicaid recipients who have a disability, were recommended for certain services or treatments by a treating provider, were inaccurately evaluated during the coverage or prior approval process with Medicaid, and have or will be harmed as a result;
- are based on subjective criteria, such as state of mind – all individuals who consumed Diet Coke from the fountain, deceived by the marketing practices employed by Coca-Cola Company into believing that fountain Diet Coke does not contain saccharin; and
- depend on a merits determination (referred to as “fail-safe” classes) – all persons who were present in the defendant’s building between 1 September 1998 and 30 November 1998 and subjected to unlawful electronic audio surveillance.

How do you objectively identify class members?

Even a proposed class that does not suffer from any of the above infirmities may still fail to satisfy the ascertainability requirement if there is no objective means of identifying class members. In Louisiana, the ascertainability requirement has been met where information necessary to identify class members is available from the defendant’s own data or some other type of data or documentation. The same is true in federal courts.

However, objectively identifying class members can be an obstacle to certification of consumer classes for economic loss associated with the purchase of low-cost products or services, because in those instances few consumers retain receipts or other documentary proofs of purchase. Further, consumer protection statutes in many states apply only to goods or services purchased by “consumers” or “for personal use”, which is not typical information found in receipts or a seller’s data. However, with some consumer products, including prescription medications, purchase data is required to be kept by the seller. In other instances, loyalty programmes, often used in chain pharmacies and grocery stores, track and keep sales data associated with the member, and purchase of these

products may be more susceptible to proof of class membership. For good cause shown, the store collecting the data can be required to produce this data even when they are not a party in the case.

Otherwise, self-identification by affidavit or similar documentation is the only way to establish class membership. Some courts do not find self-identification to be an insurmountable barrier to class certification, but where self-identification is not permitted, the determination of whether each class member purchased the product for personal use is often cited as an individual issue precluding class certification, whether couched in terms of ascertainability or one of the explicit Rule 23 requirements, such as predominance. Compare *Mullins v Direct Digital, LLC*, 795 F.3d 654, 669 (7th Circuit 2015) (stating district courts should have discretion to allow class members to self-identify and to establish mechanisms to test such affidavits if needed, analogising to the use of self-serving affidavits to support a motion for summary judgment) with *City Select Auto Sales Inc. v BMW Bank of N. Am. Inc.*, 867 F.3d 434, 441 (3d Circuit 2017) (finding that affidavits standing alone without records to identify class members or a method to weed out unreliable affidavits would not constitute a reliable and administratively feasible means of determining class membership).

In an environment where fewer consumer class actions are certified, the ability to craft a clear, concise and appropriate class definition is more important than ever, along with advanced determination of whether the added component of administrative feasibility can be met. Advanced analysis of each should be given in preparing to file a class action.

The use of standing to limit or deny consumer class actions

The US Constitution’s Article III standing requirement is a powerful constraint on consumer class actions in federal courts, often leading courts to narrow or dismiss suits where plaintiffs cannot show concrete harm. The class representative is required to have an injury-in-fact – and, as the Supreme Court has noted, the class action device “adds nothing” to the question of standing. If the named plaintiff has no real stake in the controversy, the class cannot proceed.

Federal courts have wielded this principle to bar so-called no-injury class lawsuits. For example, class representatives were found to lack standing in a class action on behalf of a class of prescription drug purchasers who sought only economic damages for the purchase of the drug but who suffered no ill effects from the drug. The court reasoned that the class representative plaintiffs lacked any injury-in-fact because they had not experienced the injury (liver damage) that prompted the drug's recall and had no contract with the manufacturer to claim a benefit-of-the-bargain loss.

Though not bound by the same Article III requirements, Louisiana state courts impose comparable limits. Louisiana's concept of "right of action" requires a class representative to have a real interest in the claim, and courts have refused to let an uninjured person represent a class. However, if a case is removed to federal court under CAFA, Article III's stricter requirements apply. Defendants, thus, frequently invoke standing in CAFA-removed cases to narrow or defeat class claims that state law might have tolerated under a broader statutory right.

In a doctrinal example, the US Supreme Court held in *Spokeo v Robins*, 578 U.S. 330 (2016) that a statutory cause of action provided in the Fair Credit Reporting Act did not eliminate the need for a concrete, particularised injury where the defendant had violated the statute but the violation did not otherwise harm the plaintiff. After *Spokeo*, federal courts have dismissed consumer class claims based on technical violations or abstract harms if plaintiffs cannot show a tangible loss, such as an out-of-pocket loss or a product defect that actually diminished the product's value. Conversely, courts find standing when a consumer alleges a definite economic injury, such as paying more for a product than it was worth due to an undisclosed defect. Economic losses are treated as concrete injuries; speculative or purely emotional grievances are not.

Additionally, defendants often argue that a class including uninjured members cannot be certified, since courts lack jurisdiction over claims by those with no injury. Some courts have adopted this stricter view, insisting that class definitions exclude anyone without

an injury-in-fact, forcing plaintiffs to narrow the class to only those actually harmed or else face denial of certification. Other courts take a more accommodating approach, treating the inclusion of some uninjured individuals as a matter for Rule 23 (typicality, predominance) rather than a constitutional bar, as long as the class representative has standing. In such courts, standing is primarily a threshold question for the class representative, and any uninjured class members can be screened out by refining the class or at the damages phase.

At judgment, however, every class member who seeks relief must have standing. The Supreme Court held in *TransUnion LLC v Ramirez*, 594 U.S. 413 (2022), that uninjured class members cannot recover damages and overturned a class damages award for members whose credit reports were shown to be inaccurate, but whose reports were never disseminated, because the risk of harm never materialised into a concrete injury.

The standing doctrine is also used to narrow class claims by product and geography. Courts often hold that a plaintiff lacks standing to sue over products never purchased or purchased in another state with laws that do not recognise an injury. Thus, multi-product classes are limited to the products the plaintiff actually purchased, and nationwide classes are pared down to the states in which the plaintiff was injured. This prevents a class representative from extending his or her claims beyond his or her own transactions and jurisdictions.

Finally, standing limits certain remedies in class actions, most notably claims for injunctive relief. To have standing for an injunction, a plaintiff must show a likelihood of future injury. In consumer cases, however, a past purchaser now aware of an alleged fraud or defect ordinarily cannot demonstrate a likelihood of future injury since no imminent threat remains. Absent a credible ongoing threat, class-wide injunctive relief is, thus, unavailable in federal court.

Motions to strike class allegations

Motions to strike have become increasingly powerful weapons to eliminate class actions entirely or substantially narrow the scope of claims and/or relief early on in a litigation. In Louisiana, plaintiffs should care-

fully consider satisfaction of each of La. C.C.P. Article 591's factors in drafting class definitions to avoid fatal flaws in class allegations at the pleading stage.

Louisiana Civil Code of Procedure Article 964 governs a general motion to strike and provides that it may be filed at any time; and if granted, any insufficient demand or other material will be stricken from the pleading. This allows a defendant to pre-emptively strike class allegations prior to taking discovery or beginning the certification process if deficiencies are facially apparent from the petition. The most successful challenges have been to typicality (eg, overbroad class definitions that include uninjured members), predominance (eg, variances that overwhelm any common questions of law or fact) and ascertainability requirements (eg, fail-safe classes or class membership that is based on subjective criteria) precluding class treatment. This practice is similarly permitted in the federal system pursuant to federal Rule 12 (f), on which La. C.C.P. Article 964 was modelled.

Louisiana also has a specific procedure for striking class action allegations if the plaintiff fails to timely move for class certification (La. C.C.P. Article 592). If the class demand is stricken, the lawsuit can proceed with the named plaintiffs, but without class relief. This mechanism for striking is available only after class certification-related discovery is taken. And class relief can be later reinstated for good cause shown.

Louisiana's restrictions on consumer class actions under certain theories of liability

While the class action mechanism has traditionally been a valuable tool used to redress consumer grievances and for economic losses that would otherwise not be individually litigated, there are certain theories of liability under Louisiana law where class treatment is not available.

Louisiana permits consumers harmed by unfair, anti-competitive and deceptive business practices to bring an individual claim for damages, including treble damages for a knowing violation, pursuant to the Louisiana Unfair Trade Practice Act (LUTPA). However, the legislature has prohibited such claims from being brought by a consumer as a class action (La. Rev. Stat. Ann. Section 51:1409). Instead, the exclusive availability of

the class device for a restitutionary recovery or injunctive relief under LUTPA is limited to an enforcement action brought by the Attorney General. And the Louisiana Supreme Court has narrowly interpreted LUTPA to sanction only egregious conduct that offends public policy.

Louisiana has further narrowed the universe of available consumer claims in the Louisiana Products Liability Act (LPLA), which sets forth the exclusive theories of liability for manufacturers for damages caused by their products (La. Rev. Stat. Ann. Section 9:2800.52). Moreover, the vast majority of federal courts applying and interpreting Louisiana law find that not only does the LPLA subsume all LUTPA claims involving products, but alternative claims such as fraud, breach of warranty or unjust enrichment are also subsumed by the LPLA.

Louisiana recognises a tort of "redhibition", which gives a buyer the right to seek a refund or reduction in price for hidden defects in a product that make it useless or its use so inconvenient they would not have purchased it (La. C.C. Article 2520). Redhibition claims are an exception to the LPLA's exclusivity provision (La. Rev. Stat. Ann. Section 9:2800.53 (5)). In sum, economic loss claims by consumers generally fall under redhibition, and personal injury claims fall under the LPLA.

Recent developments in Louisiana consumer class action cases

Recently, the Louisiana Supreme Court has arguably created a de facto LUTPA exemption for alleged unfair and deceptive practices by public entities (*Law Industries, L.L.C. v State of Louisiana Dept. of Education*, 23-00794 (La. 1/26/24); 378 So. 3d 3, 8) (dismissing a subcontractor's LUTPA claim against the Louisiana Department of Education for backing out of a school refurbishment contract because it was not engaging in "trade of commerce" but was merely a consumer of construction-related services and acting in accordance with its governmental function capacity). This decision could potentially strip future plaintiffs of a remedy when the state acts unfairly.

In June 2025, the Louisiana Attorney General filed several class action lawsuits against CVS Health

Corporation (CVS) and others alleging their business practices violate LUTPA – specifically, alleging that CVS wrongly misused customers’ personal information and data to disseminate a statewide mass text message campaign to oppose proposed legislation that would prohibit pharmacy benefit managers like CVS from owning or controlling pharmacies. The Attorney General argued that CVS’s text messages to customers with serious health conditions provoked fears of pharmacy closures and crossed an “ethical and legal line” in violation of the “fundamental principles of confidentiality and trust in the pharmacist-patient relationship”. The lawsuit further alleges that CVS’s text messages breach their own terms of service and internal privacy policies.

Similar federal class action litigation has spawned from unsolicited communications, pleading in the alternative, that these mass marketing tactics and unwanted messages violate the Telephone Consumer Protection Act (TCPA), 47 U.S.C. Section 227. This was the precise issue in *McLaughlin Chiropractic Assoc., Inc. v McKesson Corp.*, 606 U.S. 146 (2025), decided by the US Supreme Court in June 2025 finding courts are not required to accept the Federal Communications Commission’s agency interpretation of “calls” as it relates to violations of the TCPA.

As a result of *McLaughlin*, the lower courts must decide the proper interpretation of whether text messages and other communications are considered “calls” for purposes of violations of the TCPA. Prior to *McLaughlin*, dozens of courts across the country had already held that texts are considered a “telephone call” for purposes of solicitation under the TCPA. Now, the issue will be developed through future case law under a new standard, thus creating an immediate split among the federal courts that could significantly affect outcomes, depending on where the action is filed.

Data breach litigation is another increasing trend in class actions. In terms of certifying a Rule 23 (b)(3) class and satisfying predominance requirements, a class action must allege that a business entity had a duty to exercise reasonable care in safeguarding, securing and protecting the personally identifiable information of a plaintiff and/or settlement class mem-

bers, and it breached that duty – see, eg, La. Rev. Stat. Section 51:3074 (A)–(E) (imposing specific duties to: (1) “implement and maintain reasonable security procedures... appropriate to the nature of the information to protect the personal information from unauthorized access, destruction, use, modification, or disclosure”, and (2) “take all reasonable steps to destroy... the records... containing personal information that is no longer retained”, among others).

“As here, when the amount at stake for any individual plaintiff would not make litigating a data breach dispute worth the time, money, or effort, certifying the case as a class action allows the claims of those impacted to be resolved efficiently at one time”. *Merrell v 1st Lake Props., Inc.*, No 23-1450, 2025 U.S. Dist. LEXIS 98269, at *13 (E.D. La. May 22, 2025).

Lastly, recent decisions under the LPLA have the potential to open the door to class action liability for sellers or distributors of imported and defective products and as against online marketplace operators selling foreign defective products. For example, in June 2024, the Louisiana Supreme Court held that under the LPLA, Amazon, as an operator of an online marketplace, is a “seller” of third-party products sold in its marketplace when it did not hold title to the product but: (i) had physical custody of the product in its distribution warehouse; and (ii) controlled the process of the transaction and delivery through its product fulfilment programme (*Pickard v Amazon.com, Inc.*, 2023-CQ-01596 (La. 6/28/24); 387 So. 3d 515). See also *Pickard v Amazon.com, Inc.*, No 5:20-cv-01448, 2024 U.S. Dist. LEXIS 215377, at *15–*19 (W.D. La. Nov. 25, 2024) (analysing statutory provisions of the LPLA and finding Amazon, as the importer or distributor of a non-US-made product, was functioning as the alter ego of the foreign manufacturer); *Smith v China Mfrs. All., L.L.C.*, No 2:19-CV-01111, 2025 U.S. Dist. LEXIS 25757 (W.D. La. Feb. 12, 2025) (denying motion for summary judgment for a tyre distributor and importer that did not manufacture defective tyres because issues of material fact existed as to whether the tyre distributor was the alter ego of the foreign manufacturer); *Tuminello v ABC Ins. Co.*, No 23-446 (La. App. 3 Cir. 2/28/24); and 2024 La. App. LEXIS 373, at *23 (the sole US distributor of Italian company’s artificial snow products was a “manufacturer”).

As a result of the challenges in satisfying the class action procedural requirements and substantive obstacles for certification for traditional consumer fraud class actions, and in light of the development of new technologies and business strategies, the landscape of consumer class actions suggests a shift towards data-driven consumer protection class actions concerning misleading privacy policies, data breaches, unsolicited mass communications, nebulous pricing and covert fees, among other deceptive marketing practices. The law in this area will further develop as the focus of class action litigation changes.

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