
Third Circuit Clarifies Rigorous Class Certification Standards

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On December 30, 2008, the United States Court of Appeals for the Third Circuit issued its decision in *In re: Hydrogen Peroxide Antitrust Litigation* (1), following the more stringent standard adopted by several other circuits when deciding whether to certify an action to proceed as a class. The Court of Appeals clarified three main points under Rule 23 of the Federal Rules of Civil Procedure:

- (i) a decision to certify a class requires factual determinations, not merely a threshold showing, which must be made using a preponderance of the evidence standard;
- (ii) the court must resolve factual or legal disputes relevant to class certification even if those disputes overlap with the merits of the case; and
- (iii) the court is obligated to consider all expert testimony by either party and review all relevant evidence in making a class determination. (2)

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