# The George Washington Law Review

VOLUME 79

Number 2

FEBRUARY 2011

### **Aggregate Litigation: Critical Perspectives**

#### Foreword

Aggregate Litigation Reconsidered 293 Roger H. Trangsrud

#### Keynote

The Future of Mass Litigation: 306 Deborah R. Hensler Global Class Actions and Third-Party Litigation Funding

#### **ISSUES IN THE CERTIFICATION OF CLASS ACTIONS**

Reviving Judicial Gatekeeping of Aggregation: Scrutinizing the Merits on Class Certification	324	Richard Marcus
A Solution to the Choice of Law Problem of Differing State Laws in Class Actions: Average Law	374	Luke McCloud and David Rosenberg
The Jurisdictional Nature of Adequate Representation in Class Litigation	410	Patrick Woolley
Other Issues Attending the	Use	OF CLASS ACTIONS
Improving the Class Action Settlement Process: Little Things Mean a Lot	428	Alan B. Morrison

Federal Class Actions: A Near-Death 448 Linda S. Mullenix Experience in a Shady Grove

Copyright © 2011 by The George Washington Law Review

"Abandoned Claims" in Class Actions: 483 Edward F. Sherman Implications for Preclusion and Adequacy of Counsel

#### NONCLASS AGGREGATE LITIGATION

Group Consensus, Individual Consent	506	Elizabeth Chamblee Burch
Optimal Class Size, Opt-Out Rights, and "Indivisible" Remedies	542	David Betson and Jay Tidmarsh
The Puzzling Idea of Adjudicative Representation: Lessons for Aggregate Litigation and Class Actions	577	Robert G. Bone
Compared to What?: ALI Aggregation and the Shifting Contours of Due Process and of Lawyers' Powers	628	Judith Resnik

## **ETHICS IN AGGREGATE LITIGATION**

Anatomy of an Aggregate Settlement: The Triumph of Temptation over Ethics	700	Lester Brickman
The Absence of Legal Ethics in the ALI's Principles of the Law of Aggregate Litigation: A Missed Opportunity—and More	717	Nancy J. Moore
Client Representation vs. Case Administration: The ALI Looks at Legal Ethics Issues in Aggregate Settlements	734	Thomas D. Morgan
Ethics and Innovation	754	Charles Silver



Richard A. Nagareda 1963–2010

Richard A. Nagareda, the David Daniels Allen Distinguished Chair in Law and Director of the Cecil D. Branstetter Litigation and Dispute Resolution Program at Vanderbilt University Law School, passed away on October 8, 2010, at age 47.

Professor Nagareda was a leading civil litigation scholar, whose work focused on class actions and aggregate litigation. He authored several prominent books and numerous influential articles on these topics. In addition to being a respected scholar, Professor Nagareda was an esteemed teacher who held the three-year Tarkington Chair for Teaching Excellence from 2006 to 2009 and was recognized three times by his students with the Hall-Hartman Award for Excellence in Teaching.

Professor Nagareda also served as an Associate Reporter for the American Law Institute's Principles of the Law of Aggregate Litigation, completed in 2010, which was a centerpiece for the papers in this symposium. Professor Nagareda was an active participant in the symposium and moderated one of the panels.

In recognition of his life and his contribution to this symposium, the Law Review dedicates this Issue to his memory.

