

RULE 42. CLASS ACTIONS

Certain Inchoate Claims. A class action personal injuries, death, products liability or property damage involving mass tort or disaster litigation, claimants whose injuries or claims are wholly inchoate may not be certified as a class or subclass or included within another certified class or subclass. Injuries or claims are considered “wholly inchoate” where there has been no discernable or detectable manifestation of injury or damage using admissible expert evidence. In certifying classes, the court is shall, after a hearing and upon proper evidence presented, determine whether any claimants assert wholly inchoate claims. Inchoate claims excluded from class certification shall, by court order, be protected against the running of any applicable statute of limitations by a specific finding that the claims have not manifested, ripen accrued or been discoverable as of the date of the written order. Entry of an order containing such findings shall not trigger any applicable statute of limitations.

(2) After the court has determined that a class action may be maintained it shall order the party claiming the class action to direct to the members of the class the best notice practicable under the circumstances including individual notice to all members who can be identified through reasonable effort. In all class actions maintained under subdivisions (b)(1), (b)(2), and (b)(3), this notice shall advise the members of the class (A) the nature of the suit, (B) the binding effect of the judgment, whether favorable or not, and (C) the right of any member to appear before the court and challenge the court’s determinations as to the class and its representatives. In all class actions maintained under subdivision (b)(4) this notice shall advise each member of the class (A) the nature of the suit; (B) that the court will include him in the class only if he so requests by a specified date; (C) that the judgment, whether favorable or not, will include and bind all members who do request inclusion by the specified date; and (D) that any member who does not request inclusion may if he desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under subdivisions (b)(1), (b)(2), and (b)(3), whether or not favorable to the class, shall include, describe, and be binding upon all those whom the court finds to be members of the class and who received notice as provided in subdivision (c)(2). The judgment in an action maintained as a class action under subdivision (b)(4), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have

requested inclusion and whom the court finds to be members of the class.

(g) Class Counsel.

(1) Appointing Class Counsel.

- (A) Unless a statute provides otherwise, a court that certifies a class must appoint class counsel.
- (B) An attorney appointed to serve as class counsel must fairly and adequately represent the interests of the class.

(2) Appointment Procedure.

- (A) The court may allow a reasonable period after the commencement of the action for attorneys seeking appointment as class counsel to apply.
- (B) In appointing an attorney class counsel, the court must consider (i) counsel's experience in handling class actions and other complex litigation, (ii) the work counsel has done in identifying or investigating potential claims in this case, and (iii) the resources counsel will commit to representing the class, and may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class. The court may direct potential class counsel to provide information on any such subject and to propose terms for attorney fees and nontaxable costs. The court may also make further orders in connection with selection of class counsel.
- (C) The order appointing class counsel may include provisions about the award of attorney fees or nontaxable costs.

(3) Rule 8 Applicable. The provisions of Rule 8 also apply to this rule.

- (h) Attorney Fees Award.** In an action certified as a class action, the court may award reasonable attorney fees and nontaxable costs authorized by law or by agreement of the parties as follows:

- (1) *Motion for Award of Attorney Fees.* A claim for an award of attorney fees and nontaxable costs must be made by motion, subject to the provisions of this subdivision, at a time directed by the court. Notice of the motion must be served on all parties and, for motions by class counsel, given to all class members in a reasonable manner.
- (2) *Objections to Motion.* A class member or a party from whom payment is sought may object to the motion.
- (3) *Hearing and Findings.* The court may hold a hearing and must find the facts and state its conclusions of law on the motion.

