

Class action lawsuits and the legal assistant's role.

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Definition

By Rod Hughes

Pharmaceutical executives shudder at the thought of them. Tobacco companies abhor them. Fast food giants scramble to avoid them, and too many Americans seem to find themselves entangled in them. However, class action lawsuits are on the rise, and at the heart of nearly every one is a paralegal or team of paralegals working to either provide the ability to prosecute them or defend against them.

In an increasingly litigious society, class action lawsuits have become a common occurrence. In an effort to control costs and allow attorneys to focus on the theories and strategies necessary to cope with such litigation, paralegals continue to man the front lines of the class action battlefield.

One of the problems with defining the paralegal's role in class action matters is the very nature of the work. Due to the sensitivities that must be considered in most class action matters — and in some cases it has more to do with the public profile of the parties involved — many paralegals are reluctant to discuss their perspectives on class action lawsuits. Of the 12 paralegals and three attorneys contacted for this article, only three paralegals and one attorney agreed to speak on the record. The others alternately said that speaking, even in general terms, could be hazardous to their firms' client's positions or were told by supervisors they could not consent to an interview.

One Philadelphia attorney, who asked not to be named, put the situation succinctly: "It's rarely ever a done deal. Class actions go on forever, and no one wants to say or do anything in the media that would harm or even cause concern for a client who might not be media friendly."

The Paralegal Steps In

In this field of large litigation and sensitive case matters, where does the paralegal fit in?

"My primary role in such cases is to obtain, review and organize documents for use in fact investigations, as well as prepare depositions and written discovery in the lawsuit," explained Sanford G. Roberts, a paralegal with Levy, Morse & Wheeler in Englewood, Colo.

With 25 years of paralegal experience, and more than a few class action matters under his belt, Roberts is like a lot of his colleagues working on such matters. His role is to lay out all the relevant facts so the legal team can develop a coherent strategy. As Roberts noted, this sometimes can involve a massive amount of documents. In large class action matters, like those covered in the media related to recent tobacco settlements or well-known pharmaceutical companies, it's not uncommon for paralegals to find themselves facing entire warehouses full of documents, enormous database entries and a legal team spanning several law firms and temporary staff members.

J. Alex Grimsley, a partner with Bryan Cave in Phoenix, said the primary responsibility for paralegals in his office working on class actions is information management. "My paralegals are responsible for maintaining the file, organizing information regarding class members and preparing witness books and other trial aids," he said.

For most, that often is a tall order. Paralegals working on class action matters begin with a basic premise: get organized. That means trying to assemble a broad overview of the entire matter. Paralegals in these situations often begin by establishing databases to track both information and clients. These records can range from extensive, detailed medical records to simple but large customer mailing lists.

The paralegal's job is to sift through thousands, sometimes millions of pages of documents to determine what is critical and how to categorize the vast amount of data. As such, just organizing the information can take countless legal team

members months of review and data entry time.

It's also not uncommon for paralegals to be the first ones to conduct comprehensive reviews of depositions, pulling the most relevant materials to support the client's goals. Because attorneys handling class action lawsuits must focus on strategy, it's often left to the paralegal to cull out the relevant

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information that helps to build the foundation for a case. Just like Roberts, legal assistants frequently find themselves preparing drafts for discovery requests, responses and disclosures when handling class action lawsuits, sometimes because they are closer to the particular issues of a case than some of the attorneys.

"Paralegals are a critical component to my class action practice," Grimsley said. "Without [paralegals], I could not possibly manage the large amounts of data and factual information that are involved."

One prominent East Coast attorney, who asked not to be named, even went so far as to claim that while she conducts client and witness depositions, none of the subsequent materials from those meetings are presented to her without first being thoroughly reviewed by the lead paralegal on her

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legal team. This attorney said class action lawsuits, if not managed properly, can be unwieldy. "You have to surround yourself with smart, capable people to manage cases like this. Nothing crosses my desk of any consequence until [the lead paralegal] has reviewed it. The lead paralegal generally has a stronger grasp of the minute details of

certain matters, allowing me and the other attorneys to focus on the bigger picture items."

Bridgett Klingbeil, a litigation paralegal at Vorys, Sater, Seymour and Pease in Columbus, Ohio, agreed and said a paralegal's biggest contribution to class action lawsuits often is being the keeper and disseminator of critical information. She said her role consists of coordinating discovery and case file maintenance, allowing the attorneys to focus on strategy while she handles the collection, categorization, organization and analysis of hundreds of thousands of pieces of information existing in any given class action matter.

"The amount of documentation in class actions sometimes can be staggering. In a recent class action in which our firm won a defense trial verdict, the documents made available during discovery probably exceeded one million pages," Roberts said. "For certain class actions, millions of pages of documentation are just the starting point."

To be most effective in the role of information manager, Klingbeil said she believes paralegals must have a working knowledge of litigation document management software, as well as other database programs.

Computer skills are critical. More than a few cases begin with information stored in word processing programs long before a database of any kind is deemed necessary. The ability to manipulate Microsoft Word, Corel WordPerfect and document management and database programs is a necessity when tackling class action information. Programs such as OnBase by Hyland Software Inc., Alchemy MailStore by Captaris Inc., Laserfiche, Legal Files by Legal Files Software Inc., Practice Manager by RealLegal and

Case Manager Pro by Solutions In Software Inc., are only a handful of the programs paralegals might find useful in a class action suit.

Those who have been involved in class action matters even argue that paralegals should take the time to become familiar with at least two or three legal-specific document management programs so they can move

quickly when recommendations or quick data action is required.

"A lot of times the information comes to you in raw form, meaning there is no database. When that happens, you have to make quick but informed decisions on what you will recommend to your employer for managing all that data. If you know a little something about a database program or two, you already are ahead of things and can immediately reinforce your value to the other members of the legal team," said one class action veteran paralegal, who asked not to be named.

Keeping Current

Along with managing volumes of documents, class action paralegals need to be aware of changes, big and small, in laws and statutes affecting class action suits. Perhaps the most notable of those changes occurred on Feb. 18, when President Bush signed into law the Class Action Fairness Act of 2005. Simultaneously derided as anti-consumer and pro-business legislation, the

act is being lauded as a significant step in curbing junk lawsuits often filed in "judicial hellholes" favorable to large verdicts (see "Report Names 'Hellholes,'" May/June *LAT*). The new legislation will change the way attorneys approach future class action lawsuits, how they structure some of their billing and where they will argue their cases. The question many class action paralegals now are considering is exactly how the new legislation will affect them.

Under the new law, which applies only to class actions filed on or after Feb. 18, federal jurisdiction may apply in cases where the amount in controversy exceeds \$5 million, the class contains at least 100 members, or any member of the class is a citizen of a state different from any defendant.

In addition, under the Coupon Settlement provision, the act limits legal fees where plaintiffs receive coupons instead of cash settlements by linking the fees to the value of the coupons or the actual hours spent on a case. The White House claims this will discourage some attorneys from filing

junk lawsuits and ensures attorney fees will not outstrip any awards or settlements for the class itself.

"The goal of providing defendants a procedural avenue to escape certain state court jurisdictions known to be plaintiff friendly in class actions is a good one from a defendant's perspective. Of course, [the act] also could result in a proliferation of individual, state-specific class actions, which might not work to a defendant's benefit from a cost perspective," Grimsley said. As for the new law's impact on paralegals, opinions range from no effect to taking a wait-and-see approach.

Roberts said he sees the act making little difference in the work lives of paralegals. "There will be more cases removed to federal court, but the documents and the facts of a case that paralegals need to master will remain the same," he said.

Grimsley agreed, saying he saw no indication the new legislation would change things for paralegals.

However, Laura Ross, a paralegal with Briggs & Morgan in Minneapolis, said for those who have mastered

Class Actions Are Everywhere

In just the past few months, countless class action lawsuits have been filed all across the United States. Here is an overview of a few recent class action matters reported — some new and some settled — by various media outlets.

AuthentiDate Holding Corp. — a complaint filed by shareholders alleging federal securities law was violated regarding a series of material representations made by the company between Sept. 29, 2003 and May 27, 2005. The lawsuit was filed on June 6 in the U.S. District Court for the Southern District of New York.

First American Title Insurance Co. — a class action lawsuit filed on May 27 in St. Clair County Circuit Court in Illinois alleging the company misrepresented closing charges. Class members seek less than \$75,000, and it's believed to be the first class action filed in that district to meet the state court filing criteria prescribed by the Class Action Fairness Act of 2005 because the class members seek less than \$5 million.

Roman Catholic Church — the Diocese of Covington, Ky., announced on June 3 a proposed \$120 million settlement, subject to court approval, that would establish a fund to pay victims of clergy abuse alleged in a class action lawsuit filed in 2003.

DreamWorks Animations SKG Inc. — a complaint filed by purchasers of securities alleging the company issued a series of material misrepresentations to artificially inflate the price of

the organization's securities. The lawsuit was filed on June 6 in the U.S. District Court for the Central District of California.

Certified Class Action — in May, the 14th Texas Court of Appeals ruled to allow two men to proceed with an intended class action lawsuit against several local strip clubs, alleging the clubs violated state law by adding a \$5 credit card charge to the price of a lap dance. The suit originally was filed in 2003.

Avon Products Inc. — the California Court of Appeal reinstated a class action lawsuit against Avon in May for unfair business practices, fraud and breach of contract on behalf of women who sell the company's products. The class, estimated to be in the thousands, claims the company forced products on its sale representatives or deliberately shipped more products than sales representatives ordered.

Countrywide Home Loans Inc. — announced in late May a settlement of \$30 million to settle claims of a class of approximately 400 workers in its Rosemead, Calif., call center concerning overtime pay, wage and hour claims, and meal breaks.

Vegas Grand — a class action lawsuit on behalf of hundreds of Vegas Grand condominium purchasers was filed on May 19 after the Las Vegas property developer allegedly issued a unilateral cancellation of the purchasers' agreements calling for those purchasers to either accept the cancellation and a refund of the deposit, or sign new reservation contracts at higher price points.

their local court systems, a culture shock might be in the offing.

"Those firms and paralegals who have focused on class actions arising from state law clearly are going to have a more difficult time, and [perhaps] that was the intent of the changes," Ross said.

Although the nuances of evidence and filings might change, many agree a potential change of venue likely will have few effects on the paralegals working in this new class action environment.

Ross said sometimes it isn't so much the law you need to track, as those who make laws. "Because my class action cases have arisen out of civil rights law, healthy administrative offices clear of corporate influences are important — offices like the Equal Employment Opportunity Commission and the Commission on Civil Rights, which have both gone through substantive changes in the past five years," she said. "In the same light, a paralegal working on a securities class action for plaintiffs would need effective securities and consumer laws."

These are some of the more subtle changes paralegals like Ross must track that can affect class action matters.

Doing Your Homework

The best way to keep up to date on class action laws and information is to look for continuing legal education wherever you can find it. The first place to look is your local paralegal associations and paralegal programs. With class action lawsuits on the rise and the role of paralegals constantly expanding, local associations and programs are beginning to feature seminars and presentations on this topic. For example, the Kansas Paralegal Association recently included a workshop on class actions for paralegals at its annual meeting.

National associations also are getting into the class action game, with the National Federation of Paralegal Associations currently offering a series called "A Critical Update on the Class Action Fairness Act." Each session highlights a different state, with upcoming seminars focusing on Maryland, Colorado and Alabama. The classes are sponsored by the National Business Institute (www.nbi-sems.com).

In addition, several CLE providers now are offering class action seminars, open to attorneys and paralegals, most of which are available for purchase if you can't physically attend. Many include manuals and other materials, and might qualify for CLE credit with NFPA or the National Association of Legal Assistants. Recent seminars available on tape include:

- "Litigating Class Action Lawsuits: A Perspective From All Sides," put on by the Chicago Bar Association in March 2005, and available from WestLegalEdcenter (www.westlegaledcenter.com).
- "Practicing Under the Class Action Fairness Act," a June 2005

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seminar available from HalfMoon Seminars (www.halfmoonseminars.com).

- "California Paralegal's Guide to Conducting Discovery in Class Action Lawsuits," an online seminar offered by the Institute for Paralegal Education, in conjunction with WestLegalEdcenter (Go to the IPE Web site, www.nbi-sems.com, for a direct link to this seminar, as well as seminars for many other states).

Along with seminars, class action resources on the Web abound. An excellent repository of generalized information exists on the Class Actions and Derivative Suits Committee Web page of the American Bar Association (www.abanet.org/litigation/committee/classact). The site offers a quarterly newsletter, recent circuit court decisions, upcoming events and a recently published analysis of the Class Action Fairness Act of 2005 by Scott Nelson. To access much of this information, you need to be a member of the ABA, or at least be able to coax your attorney supervisor into downloading and printing some of the ABA's information for you.

The Association of Trial Lawyers of America offers a Class Actions Resource Center on its site consisting

of news and commentary related to class action lawsuits. The page, located at www.atla.org/pressroom/facts/classactions/classactions.aspx, includes a few newspaper editorial links and research-related articles.

For those looking to stay abreast of ongoing class action lawsuits and settlement news, a seemingly timely online resource is Lawyers and Settlements (www.lawyersandsettlements.com), which provides nuggets of information on potential class action filings, current class action lawsuits and recent settlements. It's worth pointing out this site, like many online resources for class action matters, appears to primarily function as a data screening service for emerging class action matters.

And finally, if you are new to class actions, a good place to start is FindLaw's Class Action Center (<http://classaction.findlaw.com>), which offers everything from pharmaceutical class action information, to a general primer on class actions titled "Class Actions and Other Multi-Party Litigation in a Nutshell."

Experiencing the Action

One thing every paralegal working in class action litigation needs is experience. All those interviewed for this article agreed there is no substitute for simply getting in on the ground floor of a class action matter when possible. If your firm handles class action lawsuits, volunteer to assist the legal team. If you are a paralegal student, seek out internships with firms that have a reputation for handling class action lawsuits in your area.

Many paralegals — both on and off the record — noted class action lawsuits are sometimes merely typical litigation matters, jumbo-sized, which require paralegals with good organizational skills and good memories. "[Class action paralegals] need to develop an ability to review documents with an eye for separating the wheat from the chaff in large document productions and to quickly bring key documents to the attention of the attorneys involved in the case," Roberts said. "Computer databases and software programs can greatly assist paralegals, but can't substitute for human intuition, skills and experience." ■