



News Release

For Immediate Release

For more information, contact:

Tim Kolly 312-698-6220 | tkolly@dri.org

DRI Files Amicus Brief Urging Supreme Court to Curb Plaintiffs' Use of "Statistical Magic" for Obtaining Class-Action Certification

CHICAGO – (April 10, 2015)— DRI—The Voice of the Defense Bar has filed an *amicus* brief urging the Supreme Court to grant certiorari in *The Dow Chemical Co. v. Industrial Polymers, Inc.*, an antitrust class action. The brief was filed through DRI's Center for Law and Public Policy.

Petitioner Dow is seeking Supreme Court review of a \$1 billion treble damages judgment awarded to a class of industrial chemical purchasers. To find that the named plaintiffs satisfied the "commonality" and "predominance" requirements for obtaining class action certification under Federal Rules of Civil Procedure 23(a)(2) and 23(b)(3), a Kansas federal district court relied on the plaintiffs' statistical sampling-and-extrapolation models. These types of models are often statistical fictions that gloss over the fact that many of the putative class members have suffered no injury. The U.S. Court of Appeals for the Tenth Circuit affirmed.

Despite the Supreme Court's opinions in *Comcast Corp. v. Behrend*, (2013), and *Wal-Mart Stores, Inc. v. Dukes*, (2011), lower federal courts have continued to rely on statistical modeling to certify many different types of class actions.

DRI's *amicus* brief explains that district courts are too easily exercising their discretion to find commonality and predominance of fundamental questions such as injury and damages by endorsing "statistical magic," which in the hands of result-oriented statisticians can make significant differences among class members conveniently disappear. When accepted by a court, such an illusion deprives defendants of their due process rights to assert individualized defenses. As a result, DRI is urging the Supreme Court to grant review in order to further articulate, clarify, or refine class-certification principles governing commonality and predominance.

"It is almost beyond belief," said brief author Lawrence S. Ebner, "that a billion dollar treble damages judgment can hinge on something so contrived as the plaintiffs' flawed modeling."

Lawrence S. Ebner of McKenna Long & Aldridge LLP in Washington, D.C., who also serves as Vice Chair of DRI's Amicus Committee, is available for interview or expert comment through DRI's Communication Office.

For the full text of the amicus brief, [click here](#).

###

About DRI – The Voice of the Defense Bar

For more than fifty years, DRI has been the voice of the defense bar, advocating for 22,000 defense attorneys, commercial trial attorneys, and corporate counsel and defending the integrity of the civil judiciary. A thought leader, DRI provides world-class legal education, deep expertise for policy-makers, legal resources, and networking opportunities to facilitate career and law firm growth. For more information, log on to www.dri.org