No. 68550-3-I

COURT OF APPEALS, DIVISION I

OF THE STATE OF WASHINGTON

DEBRA PUGH, AARON BOWMAN and FLOANN BAUTISTA on their own behalf and on behalf of all persons similarly situated,

Respondents,

v.

EVERGREEN HOSPITAL MEDICAL CENTER a/k/a KING COUNTY PUBLIC HOSPITAL DISTRICT #2,

Appellant,

WASHINGTON STATE NURSES ASSOCIATION,

Appellants.

King County Superior Court No. 10-2-33125-5 SEA,
the Honorable Harry J. McCarthy presiding

SUPPLEMENTAL BRIEF OF APPELLANT KING COUNTY PUBLIC HOSPITAL DISTRICT NO. 2 RE: CR 23.2

James S. Fitzgerald, WSBA No. 8426
John J. White, Jr., WSBA No. 13682
Kevin B. Hansen, WSBA No. 28349
Livengood Fitzgerald & Alskog, PLLC
121 Third Avenue
P.O. Box 908
Kirkland, WA 98083-0908
Ph: 425-822-9281
Fax: 425-828-0908
Attorneys for King County Public Hospital District No. 2, d/b/a Evergreen Hospital Medical Center

ORIGINAL

Table of Contents

Table of Authorities

Cases

Rules

Other Authorities

A. Introduction

Appellant King County Public Hospital District No. 2 files this supplemental brief regarding the applicability of CR 23.2[1] to *Washington State Nurses Ass'n v. King County Pub. Hosp. Dist. No. 2*, King County Superior Court No. 10-2-32896-3 SEA ("the WSNA lawsuit"), pursuant to the Court's request at oral argument on June 6, 2013 and its June 20, 2013 notation ruling.

CR 23.2 is wholly inapplicable to the WSNA lawsuit. WSNA filed its action based on Washington's longstanding recognition of jural status for associations to bring claims on behalf of their members, not CR 23.2. That WSNA might have also had access to Washington courts under CR 23.2 does not require it to have done so. CR 23.2 "class status" is not self-effecting. As with class actions under CR 23 generally, a court must approve a putative CR 23.2 class. Absent certification, there is no class.

There was neither motion nor order to approve a class under CR 23.2, so the rule's requirement of court approval of settlement of "class claims" applies to neither WSNA's settlement of its own claims nor the individual settlements and releases executed by RNs. Even if CR 23.2 status had been sought, the individual RNs were free to settle their claims

[1] The text of CR 23.2 is provided in the Appendix to this Supplemental Brief at App. 2, along with other non-case authorities cited herein.

before certification. The underlying purpose of court approval of settlement of "class claims" was not implicated by WSNA's settlement. There were no "absent" parties whose rights were affected by any of the settlements; only those who actually, affirmatively agreed to settle their particular claims are bound. The WSNA's settlement and the RNs' individual settlements with the District are all valid and binding.

B. Rule 23.2 was adopted to provide jural status to unincorporated associations that could otherwise be barred from seeking court redress of wrongs.

Under the ancient law, unincorporated associations had no jural status. They could neither sue nor be sued in their own capacity. *See, e.g., United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344, 385-86, 42 S. Ct. 570, 66 L. Ed. 975 (1922); *Brown v. United States*, 276 U.S. 134, 141, 48 S. Ct. 288, 72 L. Ed. 500 (1928).

With the rise of large-scale unincorporated associations in the 20th century, both the legislative and judicial branches sought ways to streamline litigation and confer jural status on unincorporated associations. Federal law conferred jural status for anti-trust claims. *See United Mine Workers*, 259 U.S. at 391-92. Unions could bring and defend claims brought under federal labor statutes. *See Textile Workers Union of Am. v. Lincoln Mills of Ala.*, 353 U.S. 448, 77 S. Ct. 912, 1 L. Ed. 2d 972 (1957). Although courts also recognized a limited ability of associations to

bring or defend certain federal claims, the broader issues regarding associations' jural status remained unresolved and were left to the states. *Busby v. Elec. Util. Emp. Union*, 323 U.S. 72, 73-75, 65 S. Ct. 142, 89 L. Ed. 78 (1944) (discussing Rule 17(b)).[2]

Before the 1966 adoption of Federal Rule of Civil Procedure 23.2, Rule 23 as then written governed class actions by or against members of unincorporated associations. *Tunstall v. Brotherhood of Locomotive Firemen & Enginemen*, 148 F.2d 403 (4th Cir. 1945).[3] Rule 23 was completely rewritten in 1966, with Rule 23.2 added to "deal[ ] separately" with actions "brought by or against the members of an unincorporated association as a class." Notes of Advisory Committee on Rules – 1966, 28 U.S.C. App. at 150 (App. 3). Washington adopted its identical version of Rule 23.2 the next year.

C. CR 23.2 is but one of three independent, alternative methods for an unincorporated association to sue or be sued in a Washington court.

Under both federal and state law, "[a]n unincorporated association may sue or be sued in one of three ways: (1) by treating the association as

---

[2] Rule 17(b) provided that "capacity to sue or be sued shall be determined by the law of the state in which the district court is held; except that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States." 323 U.S. at 73.

[3] The *Tunstall* court noted that Rules 17(b) and 23 "provide alternative methods of bringing unincorporated associations into court." 148 F.2d at 405.

an entity in itself, legally capable of suing or being sued; (2) by joining all members of the association as parties, or (3) by allowing the use of a class action." KARL B. TEGLAND, 3A WASHINGTON PRACTICE: RULES PRACTICE 575 (6th ed. 2013) (App. 7); *see also* CHARLES A. WRIGHT, ARTHUR R. MILLER & MARY K. KANE, 7C FEDERAL PRACTICE AND PROCEDURE § 1861 at 241-43 (2007) (App. 12 – App. 14). Rule 23.2, whose purpose is "to recognize and authorize the third option, . . . has no effect upon the other two options, which may or may not be preferable to a class action, depending on the circumstances." TEGLAND at 575 (App. 7).

Washington courts have long recognized unincorporated associations' right to sue and be sued as jural entities. *See, e.g., Int'l Ass'n of Firefighters v. Spokane Airports*, 146 Wn.2d 207, 45 P.3d 186 (2002) (unincorporated association may bring suit for damages on behalf of its members under certain circumstances); *Loveless v. Yantis*, 82 Wn.2d 754, 513 P.2d 1023 (1973) (unincorporated association may represent its members in a proceeding for judicial review); *Labonite v. Cannery Workers' & Farm Laborers' Union*, 197 Wash. 543, 86 P.2d 189 (1938) (judgment against an unincorporated association). Both *Spokane Airports* and *Loveless* were decided after the adoption of CR 23.2, but neither requires an unincorporated association to proceed under CR 23.2.

The second method, joining all members of an unincorporated association, is based on "the traditional conception of an unincorporated organization as a group of individuals voluntarily associating in a manner that may create common rights and liabilities." WRIGHT, MILLER & KANE at 242 (App. 13); *see, e.g., Riss v. Angel*, 131 Wn.2d 612, 934 P.2d 669 (1997) (suit against all individual members of an unincorporated homeowners association).

While there are no reported Washington cases interpreting the third method, a CR 23.2 class action, federal courts have repeatedly interpreted its federal equivalent. They uniformly hold that a class proceeding under Rule 23.2 is a non-exclusive method for unincorporated associations to litigate. *See, e.g., Curley v. Brignoli, Curley & Roberts Assocs.*, 915 F.2d 81, 87 (2nd Cir. 1990); *White v. Local 942, Laborers Int'l Union*, 688 F.2d 850 (9th Cir. 1982) ("Rule 23.2 provides a supplementary method for unincorporated associations to litigate, not an exclusive method.").

In fact, most federal courts hold that Rule 23.2 exists solely to provide jural capacity where none exists under state law, and thus is not available in states where unincorporated associations have such capacity. *See Northbrook Excess & Surplus Ins. Co. v. Medical Malpractice Joint Underwriting Ass'n*, 900 F.2d 476, 478-79 (1st Cir. 1990) ("[W]here an association has jural status under state law, the rule does not come into

play."); *Patrician Towers Owners, Inc. v. Fairchild*, 513 F.2d 216, 220 (4th Cir. 1975); WRIGHT, MILLER & KANE at 251-54 (App. 22 – App. 25). Under this majority position, WSNA members could not maintain a lawsuit under CR 23.2 because WSNA has jural status under Washington law. Other courts, however, take a broader view of Rule 23.2, concluding that it provides an additional means of proceeding against an unincorporated association, whether or not state law provides for an action against the entity itself. *See Curley*, 915 F.2d at 87; *Kerney v. Ft. Griffin Fandangle Ass'n*, 624 F.2d 717, 719-20 (5th Cir. 1980).[4] This federal court division is immaterial to the present case because, as discussed below, no WSNA members were parties to its lawsuit or invoked CR 23.2.

D. CR 23.2 does not apply to the WSNA action and is no basis to invalidate the individual settlements of claims between the District and the RNs.

There is no dispute that WSNA chose to sue the District as an entity in itself. CP 607-08. It named none of its members as representative plaintiffs, an express requirement to proceedings under CR 23.2. CP 607; *see also* DAVID E. BRESKIN, 9A WASHINGTON PRACTICE: CIVIL PROCEDURE FORMS AND COMMENTARY § 23.2.21 at 248-50 (3rd ed. 2000) (App. 30 – App. 32) (providing sample form for complaint by

[4] Federal courts are also divided over whether class actions under Rule 23.2 must meet all of the certification requirements of Rule 23. *See, e.g.,* WRIGHT, MILLER & KANE at 249-51 (App. 20 – App. 22).

unincorporated association under CR 23.2). Unanimous legal authority rejects the proposition that because WSNA *could have* filed its lawsuit as a class action by naming some of its members as representatives of the class, it was required to do so. Simply put, CR 23.2 does not apply to the WSNA lawsuit and court approval of the settlement under CR 23(e) was not required.

No class certification under CR 23.2 was ever sought. Regardless of how the federal courts have resolved the applicability of all the requirements of Rule 23 to Rule 23.2 class actions, all recognize that Rule 23.2 is not self-effecting. A party must request and a court must certify a Rule 23.2 class. *Compare Curley* 915 F.2d at 85 ("The language of rule 23.2 specifies only one prerequisite to class treatment, fair and adequate representation.") *with Suchem, Inc. v. Central Aguirre Sugar Co.*, 52 F.R.D. 348, 350-51 (D.P.R. 1971) (requiring satisfaction of all requirements of Rule 23 before certifying a Rule 23.2 class); *see also Sembach v. McMahon College, Inc.*, 86 F.R.D. 188, 189-90 (S.D. Tex. 1980); *Mgmt. Television Sys. v. Nat'l Football League*, 52 F.R.D. 162, 164 (E.D. Pa. 1971). Absent certification, there was never a CR 23.2 class or a class claim.

E. Even if the WSNA lawsuit were brought under CR 23.2, the requirement for court approval of a class settlement does not affect the binding nature of the settlements between the parties to the agreements, including WSNA and the 1,157 RNs.

Judicial approval of a class action settlement does not affect the legality or enforceability of the settlement agreement between the parties to the agreement. *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 593 (3rd Cir. 2010) ("The requirement that a district court review and approve a class action settlement before it binds all class members does not affect the binding nature of the parties' underlying agreement."). The purpose of Rule 23(e) is to "guard[ ] the claims and rights of the absent class members." *Id.* Here, the settlement agreement bound no one but the District, WSNA, and those RNs who ratified the agreement by independently and individually settling any rest break claims they may have had. *Nat'l Bank of Commerce v. Thomsen*, 80 Wn.2d 406, 413, 495 P.2d 332 (1972). The 1,157 RNs who chose to individually settle with the District were not "absent class members" needing the protection provided by CR 23(e).

The RNs, who were not members of a certified class, were free to settle rest break claims. *Christensen v. Kiewit-Murdock Inv. Corp.*, 815 F.2d 206, 213 (2nd Cir. 1987) ("[P]rior to class certification, defendants do not violate Rule 23(e) by negotiating settlements with potential members

of a class."). As Rule 23.2 expressly incorporates Rule 23(e), before a Rule 23.2 class is certified, the individual nurses remained free to settle their individual claims.

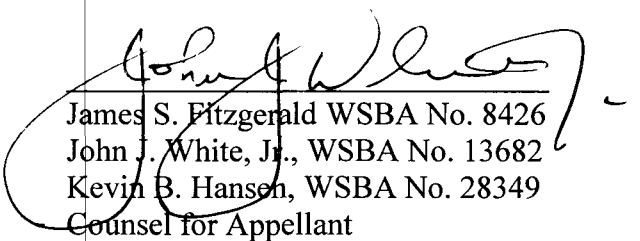
F. Conclusion

CR 23.2 doesn't apply to the WSNA lawsuit. No WSNA members were parties to the lawsuit. WSNA did not seek or obtain class certification under CR 23.2. Instead, WSNA sued the District as an entity in itself.

The subsequent settlements between WSNA and the District and between the individual RNs and the District did not require court approval under CR 23.2. This Court should reverse the trial court's collateral invalidation of the WSNA settlement and the 1,157 settlements between RNs and the District, and grant the balance of the relief requested in the appeal.

Respectfully submitted this 1st day of July, 2013

LIVENGOOD, FITZGERALD
& ALSKOG, PLLC



James S. Fitzgerald WSBA No. 8426
John J. White, Jr., WSBA No. 13682
Kevin B. Hansen, WSBA No. 28349
Counsel for Appellant
King County Public Hospital District No. 2

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the United States of America and the State of Washington that on the date specified below, I filed and served the foregoing as follows:

Attorneys for Plaintiffs: David E. Breskin Daniel F. Johnson Breskin Johnson & Townsend, PLLC 1111 Third Avenue, Suite 2230 Seattle, WA 98101 WSBA #10607 – Breskin WSBA # 27848 – Johnson Ph: 206-658-8660 Fax: 206-652-8290 E-mail:dbreskin@bjtlegal.com djohnson@bjtlegal.com asiefer@bjtlegal.com msimmel@bjtlegal.com	☐ via U.S. Mail ☐ via Hand Delivery ☐ E-Service ☐ via Facsimile ☒ via E-mail w/ hard copy to follow per agreement ☐ via Overnight Mail
Attorneys for Intervenor WSNA: David C. Campbell Carson Glickman-Flora Schwerin Campbell Barnard Iglitzin & Lavitt 18 West Mercer Street, Suite 400 Seattle, WA 98119 WSBA #13896 – Campbell WSBA #37608 – Glickman-Flora Ph: 206-285-2828 Fax: 206-378-4132 E-mail:campbell@workerlaw.com flora@workerlaw.com fassler@workerlaw.com woodward@workerlaw.com	☐ via U.S. Mail ☐ via Hand Delivery ☐ E-Service ☐ via Facsimile ☒ via E-mail w/ hard copy to follow per agreement ☐ via Overnight Mail

DATED: July 1, 2013 at Kirkland, Washington

Lee Wilson

Lee Wilson

APPENDIX

Civil Rule 23.2 ACTIONS RELATING TO UNINCORPORATED ASSOCIATIONS

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in rule 23(e).

ing the power to determine the course of the proceedings and require that any appropriate notice be given to shareholders or members.

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendments are technical. No substantive change is intended.

Rule 23.2. Actions Relating to Unincorporated Associations

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e).

(As added Feb. 28, 1966, eff. July 1, 1966.)

NOTES OF ADVISORY COMMITTEE ON RULES—1966

Although an action by or against representatives of the membership of an unincorporated association has often been viewed as a class action, the real or main purpose of this characterization has been to give "entity treatment" to the association when for formal reasons it cannot sue or be sued as a jural person under Rule 17(b). See Louisell & Hazard, *Pleading and Procedure: State and Federal* 718 (1962); 3 *Moore's Federal Practice*, par. 23.08 (2d ed. 1963); Story, J. in *West v. Randall*, 29 Fed.Cas. 718, 722–23, No. 17,424 (C.C.D.R.I. 1820); and, for examples, *Gibbs v. Buck*, 307 U.S. 66 (1939); *Tunstall v. Brotherhood of Locomotive F. & E.*, 148 F.2d 403 (4th Cir. 1945); *Oskoian v. Canuel*, 269 F.2d 311 (1st Cir. 1959). Rule 23.2 deals separately with these actions, referring where appropriate to Rule 23.

Rule 24. Intervention

(a) INTERVENTION OF RIGHT. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) PERMISSIVE INTERVENTION. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) PROCEDURE. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the United States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action in which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in Title 28, U.S.C., §2403. When the constitutionality of any statute of a State affecting the public interest is drawn in question in any action in which that State or any agency, officer, or employee thereof is not a party, the court shall notify the attorney general of the State as provided in Title 28, U.S.C. §2403. A party challenging the constitutionality of legislation should call the attention of the court to its consequential duty, but failure to do so is not a waiver of any constitutional right otherwise timely asserted.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

The right to intervene given by the following and similar statutes is preserved, but the procedure for its assertion is governed by this rule:

U.S.C., Title 28:

§45a [now 2323] (Special attorneys; participation by Interstate Commerce Commission; intervention) (in certain cases under interstate commerce laws)

§48 [now 2322] (Suits to be against United States; intervention by United States)

§401 [now 2403] (Intervention by United States; constitutionality of Federal statute)

U.S.C., Title 40:

§276a-2(b) [now 3144] (Bonds of contractors for public buildings or works; rights of persons furnishing labor and materials).

Compare with the last sentence of [former] Equity Rule 37 (Parties Generally—Intervention). This rule amplifies and restates the present federal practice at law and in equity. For the practice in admiralty see Admiralty Rules 34 (How Third Party May Intervene) and 42 (Claims Against Proceeds in Registry). See generally Moore and Levi, *Federal Intervention: I The Right to Intervene and Reorganization* (1936), 45 Yale L.J. 565. Under the codes two types of intervention are provided, one for the recovery of specific real or personal property (2 Ohio Gen.Code Ann. (Page, 1926) §11263; Wyo.Rev.Stat.Ann. (Courtright, 1931) §89–522), and the other allowing intervention generally when the applicant has an interest in the matter in litigation (1 Colo.Stat.Ann. (1935) Code Civ.Proc. §22; La.Code Pract. (Dart, 1932) Arts. 389–394; Utah Rev.Stat.Ann. (1933) §104–3–24). The English intervention practice is based upon various rules and decisions and falls into the two categories of absolute right and discretionary right. For the absolute right see English Rules Under the Judicature Act (The Annual Practice, 1937) O. 12, r. 24 (admiralty), r. 25 (land), r. 23 (probate); O. 57, r. 12 (execution); J. A. (1925) §§181, 182, 183(2) (divorce); *In re Metropolitan Amalgamated Estates, Ltd.*, (1912) 2 Ch. 497 (receivership); *Wilson v. Church*, 9 Ch.D. 552 (1878) (representative action). For the discretionary right see O.

WASHINGTON PRACTICE SERIES™

Volume 3A

RULES PRACTICE

SIXTH EDITION

By
KARL B. TEGLAND
Attorney at Law
Mill Creek, Washington

PART IV.
RULES FOR SUPERIOR COURT
(CR 1–37)

THOMSON REUTERS™

For Customer Assistance Call 1-800-328-4880

Mat #41400605

ful plaintiff in a stockholder's derivative action, but to warrant such an allowance, the action must be prosecuted, not only nominally, but actually, in the corporation's behalf. Leppaluoto v. Eggleston, 57 Wash. 2d 393, 357 P.2d 725 (1960).

In minority stockholders' derivative action, where proposed compromise settlement between corporation and other defendants had been ratified by the trial court and minority stockholders appealed, minority stockholders' application for expenses and attorney's fees was premature, and trial court properly decreed that such expenses and fees, if any, would be fixed after the remittitur was handed down. Goodwin v. Castleton, 19 Wash. 2d 748, 144 P.2d 725, 150 A.L.R. 859 (1944).

Pledgee of majority of shares in close corporation who brought shareholder derivative suit to void sale of real property indirectly owned by close corporation was not entitled to attorney fees on "common fund" basis, where pledgee was only person who benefitted from voidance of deed. Gustafson v. Gustafson, 47 Wash. App. 272, 734 P.2d 949 (Div. 1 1987).

An award of attorney's fees and costs to a successful plaintiff in a shareholder derivative action, though within trial court's discretion, must be based upon a contract, statute, or recognized ground in equity and is warranted only if action was prosecuted nominally, and actually, in corporation's behalf. Interlake Porsche & Audi, Inc. v. Bucholz, 45 Wash. App. 502, 728 P.2d 597, Blue Sky L. Rep. (CCH) P 72463 (Div. 1 1986).

Minority shareholder could recover his attorney's fees from corporation based upon his having created a fund of judgment proceeds for benefit of corporation as well as himself and as having conferred on ascertainable class of corporate stockholders a substantial benefit by preventing majority shareholder's continued misuse of corporate assets. Interlake Porsche & Audi, Inc. v. Bucholz, 45 Wash. App. 502, 728 P.2d 597, Blue Sky L. Rep. (CCH) P 72463 (Div. 1 1986).

Duty of corporation seeking to recover indemnification from majority shareholder for attorney's fees awarded to minority shareholder out of common fund was not independent of and separate from majority shareholder's fiduciary duty, the breach of which was basis for the damage award; and, hence, was not a basis on which corporation could obtain indemnification. Interlake Porsche & Audi, Inc. v. Bucholz, 45 Wash. App. 502, 728 P.2d 597, Blue Sky L. Rep. (CCH) P 72463 (Div. 1 1986).

17. Review

Whether requirement that shareholders demand corporation sue before suing derivatively is excused is within trial court's discretion, and trial court's determination of whether demand requirements are excused will only be reversed for manifest abuse of discretion. Haberman v. Washington Public Power Supply System, 109 Wash. 2d 107, 744 P.2d 1032, Blue Sky L. Rep. (CCH) P 72662 (1987), opinion amended on other grounds, 109 Wash. 2d 107, 750 P.2d 254 (1988).

CR 23.2. ACTIONS RELATING TO UNINCORPORATED ASSOCIATIONS

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in rule 23(d), and the procedure for dis-

missal or compromise of the action shall correspond with that provided in rule 23(e).

AUTHOR'S COMMENTS

1. In general

An unincorporated association may sue or be sued in one of three ways: (1) by treating the association as an entity in itself, legally capable of suing or being sued; (2) by joining all members of the association as parties, or (3) by allowing the use of a class action. The purpose of CR 23.2 is to recognize and authorize the third option—a class action. The rule has no effect upon the other two options, which may or may not be preferable to a class action, depending on the circumstances. Wright and Miller's Federal Practice and Procedure, Civil § 1861.

In choosing among the three options, practical considerations such as service of process and venue should be taken into account. In addition, the enforcement of a judgment against an unincorporated association may be affected by the method by which the association is sued. For example, the applicable substantive law may differentiate between the availability of the assets of the association and the assets of its individual members for purposes of satisfying the judgment depending upon whether the members are joined, they are sued as a class, or the association is before the court as an entity. Wright and Miller's Federal Practice and Procedure, Civil § 1861.

Federal rule compared. CR 23.2 is substantially the same as the corresponding federal rule. Thus, federal case law may be helpful in resolving issues that have not been addressed in the Washington case law. The federal case law interpreting Fed. R. Civ. P. 23.1 is discussed in detail in Wright and Miller's Federal Practice and Procedure, Civil § 1861.

For a convenient one-volume analysis of cases interpreting the Federal Rules of Civil Procedure, see Baicker-McKee, Janssen, and Corr Federal Civil Rules Handbook (republished annually).

2. Class actions under CR 23.2

As mentioned, CR 23.2 allows an unincorporated association to sue or be sued in a class action. The rule does not define "unincorporated association," leaving at least some doubt about what sorts of organizations may employ the class action option under

CR 23.2. It has been suggested that at minimum, "an organization that seeks to sue or be sued under Rule 23.2 must have control over its members, at least with regard to the sphere of activity involved in the issues being litigated." Wright and Miller's Federal Practice and Procedure, Civil § 1861.

To date, Washington has no reported cases interpreting the rule. Surprisingly, the federal courts have never fully settled the question of whether the usual requirements for a class action (numerosity, commonality, and typicality) apply under CR 23.2. By mentioning only a fourth requirement—fair representation—the rule seems to imply that the other three requirements do not apply. At least some federal courts, however, have held that all four requirements apply under CR 23.2. Wright and Miller's Federal Practice and Procedure, Civil § 1861.

In any event, CR 23.2 expressly allows the court to enter orders regulating the class action pursuant to CR 23(d), and incorporates by reference the settlement provisions in CR 23(e).

3. Suits by or against association as entity

In Washington, the case law also allows what was described above as the first option—allowing the association to sue or be sued in its own right. Loveless v. Yantis, 82 Wash. 2d 754, 513 P.2d 1023 (1973) (association of property owners whose members are injured may represent those members in proceedings for judicial review); Labonite v. Cannery Workers' and Farm Laborers' Union, 197 Wash. 543, 86 P.2d 189 (1938) (unincorporated associations can be sued, and judgments against them are valid); State ex rel. Cannery Workers & Farm Laborers Union, Local 7 v. Superior Court for King County, 30 Wash. 2d 697, 193 P.2d 362 (1948) (a part of a numerous body of members of an unincorporated association may bring an action in equity as representatives of all members and officers of such association to enforce a common benefit in behalf of all).

The usual requirements, such as standing, must of course be satisfied. See, e.g., Seattle Professional Photographers Ass'n v. Sears Roebuck Co., 9 Wash. App. 656, 513 P.2d 840, 1973-2 Trade Cas. (CCH) ¶ 74742 (Div. 1 1973) (photographers' association had standing to maintain action against defendants who allegedly sold photographic products including color portraits at less than cost).

This approach is not addressed by CR 23.2 but, as a practical matter, is used more often than a class action pursuant to CR 23.2.

4. Suits by or against all individual members

What was described above as the second option—joining all members—presumably remains available in Washington. This approach is widely regarded as satisfying all requirements of due

process. See Wright and Miller's Federal Practice and Procedure, Civil § 1861.

This approach is not addressed by CR 23.2. If the association has a large number of members, joining all members may be impracticable.

5. Local rules, forms

Counsel should be alert to the possibility of local rules supplementing CR 23.1. Local rules are readily available from a number of sources (see commentary following CR 83) and should be consulted as necessary.

Forms for use in connection with CR 23.2 are readily available in another volume of Washington Practice. See Breskin, 9A Washington Practice: Civil Procedure Forms and Commentary §§ 23.2.1 et seq. (3d ed.). Published forms should, of course, be adjusted to comply with any local requirements.

6. History of CR 23.2

CR 23.2 was adopted in 1967 as part of the original Civil Rules for Superior Court. The rule has never been amended.

CR 24. INTERVENTION

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application, anyone may be permitted to intervene in an action:

(1) When a statute confers a conditional right to intervene; or

(2) When an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirements, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon all the parties as provided in rule 5.

FEDERAL PRACTICE AND PROCEDURE®

By

The Late CHARLES ALAN WRIGHT
Charles Alan Wright Chair in Federal Courts
The University of Texas

ARTHUR R. MILLER
Bruce Bromley Professor of Law, Harvard University

and

MARY KAY KANE
John F. Digardi Distinguished Professor of Law
Chancellor and Dean Emeritus
University of California, Hastings College of the Law

Federal Rules of Civil Procedure
Rules 23.1 to 25

Sections 1821 to 2000

Volume 7C

THOMSON
WEST

Mat #40520496

RULE 23.2 ACTIONS RELATING TO UNINCORPORATED ASSOCIATIONS

§ 1861 Actions Relating to Unincorporated Associations

Text of Rule 23.2

This rule applies to an action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties. The action may be maintained only if it appears that those parties will fairly and adequately protect the interests of the association and its members. In conducting the action, the court may issue any appropriate orders corresponding with those in Rule 23(d), and the procedure for settlement, voluntary dismissal, or compromise must correspond with the procedure in Rule 23(e).

Added Feb. 28, 1966, eff. July 1, 1966;[1] as amended Apr. 30, 2007, eff. Dec. 1, 2007.[2]

§ 1861. Actions Relating to Unincorporated Associations

There are three procedures by which an unincorporated association may sue or be sued. The first recognizes the unincorporated association as a jural entity, thereby giving it capacity to institute or defend a lawsuit. Under the common law, these organizations were not considered to be entities and therefore lacked capacity to sue or be sued. More recently, however, some states have given entity status to unincorporated associations by legislative or judicial action. In addition, in a suit in a federal court seeking enforcement of a right under the Constitution or laws of the United States, Rule 17(b) permits the action to be brought by or against the unincorporated association in its common name, regardless of whether the forum state's law vests the as-

---

[Rule 23.2]

[1]History of rule

This rule was added in 1966 to deal specifically with actions that formerly had been regulated only by the general provisions of Rule 23.

[2]2007 amendment

Rule 23.2 was amended in 2007 as part of the general restyling of the Civil Rules to make them more easily understood. No substantive change was made.

sociation with capacity to sue or be sued.[1] Entity status for unincorporated associations also may be provided by federal statute[2] as, for example, is true of Section 301(b) of the Taft-Hartley Act.[3] But when federal jurisdiction is based upon diversity of citizenship, Rule 17(b) directs that the association's capacity is to be governed by the law of the forum state.

The second method for conducting litigation involving an unincorporated association is by joining all of its members. This procedure conforms to the traditional conception of an unincorporated organization as a group of individuals voluntarily associating in a manner that may create common rights and liabilities. The logical consequence of this attitude is that it is appropriate to make them all parties to an action involving associational activity.

The third method by which an unincorporated association may sue or be sued is by using the class action. Under this procedure, suit is instituted by or against the members of the association as members of a class that is too numerous to make joinder of every individual feasible. Typically, only a few persons are designated as class representatives and actu-

---

[Section 1861]

[1]**Rule 17(b)**

See vol. 6A, § 1564.

[2]**Federal statute**

Labor-Management Reporting and Disclosure Act

The filing of a complaint by several members of a labor union seeking the dissolution of an alleged trusteeship imposed by the international union on a district was all that was required to place jurisdiction within the federal district court under the Labor-Management Reporting and Disclosure Act of 1959 and the fact that the action was called a class action was unimportant, notwithstanding that the complaint might have failed to meet the requirements of Rule 23.2. Monborne v. United Mine Workers of America, D.C.Pa.1972, 342 F.Supp. 718, opinion supplemented on other grounds D.C.Pa.1973, 353 F.Supp. 255, order clarified D.C.Pa. 1973, 355 F.Supp. 1283.

[3]**Taft-Hartley Act**

Suits in which capacity was based on Section 301(b) include:

Western Automatic Mach. Screw Co. v. International Union, United Auto., Aircraft & Agricultural Implement Workers of America, C.A.6th, 1964, 335 F.2d 103.

Lodge 743, Int'l Ass'n of Machinists, AFL-CIO v. United Aircraft Corp., D.C.Conn.1969, 299 F.Supp. 877.

For a discussion of the use of Section 301(b) in providing capacity, see:

U.S. Lines Co. v. International Longshoremen's Ass'n, D.C.Mass. 1967, 265 F.Supp. 666.

Rock Drilling, Blasting, Roads, Sewers, Viaducts, Bridges, Foundations, Excavations & Concrete Work, etc., Local Union No. 17 v. Mason & Hangar Co., D.C.N.Y.1950, 90 F.Supp. 539, affirmed C.A.2d, 1954, 217 F.2d 687, certiorari denied 75 S.Ct. 604, 349 U.S. 915, 99 L.Ed. 1249.

ally made parties to the action. This practice was available between 1938 and 1966 under the general language of Rule 23. Today, a proceeding in the nature of a class action by or against an unincorporated association is expressly made available in the federal courts under Rule 23.2.

This section examines the possbile effect of selecting among those three methods in an action involving an unincorporated association. It then turns to problems in interpreting and applying Rule 23.2.

Which of the three methods described above is chosen in a particular suit may have a significant impact on the ease of prosecuting or defending the action and its ultimate result. Indeed, the choice may affect service of process, venue, subject-matter jurisdiction, and the enforceability of the judgment. For example, in a suit in which all members of an association are joined, each individual must be served with process and be brought within the personal jurisdiction of the court. On the other hand, service of process on an unincorporated association sued as an entity in its common name is sufficient if made upon an appropriate officer or agent of the association.[4] In the case of a class action against the members of an association, service must be made only upon the named representatives[5] and the court may proceed on the basis of its personal jurisdiction over the named representatives.[6]

Inasmuch as venue often turns on the residence of the parties, significant differences also appear among the three approaches to suits by or against unincorporated associations. If the suit is instituted by joining all members of the association, then the residence of each individual often must be taken into account for venue purposes.[7] In the case of large associations, this often will make it impossible to lay the venue at the residence of the members, even when that

---

[4]**Service upon entity**

Isbrandtsen Co. v. National Marine Engineers' Beneficial Ass'n, D.C.N.Y.1949, 9 F.R.D. 541.

[5]**Service upon class**

See vol. 7A, § 1757.

[6]**Jurisdiction over representatives**

Calagaz v. Calhoon, C.A.5th, 1962, 309 F.2d 248.

Battle Fowler v. Brignoli, D.C.N.Y.1991, 765 F.Supp. 1202, 1204, affirmed C.A.2d, 1991, 952 F.2d 393, **citing Wright, Miller & Kane.**

Local 15 of Independent Workers of Noble County, Inc. v. International Bhd. of Elec. Workers, D.C.Ind.1967, 273 F.Supp. 313.

See also vol. 7A, § 1757.

[7]**Residence of members**

See vol. 7, § 1659.

is permitted. In an action in which the association is treated as a class, only the residence of the representatives is taken into account.[8] Finally, if the association is treated as an entity, its residence is used for venue purposes.

Initially, there was a split of authority over where an unincorporated association resides for venue purposes. Some courts required the residence of all members to be taken into account in determining the location of the association,[9] others restricted residence to the association's principal place of business,[10] and still others held that venue was proper wherever the association did business.[11] In 1967, the Supreme Court resolved this dispute in Denver & Rio Grande Railroad Company v. Brotherhood of Railroad Trainmen.[12] The Court approved the view espoused by Judge Learned Hand in Sperry Products, Inc. v. Association of American Railroads,[13] that unincorporated associations should be treated in the same fashion as corporations for venue purposes. At the time Judge Hand wrote, however, corporations were considered to reside only in their state of incorporation or their principal place of business. Today, corporations are treated as residents of all districts in which

[8]**Residence of representatives**

See vol. 7A, § 1757.

[9]**Where all members reside**

Sutherland v. U.S., C.C.A.8th, 1934, 74 F.2d 89.

Champion Spark Plug Co. v. Karchmar, D.C.N.Y.1960, 180 F.Supp. 727.

Harris Mfg. Co. v. Williams, D.C.Ark.1957, 157 F.Supp. 779.

Koons v. Kaiser, D.C.N.Y.1950, 91 F.Supp. 511.

Gross v. Miller, D.C.Md.1943, 8 F.R.Serv. 19a.1, case 1.

See also

Hadden v. Small, D.C.Ohio 1951, 145 F.Supp. 387.

[10]**Principal place of business**

Brotherhood of Locomotive Firemen & Enginemen v. Graham, C.A.D.C.1948, 175 F.2d 802, reversed on other grounds 1949, 70 S.Ct. 14, 338 U.S. 232, 94 L.Ed. 22.

Cherico v. Brotherhood of R.R. Trainmen, D.C.N.Y.1958, 167 F.Supp. 635.

McNutt v. United Gas, Coke & Chem. Workers of America, C.I.O., D.C.Ark.1952, 108 F.Supp. 871.

[11]**Wherever doing business**

R & E Dental Supply Co. v. Ritter Co., D.C.N.Y.1959, 185 F.Supp. 812.

American Airlines, Inc. v. Air Line Pilots Ass'n Int'l, D.C.N.Y. 1958, 169 F.Supp. 777.

Portsmouth Baseball Corp. v. Frick, D.C.N.Y.1955, 132 F.Supp. 922.

[12]**Denver & Rio Grande case**

1967, 87 S.Ct. 1746, 387 U.S. 556, 18 L.Ed.2d 954.

[13]**Sperry Products case**

C.C.A.2d, 1942, 132 F.2d 408, certiorari denied 63 S.Ct. 1031, 319 U.S. 744, 87 L.Ed. 1700.

they do business and as a result of the Denver & Rio Grande case the same rule is applied to unincorporated associations.[14]

Differences in the treatment of unincorporated associations also arise in the context of subject-matter jurisdiction. For purposes of diversity jurisdiction, an unincorporated association is said to have no citizenship of its own. Thus, if suit is brought by or against an association as an entity or by or against its individual members, the organization's citizenship is deemed to be the same as that of its members.[15] This effectively may bar resort to federal diversity jurisdiction because the requirement of complete diversity is virtually impossible to satisfy in cases involving associations with

---

[14]**Wherever doing business**

Graf v. Tastemaker, D.C.Colo. 1995, 907 F.Supp. 1473 (partnership).

Flowers Indus., Inc. v. Bakery & Confectionery Union, D.C.Ga. 1983, 565 F.Supp. 286, 290 n. 2 (pension fund).

See vol. 15 § 3812.

[15]**Citizenship of entity**

In Carden v. Arkoma Assocs., 1990, 110 S.Ct. 1015, 494 U.S. 185, 108 L.Ed.2d 157, the Court held that limited partnerships are unincorporated associations and the citizenship of all general and limited partners must be considered in determining diversity.

Indiana Gas Co. v. Home Ins. Co., C.A.7th, 1998, 141 F.3d 314, 321, **citing Wright, Miller & Kane,** certiorari denied 119 S.Ct. 339, 525 U.S. 931, 142 L.Ed.2d 280.

Halleran v. Hoffman, C.A.1st, 1992, 966 F.2d 45, 47, **citing Wright, Miller & Kane.**

Lovell Mfg. Co. v. Export-Import Bank of the U.S., C.A.3d, 1988, 843 F.2d 725, 729 n. 5, **citing Wright, Miller & Kane.**

Arbuthnot v. State Auto. Ins. Ass'n, C.A.10th, 1959, 264 F.2d 260.

Lowry v. International Bhd. of Boilermakers, Iron Shipbuilders & Helpers of America, C.A.5th, 1958, 259 F.2d 568.

Hettenbaugh v. Airline Pilots Ass'n Int'l, C.A.5th, 1951, 189 F.2d 319.

Rule 23.2 cannot be used to manufacture subject-matter jurisdiction based on diversity; the complete-diversity requirement cannot be transmuted into a minimal-diversity requirement so easily. Benn v. Seventh-Day Adventist Church, D.C.Md.2004, 304 F.Supp.2d 716.

DAB Associates v. Bakst, D.C.Ga.1988, 682 F.Supp. 1231, 1234, **citing Wright, Miller & Kane.**

See vol. 13B, § 3630.

Compare

A more flexible test for capacity of citizenship is needed, "a test which demands that consideration be given to whether an organization's essential characteristics sufficiently invest it, like a corporation, with a complete legal personality distinct from that of the members it represents." Mason v. American Express Co., C.A.2d, 1964, 334 F.2d 392, 393.

But compare

Bouligny, Inc. v. United Steelworkers of America, AFL-CIO, C.A.4th, 1964, 336 F.2d 160, affirmed 1955, 86 S.Ct. 272, 382 U.S. 145, 15 L.Ed.2d 217.

large, multistate memberships. In sharp contrast, the approach utilized when the association sues or is sued in a class action is that the citizenship of the class is considered to be that of the named representatives; the representatives usually can be chosen to ensure complete diversity.[16]

As the foregoing discussion suggests, the treatment of unincorporated associations as classes provides substantial benefits from the perspective of personal jurisdiction, venue, and subject-matter jurisdiction. In addition to those mentioned, the logic of treating such an organization as a class indicates that the common claims of the individual members may be viewed as presenting a common and undivided interest and thus they will be allowed to be aggregated to fulfill the $75,000 jurisdictional amount requirement.[17] Further-

[16]**Citizenship of class**

Supreme Tribe of Ben-Hur v. Cauble, 1921, 41 S.Ct. 338, 255 U.S. 356, 65 L.Ed. 673.

Plaintiff's amended complaint which sought to sue individual members of an unincorporated association and to recover against both individual and joint property properly brought a class suit even though the governing Texas law permits an unincorporated association to sue and be sued as a jural person, and thus the complaint alleged citizenship sufficient to establish diversity by alleging that the named defendants were citizens of Texas and that plaintiff was a citizen of New York since a class is considered to be diverse from the opposing party if the named parties are diverse. Kerney v. Fort Griffin Fandangle Ass'n, Inc., C.A.5th, 1980, 624 F.2d 717, 720, **citing Wright & Miller.**

Class action may be brought on behalf of unincorporated association's members, creating diversity of parties when there would otherwise be none, even when relevant state law authorizes suit by the unincorporated association itself. Murray v. Sevier, D.C.Kan.1994, 156 F.R.D. 235.

Sanders v. International Ass'n of Bridge, Structural & Ornamental Iron Workers, D.C.Ky.1954, 120 F.Supp. 390.

Ketcher v. Sheet Metal Workers' Int'l Ass'n, D.C.Ark.1953, 115 F.Supp. 802.

Fitzgerald v. Dillon, D.C.N.Y. 1950, 92 F.Supp. 681.

See also

Murray v. Scott, D.C.Ala.2001, 176 F.Supp.2d 1249.

International Allied Printing Trades Ass'n v. Master Printers Union of New Jersey, D.C.N.J.1940, 34 F.Supp. 178.

[17]**Aggregation**

See vol. 7A, § 1756.1 and the discussion of aggregation in vol. 14B, §§ 3704 to 3706.

But compare

Claim against each defendant, even if part of an unincorporated class, must meet the jurisdictional-amount requirement in order to establish diversity jurisdiction. Allendale Mut. Ins. Co. v. Excess Ins. Co., D.C.N.Y.1999, 62 F.Supp.2d 1116.

A class action is properly maintained for breach of a collective-bargaining contract involving common questions of law and fact, but

more, when the association is a defendant, plaintiff's ability to select the class representatives enables plaintiff to choose adversaries, which is helpful for purposes of securing personal jurisdiction, especially when a national organization is involved. Thus, plaintiff often will be able to select the most advantageous forum in which to litigate, although choice-of-law principles reduce the ability to seek out the most favorable substantive state law.

The enforcement of a judgment against an unincorporated association also may be affected by the method by which the association is sued. For example, the governing law may differentiate between the availability of the assets of the association and the assets of its individual members for purposes of satisfying the judgment depending upon whether the members are joined, they are sued as a class, or the association is before the court as an entity.

A judgment secured under Rule 23.2 against an unincorporated association in a diversity action is enforced according to state law. Accordingly, when state law does not permit enforcement directly against the assets of the association, plaintiff must proceed against the property of the individual members.[18] As a practical matter, this enables the association's assets to be reached indirectly, but only to the extent that each member of the class, rather than the association itself, owns them.

As indicated earlier, Rule 23.2 expressly authorizes the class-action treatment of unincorporated associations. Prior to 1966, the year Rule 23 was completely rewritten and Rule 23.2 was promulgated, a class action by or against the members of an unincorporated association was permitted when the requirements of Rule 23, as it then existed, were met and the applicable law permitted them to sue or be sued.[19] The separate provision now found in Rule 23.2 does

---

the claims of the members are several not joint and cannot be aggregated to achieve jurisdictional amount. Air Line Dispatchers Ass'n, A.F. of L. v. California Eastern Airways, Inc., D.C.Cal.1954, 127 F.Supp. 521.

[18]**Enforcement against individual**

Benz v. Compania Naviera Hidalgo, S.A., C.A.9th, 1956, 233 F.2d 62, affirmed on other grounds 1957, 77 S.Ct. 699, 353 U.S. 138, 1 L.Ed.2d 709.

See also

Canuel v. Oskoian, D.C.R.I. 1960, 184 F.Supp. 70. Earlier proceedings in this case are discussed in text at note 33, above.

[19]**Pre-1966 practice**

Calagaz v. Calhoon, C.A.5th, 1962, 309 F.2d 248.

not represent a departure from the pre-1966 practice.[20]

Suits involving unincorporated associations were classified as "true" class actions by the courts under former Rule 23.[21] The explicit authorization for suits by or against unincorporated associations in Rule 23.2 eliminates any need to speculate as to how the suits would be treated under the new text

---

Oskoian v. Canuel, C.A.1st, 1959, 269 F.2d 311.

Lowry v. International Bhd. of Boilermakers, Iron Shipbuilders & Helpers of America, C.A.5th, 1958, 259 F.2d 568.

Advertising Specialty Nat. Ass'n v. FTC, C.A.1st, 1956, 238 F.2d 108.

Benz v. Compania Naviera Hidalgo, S.A., C.A.9th, 1956, 233 F.2d 62, affirmed on other grounds 1957, 77 S.Ct. 699, 353 U.S. 138, 1 L.Ed.2d 709.

Giordano v. Radio Corp. of America, C.A.3d, 1950, 183 F.2d 558.

System Fed'n No. 91, Ry. Employees' Dep't, Am. Fed'n of Labor v. Reed, C.A.6th, 1950, 180 F.2d 991.

Montgomery Ward & Co. v. Langer, C.C.A.8th, 1948, 168 F.2d 182.

Tunstall v. Brotherhood of Locomotive Firemen & Enginemen, C.C.A.4th, 1945, 148 F.2d 403.

Mutation Mink Breeders Ass'n v. Lou Nierenberg Corp., D.C.N.Y, 1959, 23 F.R.D. 155.

Air Line Dispatchers Ass'n, A.F. of L. v. California Eastern Airways, Inc., D.C.Cal.1954, 127 F.Supp. 521.

White v. Quisenberry, D.C.Mo. 1953, 14 F.R.D. 348.

Pascale v. Emery, D.C.Mass. 1951, 95 F.Supp. 147.

Fitzgerald v. Dillon, D.C.N.Y. 1950, 92 F.Supp. 681.

Fitzgerald v. Kriss, D.C.N.Y. 1950, 10 F.R.D. 51.

Durkin v. Rieve, D.C.Pa.1949, 10 F.R.D. 71.

Malarney v. Upholsterers' Int'l Union of No. America, D.C.Pa.1947, 7 F.R.D. 403.

Philadelphia Local 192 of Am. Fed'n of Teachers v. American Fed'n of Teachers, D.C.Pa.1942, 44 F.Supp. 345.

National Hairdressers & Cosmetologists' Ass'n v. Philad Co., D.C.Del.1940, 34 F.Supp. 264.

International Allied Printing Trades Ass'n v. Master Printers Union of New Jersey, D.C.N.J.1940, 34 F.Supp. 178.

But see

Capacity to sue, even in class actions, is governed by Rule 17(b), which gives authority to the forum state. Underwood v. Maloney, C.A.3d, 1958, 256 F.2d 334, certiorari denied 79 S.Ct. 93, 358 U.S. 864, 3 L.Ed.2d 97.

Lloyd A. Fry Roofing Co. v. Textile Workers Union of America, AFL-CIO, D.C.Pa.1957, 149 F.Supp. 695, reargument denied D.C.Pa. 1957, 152 F.Supp. 19.

Milk Wagon Drivers' Union of Chicago, Local 753 v. Associated Milk Dealers, D.C.Ill.1941, 39 F.Supp. 671.

[20] **No change**

Sembach v. McMahon College, Inc., D.C.Tex.1980, 86 F.R.D. 188, 192, **citing Wright & Miller.**

See Cohn, The New Federal Rules of Civil Procedure, 1966, 54 Geo.L.J. 1204, 1227.

[21] **Former classifications**

See vol. 7A, § 1752.

of Rule 23. In particular, it is unnecessary to determine which of the three class-action categories described in Rule 23(b) governs actions involving unincorporated associations.

Rule 23.2 appears to permit the institution of class actions by or against unincorporated associations without fulfilling all of the requirements for other class actions prescribed by Rule 23. This conclusion is the logical implication of the passage in the Advisory Committee's Note indicating that the main purpose of treating an unincorporated association as a class "has been to give 'entity treatment' to the association when for formal reasons it cannot sue or be sued as a jural person under Rule 17(b)."[22] Treatment as an entity suggests the inapplicability of those conditions for maintaining class actions, especially the four set out in Rule 23(a), that would make it difficult for an unincorporated association to sue or be sued.

But the judicial decisions to date have cast some doubt on this question.[23] Some district courts have held that the Rule 23 requirements, particularly the provision calling for the class to be so numerous as to make joinder impracticable, also are operable in actions under Rule 23.2.[24] Other courts, however, have held that the Rule 23 prerequisites need not

---

[22]**Advisory Committee Note**

See the Advisory Committee's Note to Rule 23.2, which is set forth in vol. 12A.

See also

Local 194, Retail, Wholesale & Dep't Store Union v. Standard Brands, Inc., C.A.7th, 1976, 540 F.2d 864.

Murray v. Sevier, D.C.Kan. 1994, 156 F.R.D. 235, 240, **quoting Wright, Miller & Kane.**

Sembach v. McMahon College, Inc., D.C.Tex.1980, 86 F.R.D. 188, 192, **citing Wright & Miller.**

State v. Kansas City Firefighters Local 42, Mo.App.1984, 672 S.W.2d 99, 118, **citing Wright & Miller.**

[23]**Doubt on issue**

Note, Capacity and Class Actions Under Federal Rule 23.2, 1981, 61 B.U.L.Rev. 713.

[24]**Rule 23 applicable**

Sembach v. McMahon College, Inc., D.C.Tex.1980, 86 F.R.D. 188, 190, **citing Wright & Miller.**

Merkey v. Board of Regents of Florida, D.C.Fla.1972, 344 F.Supp. 1296, vacated on other grounds C.A.5th, 1974, 493 F.2d 790 (common questions of law and fact and member of class).

"As is apparent, the same prerequisites contained in Rule 23 for a class action are also required for actions under Rule 23.2 * * *." Suchem, Inc. v. Central Aguirre Sugar Co., D.C.Puerto Rico 1971, 52 F.R.D. 348, 355.

In Rippey v. Denver U.S. Nat. Bank, D.C.Colo.1966, 260 F.Supp. 704, suit was brought by eight beneficiaries of a trust against the trustee bank for alleged improprieties in the handling of trust funds. Plaintiffs claimed they fairly and adequately represented the trust as

be satisfied in litigation under Rule 23.2.[25] There are persuasive arguments favoring this latter view. In addition to the statement in the Advisory Committee's Note, Rule 23.2 itself expressly provides that the parties acting as representatives must fairly and adequately protect the interests of the association and its members. The standards developed under Rule 23(a)[26] certainly provide a ready analogy, but should not be viewed as controlling.[27] Nor is there

---

an unincorporated association. The court said the beneficiaries were not sufficiently numerous to constitute a class under Rule 23(a) and thus precluded their claim under Rule 23.2. The court's attitude may have been affected by the questionable invocation of Rule 23.2.

[25]Rule 23 inapplicable

Curley v. Brignoli, Curley & Roberts Assocs., C.A.2d, 1990, 915 F.2d 81, *86 n. 4*, ***citing Wright, Miller & Kane,*** certiorari denied 111 S.Ct. 1430, 499 U.S. 955, 113 L.Ed.2d 484.

Resolution Trust Corp. v. Deloitte & Touche, D.C.Colo.1993, 822 F.Supp. 1512.

Gay Lib v. University of Missouri, D.C.Mo.1976, 416 F.Supp. 1350, reversed on the merits C.A.8th, 1977, 558 F.2d 848, certiorari denied 98 S.Ct. 1276, 434 U.S. 1080, 55 L.Ed.2d 789.

Management Television Sys., Inc. v. National Football League, D.C.Pa.1971, 52 F.R.D. 162.

See also

Arkansas County Farm Bureau v. McKinney, 1998, 976 S.W.2d 945, 949, 334 Ark. 582, **citing Wright, Miller & Kane.**

[26]Adequate representation

See vol. 7A, §§ 1765 to 1770.

[27]Analogy to Rule 23(a)(4)

The member of an unincorporated association of sport fishermen fairly and adequately represented the interests of the association and its members, and thus could serve as class representative in a direct action against alleged looters of association funds; all members were equally injured by defendants' conduct, the same misrepresentations were made to all members, and the representative member's understanding of his claim was irrelevant to his lawyers' ability to prosecute the claim. Murray v. Sevier, D.C.Kan.1994, 156 F.R.D. 235.

"Fair and adequate representation" requirement for class certification of current and former partners of an accounting partnership and its successor was satisfied in an action arising from audits performed on savings and loan's financial statements and alleged intentional destruction of work papers; class representatives were all current or former partners who held positions of responsibility, the litigation was being handled by the successor's national counsel, and the motion for certification was made as soon as practicable. Resolution Trust Corp. v. Deloitte & Touche, D.C.Colo.1993, 822 F.Supp. 1512.

The rule governing actions relating to unincorporated associations, which requires that the representatives demonstrate they will adequately represent the "interests of the association and its members," does not utilize a higher standard than Rule 23's requirement that representative parties fairly and adequately protect the interests of

any reason to read the other Rule 23(a) prerequisites relating to the size of the class, the existence of common issues of law or fact, or the typicality of the representatives' claims or defenses into every Rule 23.2 action, although certain aspects of these principles certainly are embraced in the notion of adequacy of representation.[28]

In addition, Rule 23(d),[29] which lists the orders the district court may make in connection with a class action, is specifically incorporated by reference in Rule 23.2, as is Rule 23(e), which requires approval of the court, following notice, for the dismissal or compromise of a class action.[30] The explicit incorporation of these portions of Rule 23 suggests that the other provisions in that rule, including the limitations in Rule 23(a) other than adequacy of representation and the description in Rule 23(b) of when a class action may be maintained, do not apply to actions involving an unincorporated association. This construction is reinforced by the last sentence of the Advisory Committee Note to Rule 23.2, which states that the rule deals "separately" with these actions, referring "where appropriate" to Rule 23. Post-1966 amendments to Rule 23 adding additional requirements also would be inapplicable under this analysis.

Another question that has arisen is whether Rule 23.2 is applicable in a federal diversity suit when the forum state's law partially or completely prohibits a class action involving unincorporated associations or when it provides that suits by and against these organizations are to be maintained in another manner.[31] Prior to the adoption of Rule 23.2, the Third Circuit ruled that in a diversity action, Rule 17(b) refers the court to the law of the forum state to determine

---

the class. Gravenstein v. Campion, D.C.Alaska 1982, 96 F.R.D. 137.

See also

State v. Kansas City Firefighters Local 42, Mo.App.1984, 672 S.W.2d 99, 119, **citing Wright & Miller.**

[28]**Other prerequisites**

See vol. 7A, §§ 1759 to 1764.

[29]**Rule 23(d) orders**

See vol. 7B, §§ 1791 to 1796.

[30]**Dismissal or compromise**

See vol. 7B, §§ 1797 to 1797.6. The absence of an express reference in Rule 41(a)(1) to Rule 23.2 does not mean that the latter rule is not excluded from the scope of the former. Rule 41(a)(1) does refer to Rule 23(e), which embraces dismissal or compromise under Rule 23.2 by virtue of that provision's incorporation of the practice under Rule 23(e). See vol. 9, § 2363.

[31]**Applicability of Rule 23.2**

Note, Capacity and Class Actions Under Federal Rule 23.2, 1981, 61 B.U.L.Rev. 713.

the capacity of an unincorporated association.[32] The court held that because Pennsylvania law forbids suits by or against unincorporated associations in the form of a class action, a class suit cannot be maintained in a diversity action in a Pennsylvania federal court. The First Circuit, in Oskoian v. Canuel,[33] also decided before the adoption of Rule 23.2, distinguished the case before it from the Third Circuit decision on the ground that Rhode Island law recognized two procedures for suits by or against unincorporated associations, and that they were not exclusive. Therefore, a class action under the pre-1966 version of Rule 23 was maintainable in a Rhode Island federal court. The First Circuit also expressed the opinion that methods of determining capacity involved a procedural matter.

The Advisory Committee Note to Rule 23.2 seems to approve the Oskoian approach.[34] This statement lends support to the view that Rule 23.2 is a procedural device that provides a supplementary method for unincorporated associations to litigate in a federal court and should not be viewed as in conflict with existing state practice on the subject.[35] Of course, this may be a somewhat unrealistic attitude when the state clearly has made a conscious effort to prescribe the manner in which an unincorporated association must sue or be sued. Even so, the principles enunciated in Erie Railroad Company v. Tompkins[36] and Hanna v. Plumer[37] indicate that if a conflict exists, it should be

---

[32]**Third Circuit**

Underwood v. Maloney, C.A.3d, 1958, 256 F.2d 334, certiorari denied 79 S.Ct. 93, 358 U.S. 864, 3 L.Ed.2d 97.

[33]**Oskoian case**

C.A.1st, 1959, 269 F.2d 311. For a more complete discussion of Underwood and Oskoian and a discussion of the same issue in relation to class actions in general, see vol. 7A, § 1758.

[34]**Advisory Committee Note**

See the Advisory Committee's Note to Rule 23.2, which is set forth in vol. 12A.

[35]**Procedural device**

Curley v. Brignoli, Curley & Roberts Assocs., C.A.2d, 1990, 915 F.2d 81, 87, **citing Wright, Miller & Kane,** certiorari denied 111 S.Ct. 1430, 499 U.S. 955, 113 L.Ed.2d 484.

Lumbermen's Underwriting Alliance v. Mobil Oil Corp., D.C.Idaho 1985, 612 F.Supp. 1166, 1171, **citing Wright & Miller.**

[36]**Erie case**

1938, 58 S.Ct. 817, 304 U.S. 64, 82 L.Ed. 1188.

[37]**Hanna case**

1965, 85 S.Ct. 1136, 380 U.S. 460, 14 L.Ed.2d 8.

resolved in favor of Rule 23.2.[38] Despite these arguments, the clear trend in cases decided since the adoption of Rule 23.2 has been to follow the pre-1966 Third Circuit approach of honoring the state law prohibition against suit.[39]

The federal courts generally interpret provisions relating to the capacity of unincorporated associations as permissive rather than as excluding other methods of permitting the organization to sue or be sued.[40] For example, provisions for entity or class treatment of unincorporated associations are

---

[38]**Erie-Hanna doctrine**

This doctrine is discussed at length in vol. 19.

[39]***State* law followed**

Patrician Towers Owners, Inc. v. Fairchild, C.A.4th, 1975, 513 F.2d 216, 220, **citing Wright & Miller.**

Action could not be brought against unincorporated association by a suit against representatives; such suit was permissible only when the association could not be sued as an entity under state law, and Massachusetts permitted suit against the association directly. Northbrook Excess & Surplus Ins. Co. v. Medical Malpractice Joint Underwriting Ass'n of Massachusetts, D.C.Mass.1989, 128 F.R.D. 10, 11, **citing Wright, Miller & Kane.**

National Bank of Washington v. Mallery, D.C.D.C.1987, 669 F.Supp. 22, 25, **citing Wright, Miller & Kane.**

The capacity of defendant unincorporated association to sue or be sued was determined by the law of Pennsylvania as the state in which the federal district court was held and, since the law of Pennsylvania provided that an unincorporated association could sue and be sued as an entity, but not as a class, plaintiff could not invoke the class-action rule to sue defendant unincorporated association as a class. Lang v. Windsor Mount Joy Mut. Ins. Co., D.C.Pa.1980, 493 F.Supp. 97.

Suchem, Inc. v. Central Aguirre Sugar Co., D.C.Puerto Rico 1971, 52 F.R.D. 348.

See also

Garfield Local 13-566 Oil, Chem. & Atomic Workers Int'l Union, AFL-CIO v. Heyden Newport Chem. Corp., D.C.N.J.1959, 172 F.Supp. 230.

[40]**Permissive**

Copra v. Suro, C.A.1st, 1956, 236 F.2d 107.

Ketcher v. Sheet Metal Workers' Int'l Ass'n, D.C.Ark.1953, 115 F.Supp. 802.

Statute authorizing labor union to sue or be sued as an entity does not abolish class actions by and against the union. Tisa v. Potofsky, D.C.N.Y.1950, 90 F.Supp. 175.

But compare

"In short, we are confronted here with the question whether in a single cause of action a representative action is maintainable under Rule 23.2 when joined (and joined voluntarily by the plaintiffs themselves) with an action brought by the party for whose benefit the representative action is sought to be asserted: * * * It is obvious that the right of the representative plaintiffs to sue for the benefit of the unincorporated association under 23.2 has considerable similarity to a class derivative suit. A derivative action would ordinarily not be

not thought to preclude action by joinder of all the members. Additionally, when an action is brought by joinder of all the members, the judge may convert the suit to a class action if the change would be administratively advantageous in terms of the expeditious adjudication of the litigation.

Problems occasionally may arise in defining what is an unincorporated association and it is possible that attempts will be made to evade the prerequisites of Rule 23(a) and (b) by purporting to bring suit under Rule 23.2. Under Rule 17(b), the question of what constitutes an unincorporated association for capacity purposes is left to the law of the forum state.[41] The same approach should be applied under Rule 23.2, even though the rule is silent on the matter. In any event, federal courts must be sensitive to the possibility of evasion and limit the application of Rule 23.2 to bona fide unincorporated organizations that are entitled to entity treatment. At a minimum, an organization that seeks to sue or be sued under Rule 23.2 must have control over its members, at least with regard to the sphere of activity involved in the issues being litigated.

§§ 1862–1900 are reserved for supplementary material.

---

maintainable if the real party's interest, the corporate principal, for instance, had brought suit in its own name. Why should there be a different rule where, under largely similar circumstances, a class action under 23.2 is pressed on behalf of an unincorporated association if the very entity the class representative is seeking to represent (i.e., the unincorporated association) is itself a party, asserting in good faith the very same claim that the class representative is asserting? We apprehend none in principle." Patrician Towers Owners, Inc. v. Fairchild, C.A.4th, 1975, 513 F.2d 216, 221 (per Russell, J.).

The holder of season tickets for the Buffalo, New York, professional football team was not entitled to maintain an antitrust action against a defendant class represented by the professional football league when there were predominantly individual factual inquiries necessary for the resolution of the antitrust issues and the federal rules authorized actions by or against members of an unincorporated association by naming certain members as representative parties rather than the association itself. Coniglio v. Highwood Servs., Inc., D.C.N.Y.1972, 60 F.R.D. 359.

[41] **Identification of associations**

Coverdell v. Mid-South Farm Equip. Ass'n, Inc., C.A.6th, 1964, 335 F.2d 9.

Yonce v. Miners Memorial Hosp. Ass'n, Inc., D.C.Va.1958, 161 F.Supp. 178.

WASHINGTON PRACTICE

Volume 9A

CIVIL PROCEDURE FORMS AND COMMENTARY

By

DAVID E. BRESKIN
Member of the Washington Bar

Rules 16 to 30

ST. PAUL, MINN.
West Group
2000

RULE 23.2

ACTIONS RELATING TO UNINCORPORATED ASSOCIATIONS

Table of Sections

RULE 23.2 ACTIONS RELATING TO UNINCORPORATED ASSOCIATIONS

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in rule 23(e).

A. COMMENTARY

§ 23.2.1 Introduction

CR 23.2 serves two purposes: first, the Rule permits an unincorporated association to be treated as a "legal entity" for purposes of bringing suit to protect the interests of its members or for being sued for the common actions of its members. Secondly, the Rule permits a class action involving all members of the association as plaintiff or defendant through the naming of certain representative members. See Advisory Committee Notes, Fed.R.Civ.Proc. 23.2; Murray v. Sevier, 156 F.R.D. 235

(D.Kan.1994); University of Texas at Austin v. Vratil, 96 F.3d 1337 (10th Cir.1996); Stolz v. United Broth. of Carpenters and Joiners, 620 F.Supp. 396 (D.C.Nev.1985); Gravenstein v. Campion, 96 F.R.D. 137 (D.Alaska 1982).

In contrast to class actions brought under CR 23(a), class actions relating to unincorporated associations may be brought under CR 23.2 without meeting the numerosity, commonality and typicality requirements of CR 23. Murray, supra. at 240–241; Curley v. Brignoli, Curley & Roberts Assocs., 915 F.2d 81, 85–86 (2d Cir.1990), cert. denied, 499 U.S. 955, 111 S.Ct. 1430, 113 L.Ed.2d 484 (1991).

However, the court has broad discretion to make appropriate orders in the conduct of the class action under CR 23.2 in the same manner as provided in CR 23(d) for other class actions. A general form of motion, declaration and order for the conduct of a class action may be found under Rule 23 at forms §§ 23.51–.53. The forms are appropriate for use under CR 23.2 as well.

Class actions brought under CR 23.2 may not be dismissed or settled without court approval in the same manner as class actions under CR 23 (e). A general form of motion, declaration and order for the approval of a class action settlement may be found under Rule 23 at forms §§ 23.61–.63.

Discovery in CR 23.2 class actions, which involve the claims or defenses of the unincorporated association, should be directed to the plaintiff or defendant association and not to the representative members of the association. University of Texas at Austin v. Vratil, supra. at 1339.

Provided below at § 23.2.21 is a general form of complaint for a suit by an unincorporated association against an individual defendant. The illustrative form, which follows directly, is for a suit by an individual plaintiff against a defendant unincorporated association. See, e.g., Deloitte Noraudit A/S v. Deloitte Haskins & Sells, 148 F.R.D. 523 (S.D.N.Y. 1993).

B. ILLUSTRATIVE FORM

§ 23.2.11 Complaint

[*Plaintiff*],

Plaintiff,

v.

[*Defendant first representative*],
[*Defendant second representative*],
and [*Defendant association*],

No. _____

COMPLAINT FOR [*Specify, e.g., Consumer Protection Act Violation*]

Defendants.

Plaintiff [*name*] alleges the following complaint for a class action under CR 23.2 against defendants [*name first representative member*] and [*name second representative member*] as representative members of the defendant [*name unincorporated association name and its members*]:

I. JURISDICTION AND VENUE

1. Plaintiff [*name*] is (a resident of [*county*], Washington) or (a Washington or foreign corporation doing business in [*county*], Washington.)

2. Defendant [*name first representative member*] is a resident of [*county*], Washington and is a member of the [*name unincorporated association*]. (Plaintiff is the [*officer or title, e.g., president*] of the [*association*].)

3. Defendant [*name second representative member*] is a resident of [*county*], Washington and is a member of the [*name unincorporated association*]. (Plaintiff is the [*officer or title, e.g., vice-president*] of the [*association*].)

4. Defendant [*name unincorporated association*] is an unincorporated association of [*describe membership, e.g., producers of dairy products*] within [*specify, e.g., the State of Washington or (county), Washington*].

5. Plaintiff [*name*] brings this action against defendants [*name first representative*] and [*name second representative*] as representatives for the class of all members of [*name association*] pursuant to CR 23.2. There are [*state number*] members of the [*name association*]. (The association's members are dispersed geographically over [*specify area, e.g., 15 different counties in the State of Washington*].) It is impracticable to join all members of the defendant association as parties to the action.

6. Defendants [*name first representative*] and [*name second representative*] will fairly and adequately represent the interests of the association and its members.

II. BACKGROUND FACTS

7. [*Set out events or conduct by the defendant association members which is the factual basis for the plaintiff's claims.*]

III. CLAIMS AND CAUSES OF ACTION—[*Specify, e.g., CONSUMER PROTECTION ACT VIOLATION*].

8. [*Set out claim, e.g., The defendant (name association) and its members have engaged in a false and deceptive trade practice by (describe contested practice). Defendants' practice affects the public interest and is a violation of RCW 19.86 et seq.*]

IV. DAMAGES

9. As a result of the defendant [*name association*]'s [*specify claim, e.g., Consumer Protection Act violation*], and the [*specify claim, e.g., violation of law*] by its members described above, plaintiff [*name*] has suffered the following damages: [*specify*].

(10. As a result of Defendant [*name*]'s [*specify claim, e.g., Consumer Protection Act violation*], and the [*specify claim*] of its members, plaintiff [*name*] will suffer the following damages in the future: [*specify*].)

V. REQUEST FOR RELIEF

Plaintiff [*name*] requests that judgment be entered against defendant [*name association*] and its members, jointly and severally, as follows: [*specify relief requested, e.g.:*

1. Awarding the plaintiff (name), its claimed damages in amounts to be established at trial.

2. Enjoining defendant (name association) and its members from (specify).

3. Awarding the plaintiff its statutory fees and costs.]

4. Awarding the plaintiff [*name*] any further or additional relief which the court finds appropriate, equitable or just.

Dated: [*month, day, year*].

[*Signed*] _____
[*Typed Name*]
Attorney for Plaintiff [*Name*]
[*Bar Association Number*]
[*Address*]
[*Telephone Number*]

[*Verification, if needed or desirable*]

C. SAMPLE FORMS

§ 23.2.21 Complaint in Action by Unincorporated Association

[*Court Caption*]

[*Parties*]

No. _____
COMPLAINT FOR [*Specify*]

Plaintiffs [*name first representative member*] and [*name second representative member*], as representatives on behalf of the plaintiff [*name unincorporated association*] and its members, allege the following complaint for a class action under CR 23.2 against defendant [*name*]:

I. JURISDICTION AND VENUE

1. Plaintiff [*name first representative member*] is a resident of [*county*], Washington and is a member of the [*name unincorporated association*]. (Plaintiff is the [*officer or title, e.g., president*] of the [*association*].)

2. Plaintiff [*name second representative member*] is a resident of [*county*], Washington and is a member of the [*name unincorporated association*]. (Plaintiff is the [*officer or title, e.g., vice-president*] of the [*association*].)

3. Plaintiff [*name unincorporated association*] is an unincorporated association of [*describe membership, e.g., producers of dairy products*] within [*specify, e.g., the State of Washington or (county), Washington*].

4. Defendant [*name*] is (a resident of [*county*], Washington) or (a Washington or foreign corporation doing business in [*county*], Washington.)

5. Plaintiffs [*name first representative*] and [*name second representative*] bring this action as a class action on behalf of the plaintiff [*association*] and all of its members pursuant to CR 23.2. There are [*state number*] members of the [*name association*]. (The association's members are dispersed geographically over [*specify area, e.g., 15 different counties in the State of Washington*].) It is impracticable to join all members of the plaintiff association as parties to the action.

6. Plaintiffs [*name first representative*] and [*name second representative*] will fairly and adequately represent the interests of the [*association*] and its members.

II. BACKGROUND FACTS

7. [*Set out events or conduct by defendant which is the factual basis for the association's claims.*]

III. CLAIMS AND CAUSES OF ACTION—[*Specify, e.g., CONSUMER PROTECTION ACT VIOLATION*].

8. [*Set out claim, e.g.: Defendant (name) has engaged in a false and deceptive trade practice by (describe contested practice). Defendant's practice affects the public interest and is a violation of RCW 19.86 et seq.*]

IV. DAMAGES

9. As a result of Defendant [*name*]'s [*specify claim, e.g., Consumer Protection Act violation*] described above, the plaintiff [*association*] and its members have suffered the following damages: [*specify*].

(10. As a result of Defendant [*name*]'s [*specify claim, e.g., Consumer Protection Act violation*], the plaintiff [*association*] and its members will suffer the following damages in the future: [*specify*].)

V. REQUEST FOR RELIEF

Plaintiffs [*name first representative member*] and [*name second representative member*], as representatives on behalf of the plaintiff [*name unincorporated association*] request that judgment be entered against defendant [*name*] as follows: [*specify relief requested, e.g.:*

1. Awarding the plaintiff (association), its claimed damages in amounts to be established at trial.

2. Enjoining defendant (name) from (specify).

3. Awarding the plaintiffs and the plaintiff association their statutory fees and costs.]

4. Awarding the plaintiffs and the plaintiff association any further or additional relief which the court finds appropriate, equitable or just.

Dated: [*month, day, year*].

[*Signed*] _____
[*Typed Name*]
Attorney for Plaintiffs [*name*], [*name*] and [*name association*]
[*Bar Association Number*]
[*Address*]
[*Telephone Number*]

[*Verification, if needed or desirable*]

Author's Comment

Class actions brought under CR 23.2 are governed by the jurisdiction and venue rules applicable to class actions generally.