



## **CLASS ACTION REFORM: INTERLOCUTORY APPEALS INCREASE FAIRNESS & EFFICIENCY**

Although designed to promote judicial efficiency and fairness, class actions have become a means to extort a settlement out of defendants without considering the merits of the case. Amending New Jersey court rules to permit interlocutory appeal of class certification decisions would enhance the predictability and fairness of the judicial process, and increase the likelihood that cases are decided on the merits rather than the cost of litigation.

### **Class Certification is Often the 1<sup>st</sup> and Only Step in New Jersey Class Actions**

Parties to class action suits in New Jersey state courts do not have a right to an immediate, or interlocutory, appeal of a court's decision to certify, or not certify, a class of plaintiffs. Parties can only appeal certification decisions at the time they are made if the appellate court gives them permission to do so. This means that questionable class-certification decisions can be appealed as of right only after the case has been litigated to final judgment.

### **Why is this bad?**

New Jersey's current practice disfavoring interlocutory review of certifications emphasizes economics over justice, and invites plaintiffs to file weak claims.

### **Allowing for an Interlocutory Appeal as of Right Would Solve This Problem**

A rule change permitting interlocutory appeal of class certification decisions would enhance the predictability and fairness of the judicial process, and increase the likelihood that courts reach decisions based on the merits of the cases before them.

The entire federal system and a handful of states including Connecticut, New York, and Pennsylvania already allow for interlocutory appeal of class certification decisions. A similar change to New Jersey law would ensure this state's litigants also have an opportunity to correct class certification errors.

### **Either the Courts or the Legislature Could Address This Issue**

Though they are by definition procedural, class certifications are in practice dispositive, and thus substantive. This means that either the courts or the legislature could make this policy change. NJCJI will continue to press this issue with both branches.