

UNNAMED CLASS MEMBER STANDING: A SUMMARY

<i>DE MINIMIS</i> OR "SOME INJURED" STANDARD	ALL-OR-NOTHING TEST	NAMED PLAINTIFF'S STANDING ONLY (INJUNCTIONS)	NO DECISION
<p>First Circuit: <i>Asacol</i> – 10% uninjured; certification reversed and remanded, requiring plan to protect defendants’ rights</p> <ul style="list-style-type: none"> • 5.8% uninjured – certification affirmed but with proposed plan • Cases with 6.7% (of “hundreds of thousands”) and 8% (25,000+) uninjured with no workable plan – certification denied 	<p>Second Circuit: <i>Denny</i> – Define class so all members have standing under Article III analysis (But see <i>In re Restasis</i> (certification granted with 5.7% uninjured))</p>	<p>Third Circuit: <i>Neale</i></p>	<p>Fourth Circuit: <i>Krakauer</i> – issue “must be left for another day”</p>
<p>Third Circuit: <i>Neale</i> – “do not expect a plaintiff to be able to identify all class members at class certification”</p>	<p>Eighth Circuit: <i>Avritt</i> and <i>Halvorsen</i> - all class members must show standing as part of Rule 23 analysis</p>	<p>Ninth Circuit: <i>Melendres, Bates</i></p>	<p>Fifth Circuit: <i>Flecha</i> - “Our court has not yet decided whether standing must be proven for unnamed class members, in addition to the class representative.”</p>
<p>Sixth Circuit: <i>Whirlpool</i> - “some class members” would not defeat certification</p>	<p>Ninth Circuit: <i>Ramirez</i> - all members must show standing before award but not at certification stage</p>	<p>Tenth Circuit: <i>Devaughn</i></p>	<p>Tenth Circuit: <i>In re EpiPen</i> – district court predicts Circuit Court will follow Seventh Circuit for damages cases</p>
<p>Seventh Circuit: <i>Kohen</i> - No cert if “a great many persons” are uninjured</p> <ul style="list-style-type: none"> • “No precise measure” for “a great many;” case-specific • 2.4% uninjured not sufficient to defeat certification 		<p>D.C. Circuit: <i>Azar</i></p>	
<p>Ninth Circuit: <i>In re Lidoderm</i> (district court) - .06% (3 persons out of 52) to 7.2% uninjured deemed <i>de minimis</i> and various plans can insure that they would not get damages</p>			
<p>Eleventh Circuit: <i>Cordoba</i> – follows Seventh Circuit</p>			
<p>D.C. Circuit: <i>In re Rail Freight</i> – certification denied with 12.7% (2037 persons) uninjured without separation plan</p>			