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Chapter 5

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Royalty Owner Class Actions: An Appropriate Vehicle for Recovery?[1]

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Synopsis

§ 5.01. Introduction.

[1] — A Brief History of Class Actions.

Class actions arose in equity and were known to English chancery practice since the 17th Century.[2] In 1853, the United States Supreme Court gave its blessing to an equitable class action in *Smith v. Swormstedt*.[3]

In 1938, the Federal Rules of Civil Procedure were adopted, and they recognized several different types of class actions. The class action system adopted in 1938, however, proved to be unsatisfactory. In 1966, the Federal Rules of Civil Procedure were amended due to the unworkability of the

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2 *See* A. Homburger, "State Class Actions and the Federal Rule," 71 *Colum. L. Rev.* 609, 611 (1971).

3 Smith v. Swormstedt, 57 U.S. 288, 14 L. Ed. 942 (1853).

then existing classifications. At that time, Rule 23 — which governs federal class actions — underwent an innovative revision.[4]

Since that time, Rule 23 of the Federal Rules of Civil Procedure has remained essentially unchanged. The popularity of class actions, however, has increased dramatically in recent years. From antitrust to securities fraud suits, class actions have proliferated in all types of cases. Indeed, the perceived abuse of the class action mechanism in securities fraud actions resulted in Congress imposing legislative restrictions on such proceedings.[5]

[2] — Royalty Owner Class Actions.

Certainly, the use (or attempted use) of class actions on behalf of royalty owners has increased in recent years. This is not surprising since class actions furnish an efficient means for numerous claimants with a common complaint to obtain a remedy "[w]here it is not economically feasible to obtain relief within the traditional framework of a multiplicity of small individual suits for damages."[6] Class actions also facilitate "the spreading of litigation costs among numerous litigants with similar claims."[7]

The debate over the use of class actions to address royalty owner claims has been quite heated, however. This should not be surprising. Millions of dollars are potentially at stake, and "class actions are extraordinary proceedings with extraordinary potential for abuse."[8]

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4 *See generally* Kaplan, "Continuing Work of Civil Committee: 1966 Amendments of the Federal Rules of Civil Procedure (I)," 81 *Harv. L. Rev*. 356, 375-400 (1967)(hereinafter Kaplan, *Continuing Work*).

5 *See* Private Securities Law Reform Act of 1995, Pub. L. No. 104-67,109 Stat. 737 (1995).

6 Deposit Guar. Nat'l Bank v. Roper, 445 U.S. 326, 339 (1980); *see also* 1 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* § 1.06, at 1-20 (3d ed. 1992)(listing the objectives of class actions: promoting efficiency, protecting defendants from inconsistent verdicts, protecting the rights of absent class members, allowing recovery by small claimants, and enforcing laws through private attorney general suits).

7 United States Parole Comm'n v. Geraghty, 445 U.S. 388, 403 (1980).

8 General Motors Corp. v. Bloyed, 916 S.W.2d 949 (Tex. 1996).