Ninth Circuit Vacates $24M Class Judgment on Standing and Predominance Grounds

"Class actions present significant risk, because a certified class exposes a class defendant to class-wide liability," warns James Bogan III of ***Kilpatrick Townsend & Stockton LLP*** in ***JD Supra***.

"Most defendants agree to settle rather than face the risk of a class verdict. But sometimes a class defendant will roll the dice, hoping it will prevail either at trial or on appeal. In a recent case, Bahamas Surgery Center, LLC v. Kimberly-Clark Corporation, …, the class defendants did just that. Although the district court entered judgment against the class defendants in the amount of $24 million, they were ultimately saved on appeal by a split panel of the Ninth Circuit Court of Appeals."

"By way of background, Bahamas Surgery Center, LLC (Bahamas), sued Kimberly-Clark Corporation (KC) and Halyard Health, Inc. (Halyard), for fraud, asserting that KC and Halyard misrepresented the efficacy of surgical gowns in terms of blocking the spread of pathogens. Bahamas presented evidence that the surgical gowns had been labeled as compliant with a specific standard going to that efficacy – the Association for the Advancement of Medical Instrumentation (AAMI) Liquid Barrier Level 4 standard – when in fact the gowns did not meet that standard."

Read the article.