

# 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.***