

# APPELLATE COURT REVERSES CERTIFICATION OF SUBCLASS IN PLAINS PIPELINE CASE

The US Court of Appeals for the Ninth Circuit reversed a district (trial level) court's class action certification order in a suit against Plains All America Pipeline, L.P. and Plains Pipeline, L.P. ("Plains") claiming damages from a 2015 oil spill from a Plains pipeline in Santa Barbara, California. The district court had certified as appropriate for handling as a class action a subclass of "individuals and entities who were employed, or contracted, to work on or provide supplies, personnel, or services for the operations of" the facilities reliant on the pipeline. In short, this subclass would be businesses and individuals who worked at or provided services for the offshore drilling facilities or onshore crude processing facilities that utilized the pipeline. In *Andrews v. Plains*, the 9<sup>th</sup> Circuit reversed certification and ruled this group could not bring their claims as a class action.



## **Proposed Subclass Was Too Varied**

The 9<sup>th</sup> Circuit determined the subclass was too varied to warrant class certification. For example, the subclass would include those who provided core services to the facilities and those who "provided incidental, subcontracted services to the facilities, such as a pest control company or a telecommunications provider." The disparity in membership would require individual subclass members to provide varying evidence to establish the extent of any economic injury. Also, California law requires those who claim only economic loss to have either a contract or "special relationship" with the person causing the loss. Each subclass member would need to establish its "special relationship" in order to be allowed to recover, thus necessitating individual, rather than class action, proceedings.

## **Rare Reversal of Class Certification**

Reversals of class certification decisions are rare. While appellate courts have discretion to consider an appeal of a certification while the case is pending before the trial court, they usually decline, and then the defendants almost always settle.

Those seeking review of a certification order must petition the appellate court for review, which has complete discretion to accept or deny. At least for this subclass, Plains was able to persuade the 9<sup>th</sup> Circuit to hear its appeal and reverse the certification.

For a copy of the 9<sup>th</sup> Circuit's decision

<http://cdn.ca9.uscourts.gov/datastore/memoranda/2019/07/03/18-55850.pdf>