

## California Court of Appeal Issues Ruling on Class Certification: Conclusory Class Allegations Are Defeated

Posted on August 25, 2009 by [Royal Oakes](#)

The pen is mightier than the sword, and a variation on that theme – the declaration is mightier than conclusory class action allegations – has just been embraced by the Fourth District California Court of Appeal in the case of [Ali v. USA Cab Ltd. \(August 24, 2009\)](#).

In *Ali* a putative class of drivers who leased taxis from USA Cab claimed the company wrongfully classified the drivers as independent contractors rather than employees. As a result, plaintiffs claimed, USA Cab improperly withheld workers' compensation insurance, minimum wages and meal/rest breaks. Although the complaint asserted the drivers assumed no risk and provided no tools, USA Cab attacked plaintiffs' motion for class certification by filing declarations showing the drivers were not subject to USA Cab's control, that the drivers provided their own maps, cell phones, computers and GPS systems, and that they paid for their own advertising and business cards.

The use of dozens of drivers' declarations proved to be a powerful weapon against plaintiffs' motion for class certification. The trial court found common issues did not predominate, as putative class members presented a vast variety of factual circumstances not susceptible to class resolution. Because proof of liability as to a sampling of class members would not establish proof of liability as to the class, the Court of Appeal affirmed the trial court's denial of the certification motion.

The Court of Appeal also held the suit failed the superiority test, concluding plaintiffs failed to demonstrate class treatment would be superior to individual actions, because the putative class action would be "extremely difficult to manage." The opinion found that even if judgment were to be rendered for the class, the need to litigate each member's right to recover would eliminate any efficiencies resulting from the class mechanism.

The lesson of the *Ali* case is clear: The notion that common issues predominate is easy to assert, but if declarations can disprove commonality, they can be a devastating weapon in defeating a putative class action.