

[Class Certification Can Properly be Denied When Individual Showings of Damages Predominate](#)

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A common perception in class action litigation is that, where damages are individualized, this will not usually mean that a class action cannot be certified. However, in certain cases, where individualized questions of damages exist – and indeed predominate over one or more common issues – a trial court may deny class certification and that denial should be upheld on appeal. The recent decision in [Evans v. Lasco Bathware, Inc.](#) presents such a case.

In *Evans*, the plaintiff brought suit against Lasco claiming that the shower pans that had been installed in thousands of residential showers were defectively designed, resulting in water leakage and consequential damages to adjacent components of the homes' shower system. The plaintiff sought to certify a class alleging claims for strict products liability and negligence, and asserted that its expert had concluded that the shower pan design was defective (a common issue) and that damage could be resolved by calculating some formula to estimate the average cost to replace the shower pan with a new generation of shower pan and thereby avoid the need for class members to submit the individualized damage estimates.

The trial court denied class certification, holding that the need for individualized proof of the amount of damages for removing and replacing the shower pans predominated over the common questions. The Court of Appeal affirmed, explaining that while

a trial court has discretion to permit a class action to proceed where the damages recoverable by the class must necessarily be based on estimations, the trial court equally has discretion to deny certification when it concludes the fact and extent of each member's injury requires individualized inquiries that defeat predominance.

On this basis, it asserted that the trial court did not abuse its discretion in declining to certify the class as to common issues of liability and causation since those issues required individualized proof from each class member.