vindicates a corporate right secondarily—canons of due process are not offended by holding the class to the result of the suit, either on familiar agency principles or because the possibility of being so bound is incidental to participation in corporate enterprise. But a different problem arises when absent parties are bound by judgments incurred by others *who are merely similarly situated.* At that point efficacy collides with principles of due process" (Federal Class Actions, op. cit., p. 830; emphasis supplied; *Christopher* v. *Brusselback*, 302 U.S. 500, 503–505 (1938)).

It is not believed that the aforementioned assessment of the measure of due process protection required to be accorded unidentified members of the class joined as defendants in litigation is in conflict with the provisions of the revised Rule 23(b)(c)(2) which stipulates that in any class action, "where the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, . . . the court shall direct to the members of the class the best practical notice under the circumstances, including individual notice to all members who can be identified through reasonable effort." In two decisions construcing this new rule, federal courts, in one instance, approved notice by publication as an adequate means whereby representatives, instituting an action on behalf of several thousand taxpayers residing in a sanitary district, might notify absentees; whereas, in the second instance, also involving absent members of a class of plaintiffs, another federal court concluded the varied nature of the interests asserted on behalf of the latter required individual notice and that due process standards could not be satisfied by "free publicity" or "by paid advertisements in newspapers of national distribution" (*Eisen* v. *Carlisle & Jacqueline*, 41 F.R.D. 147, 151–152 (1966); *Booth* v. *General Dynamics Corporation*, 264 F. Supp. 465, 472 (1967)). For reasons previously assigned, members of a class, whose only common interest is deductible from the fact that they are "merely similarly situated", are believed to be entitled to a more generous measure of protection when sued as defendants than when instituting an action as plaintiffs.

II

A. Class action against manufacturers or utilities emitting pollutants

Absent any evidence that manufacturers or public utilities are bound together by common ties in the form of membership in a trade association or of corporate affiliations embracing a parent-subsidiary or holding company relationship, presumably a class action could be instituted against a group of utilities or a group of manufacturers only upon the basis that the latter were similarly situated; namely, that each group was engaging in a course of action which give rise to "questions of law or fact common to the members of the class" or group and that such "common questions of law or fact predominate over any questions affecting only individual members" (Rule 23(a)(b)(3)). For "common questions of law or fact" to predominate, the manufacturers or the utilities constituting the class sued as defendants apparently would have to be engaged in productive activities which emit like pollutants, the dispersion of which was attended by a like hazard to public health in a reasonably compact geographical area. Thus the manufacturers conceivably might be processors of chemicals or the utilities might be guilty of burning coal with a high sulphur content. As to the area in which the utilities or the manufacturers