

Fixing The Broken Class Action Lawsuit System

A big and important issue, not only in legal circles, but in the country and for the economy as a whole, is whether something needs to be done to curb or control class action litigation. For some time Congress has been considering legislation designated as the Class Action Fairness Act of 2003. In announcing that this legislation was reported favorably by the Senate Judiciary Committee, Senator Orrin Hatch, the Chair, stated:

“The Class Action Fairness Act of 2003 is a good and fair bill that provides much-needed legislation to curb class action abuses that are all too rampant. Some claim this bill would eliminate state class actions and that is just not true. It only seeks to address those class actions that properly belong in federal court. The bill provides additional consumer protections to prevent egregious settlements that give lawyers millions of dollars while leaving the plaintiffs with worthless coupons.”

The purpose of the Class Action Procedural Rule – Federal Rule 23 and its state counterparts is to make the courts more accessible to the little guy who, along with others similarly situated, had a beef with a company or institution possessing vastly more economic power. The rule was crafted to facilitate an efficient and relatively inexpensive resolution of multiple individual claims. Few would seriously argue that historically the class action rule has been an effective tool to hold wrongdoers accountable and may have contributed to improved safety for our citizens. When not abused the class action procedure could be implemented without doing violence to the important concept envisioned by the Framers of the U.S. Constitution that disputes between citizens of different states should be resolved in the federal courts. This is particularly important when the outcome can significantly impact interstate commerce and the lives of citizens throughout the country. In recent times the class action method of resolving disputes has run amok. The current situation which all too frequently awards only class action lawyers or allows, at best, an uninformed or overwhelmed or, at worst, a biased state court judge to facilitate enormous judgments having a nationwide economic effect. Even though these abuses have taken place in only a handful of jurisdictions in a few states (thankfully, not including Indiana), the nationwide impact has been enormous. The financial reward provided to those engaged in class action litigation has been so great that it has been said that state court class action filings have grown an astonishing 1000% over the last decade.

Even though only a small number of state courts in states like Mississippi, Texas, Florida and Illinois routinely fail to exercise sound judicial judgment in class action cases, those courts have become magnets for a hugely disproportionate share of interstate class actions which result in outcomes national in scope. Madison County, Illinois is a perfect example. Although it is a relatively small, rural county in southwestern Illinois across the river from St. Louis, in recent years more nationwide class actions have been filed in Madison County than in some of the nation's most populated jurisdictions. In 1998 two class actions were filed in Madison County. In 2000 the number rose to 39. It increased to 43 in 2001 and was on track for a record-breaking 75 or more cases in 2002. Almost all of these lawsuits were filed on behalf of multi-state classes. Few involved Madison County defendants. Many of the cases attacked standard practices engaged in by national in scope insurance companies and financial institutions. One of

the most egregious examples of overreaching by a county court judge involved the State Farm Insurance Company. This case involved 4.7 million class members from all 50 states. The Madison County trial judge ruled that State Farm could no longer use after-market parts to fix accident-damaged vehicles. This ruling was made despite the fact that some states had enacted laws requiring generic parts be made available to hold down the cost of repair and insurance premiums. Thus, one state court judge usurped the prerogative of all 50 state legislatures and impacted insurers and consumers in all fifty states.

The State Farm case is an example of the situation the Framers of our Constitution had in mind when they created the concept of “diversity jurisdiction” in Article III of the Constitution. This concept allows for major disputes between citizens of different states to be heard in a neutral federal court before a judge nominated by the president of the United States and confirmed by the US Senate. Unfortunately, our federal diversity jurisdiction statutes were enacted years ago — well before the modern day class action. The unintended consequence is that most present-day class actions cannot be removed to federal court even though they are often the most significant lawsuits involving the greatest number of citizens with numerous interstate commerce implications. Unlike federal courts, state courts lack meaningful mechanisms for coordinating parallel class actions. Once a class action is filed, “copycat” cases are often filed in other state court jurisdictions which cannot be consolidated as is the case in federal court via the multi-district litigation procedure. Besides being wasteful, inconsistent outcomes can result.

Even worse, state courts sometimes compete, each vying to control the litigation of a particular matter. For example, at the urging of counsel, a state court in one state may certify a nationwide class regarding a particular set of claims and then quickly move to the disposition stage depriving class members living in other states of the right to have their claims heard in their own courts. Class counsel jockeying for controlling position among “competing” cases often sacrifice class members’ interests to achieve their own litigation goals.

Chief among the abuses in the current state court class action morass are settlements in which consumers receive coupons or something else of little value while their lawyers walk away with millions in legal fees. In a recent class action lawsuit against Blockbuster over late fees, class members received coupons for free movie rentals and their lawyers were awarded \$9.25 million.

What do citizens make of this state of affairs? A recent poll published in USA Today found that 67% of Americans believe that lawyers benefit the most from class action lawsuits and 61% believe that consumers and class members benefit the least. The poll also found that 40% of those questioned, or the equivalent of about 60 million people, have been part of a class action lawsuit. Of that number, only 30% tried to claim a reward and more than half of those who did try (53%) say they got nothing of any value from the lawsuit.

Interestingly, in recent years, the federal courts have made efforts to halt some of the abuses occurring with class action litigation, particularly by more carefully scrutinizing proposed settlements. Federal courts have rejected numerous proposed class settlements, and the federal class action rules on settlements are being substantially improved. The same cannot be said for

those state courts that continue to be willing to approve fee-driven settlements. Not surprisingly, those courts have become very popular venues for class action filings. Fortunately, Indiana is not a target for forum shopping. This does not mean, however, that class action abuse is not a problem for Hoosiers. All Indiana companies are subject to these lawsuits in places like Jefferson County, Mississippi and Madison County, Illinois. When Indiana companies are trapped in costly litigation battles in these foreign venues, all Hoosiers end up footing the bill by paying more for goods and services in the marketplace.

The Class Action Fairness Act of 2003 will help curb many of the abuses in the current class-action system by transferring to federal courts jurisdiction over national class-action lawsuits involving plaintiffs and defendants from different states. To move the largest and most complex class actions into federal court, the bill would change the law to provide that federal jurisdiction exists whenever any member of a plaintiff class is a citizen of a different state than any defendant, so long as the aggregate amount in controversy exceeds \$5 million. The bill contains provisions to keep class actions in state court when the case primarily involves matters of local concern or when most of the parties affected are citizens of the same state.

The legislation also contains a "Class Action Plaintiffs' Bill of Rights" that:

- Ensures that judges review the fairness of proposed settlements that provide only coupons to the plaintiffs;
- Prevents higher settlement payments to plaintiffs recruited to file the lawsuit;
- Bans settlements that actually impose costs on class members;
- Requires that all settlement notices be written in "plain English."

Some opponents of the Class Action Fairness Act have charged that expanding federal jurisdiction over interstate class actions could overload the federal judiciary. Although the precise number of class actions annually filed in our state courts has eluded researchers, there is no basis for arguing that the Class Action Fairness Act would prompt a tidal wave of class actions that would overwhelm our federal courts. Critics making the judicial overload argument ignore the fact that the Class Action Fairness Act would not require that interstate class actions be heard in federal courts. It simply creates the option for both plaintiffs and defendants. There is no reason to believe that all class actions will be moved to federal court. Further, interstate class actions are certainly no less deserving of a federal forum than individual product liability actions, personal injury cases or civil habeas corpus cases that are currently filed in federal court.

Federal courts are better equipped than state courts to handle the demands of interstate class action cases. Many state courts are tribunals of general jurisdiction. They hear a variety of cases, including divorce matters, custody disputes, name change petitions, traffic violations, small claims contract disputes, minor misdemeanors, and major felonies. Thus, when a class action is filed in those courts, it diminishes the court's ability to provide a broad array of very basic legal services for the local community. The judges presiding over those state courts have

far fewer resources for dealing with huge, complex cases. Federal court judges often have two or more law clerks; state court judges often have none. And federal court judges usually can delegate aspects of their cases (e.g., discovery issues) to magistrate judges or special masters; state court judges typically lack such resources.

Some federal judicial districts may need additional resources to handle more class action litigation. Wherever that need has been confirmed, additional resources should be provided (as they were in 1999 and again during 2002, when new permanent and temporary federal district court judgeships were added). But those spot shortages are no excuse for continuing to deny both consumers and corporations their due process rights by keeping interstate class actions a state court monopoly.

It is time for Congress to fix the broken class action lawsuit system by passing the Class Action Fairness Act.