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Policy Statement

Class Action Fairness: Preventing Lawsuit Abuse

March 7, 2002

The House will vote next week on H.R. 2341, the Class Action Fairness Act. Created for the purpose of efficiently addressing large numbers of similar claims, the class action lawsuit too often has victimized consumers through unfair settlements. In many cases, the device has become nothing more than a fee generating mechanism for trial lawyers.

Today, class actions frequently result in little or no recovery for members of the injured class, but handsome legal fees for their attorneys. Class actions can waste scarce judicial resources and impose high costs on innocent workers and shareholders—costs that are then paid by consumers. Worst of all, the class action device has permitted a few lawyers to force thousands of Americans into court in out-of-state venues they pick. The Fairness Act addresses these abuses by improving the procedures for removing class actions from state court to federal court, and by creating a “Consumer Class Action Bill of Rights.”

A handful of jurisdictions around the country have become notorious for their allegiance to the class action plaintiff’s bar. There have been a disproportionately high number of class actions filed in state courts located in such places as Madison County, Illinois; Jefferson County, Texas; and Palm Beach County, Florida. The often innocent victims of such lawsuit abuse, faced with litigating in remote and unfriendly forums, have only one practical option for obtaining a fair trial—removal to federal court.

However, under the bizarre current rules, an action cannot be removed to federal court unless 100% of all named plaintiffs are citizens of a different state from every defendant. Also, for every

plaintiff (including unnamed class members), there must be an amount in controversy in excess of \$75,000. These requirements can easily be defeated by including in the complaint a plaintiff and defendant from the same state, and through other artful pleading. The result: Americans are forced to travel long distances to appear before courts with a demonstrated predisposition that favors the lawyers suing them.

The Fairness Act addresses this problem by providing that the federal district courts have original jurisdiction over a class action where: (1) any member of a plaintiff class is a citizen of a different state than any defendant; and (2) the aggregated claims of the individual class members exceed \$2,000,000. If these conditions are met, plaintiffs or defendants can remove the case to federal court.

Not every class action belongs in federal court. The Fairness Act, therefore, authorizes federal judges to return a case to state court if that's truly where it belongs. For example, if a substantial majority of the class are citizens of the state where the action was filed, the matter can be sent to state court. The same would be true if state law primarily governs the claims. Other reasons for keeping a multi-state class action in state court include primary defendants who are states or non-federal public officials or entities, or class sizes of less than 100.

The Fairness Act also creates a Consumer Class Action Bill of Rights that establishes, among others, the following safeguards:

- **Court protection of class members' interests in settlements.** The law would provide increased judicial scrutiny of non-cash benefits by requiring the court to make a written finding that "the settlement is fair, reasonable, and adequate for class members."
- **Protecting class members from incurring financial loss.** The court would be required to make a written finding justifying any monetary loss to class members.
- **Requiring "plain English" settlement proposals.** Any notice of a proposed class action settlement must be simple, clear, and easily understood. The law also specifies that important information must be contained within the notice.
- **Consumer protection in TV and radio notices.** If television or radio notices to class members are used, they must include the right of each member to be excluded from the class action and from any settlement.

The Class Action Fairness Act will mark an important step toward eliminating prejudice by out-of-state courts against other Americans. It will increase judicial efficiency and provide a forum better suited to adjudicating complex class action litigation. Most importantly, it will restore luster to the honored American maxim of "equal justice under law."