

Testimony of

# **The Honorable Orrin Hatch**

July 31, 2002

Mr. Chairman, I would like to thank you and Senator Kohl for scheduling this hearing on the important topic of class action litigation. I am pleased also that the Chairman has agreed to hold a hearing in September on the problems with asbestos litigation. I am hopeful that we can work together on that issue.

Over the past decade, it has become clear that abuses of the class action system have reached epidemic levels. In recent years, it has become equally clear that the ultimate victims of this epidemic are poorly-represented class members and individual consumers throughout the nation. The Class Action Fairness Act of 2002 represents a modest, measured effort to remedy the plague of abuses, inconsistencies, and inefficiencies that infest our current system of class action litigation.

It is essential that we address the abuses that are running rampant in our current class action litigation system. Frequently, plaintiff class members are not adequately informed of their rights or of the terms and practical implications of a proposed settlement. Too often judges approve settlements that primarily benefit the class counsel, rather than the class members. There are numerous examples of settlements where class members receive little or nothing, while attorneys receive millions of dollars in fees. Multiple class action suits asserting the same claims on behalf of the same plaintiffs are routinely filed in different state courts, causing judicial inefficiencies and encouraging collusive settlement behavior. And state courts are more frequently certifying national classes leading to rulings that infringe upon or conflict with the established laws and policies of other states.

Despite the mountains of evidence demonstrating the drastically increasing harms caused by class action abuses, I am sure that several here today will attempt to deny the existence of any problem at all. Others will try to confuse the issue with spurious claims that proposed reforms would somehow disadvantage victims with legitimate claims or further worsen class action abuses. Others may even contend that past legislative reforms have contributed to recent financial debacles and that the proposed reforms will encourage more. Such claims are nothing more than red herrings intended to divert today's debate from the real issues.

In this regard let me emphasize a few points regarding S. 1712. First, this bill does not seek to eliminate state court class action litigation. Class action suits brought in state courts have proven in many contexts to be an effective and desirable tool for protecting civil and consumer rights. Nor do the reforms we will discuss today in any way diminish the rights or practical ability of victims to band together to pursue their claims against large corporations. In fact, we have included several consumer protection provisions in our legislation that I feel strongly will substantially improve plaintiffs' chances of achieving a fair result in any settlement proposal.

There are three key components to S. 1712. First, the bill implements consumer protections against abusive settlements by: (1) requiring simplified notices that explain to class members the terms of proposed class action settlements and their rights with respect to the proposed settlement in "plain English"; (2) enhancing judicial scrutiny of coupon settlements; (3) providing a standard for judicial approval of settlements that would result in a net monetary loss to plaintiffs; (4) prohibiting "bounties" to class representatives; and (5) prohibiting settlements that favor class members based upon geographic proximity to the courthouse.

Second, the bill requires that notice of class action settlements be sent to appropriate state and federal authorities to provide them with sufficient information to determine whether the settlement is in the best interest of the citizens they represent.

Finally, the bill amends the diversity-of-citizenship jurisdiction statute to allow large interstate class actions to be adjudicated in Federal court by granting jurisdiction in class actions where there is "minimal diversity" and the aggregate amount in controversy among all class members exceeds \$2 million.

Although some critics have argued that this amendment to diversity jurisdiction somehow violates the principles of federalism or is inconsistent with the Constitution, I fully agree with Mr. Dellinger, who will testify today, that it is "difficult to understand any objection to the goal of bringing to the federal court cases of genuine national importance that fall clearly with the jurisdiction conferred on those courts by Article III of the Constitution."

Lastly, I would like to express my appreciation to the many individuals who have shared with me the details of their experiences with class action litigation. In particular, I am grateful to those victims of various abuses of the current system who have come forward and told their stories in the hope that something positive might come out of their terrible experiences.

In particular, I would like to acknowledge Irene Taylor of Tyler, Texas, who is here today. Mrs. Taylor was bilked out of approximately \$20,000 in a telemarketing scam that defrauded senior citizens out of more than \$200 million. In a class action brought in Madison County, Illinois, the attorneys purportedly representing Mrs. Taylor negotiated a proposed settlement which will exclude her from any recovery whatsoever.

I would also like to recognize Martha Preston of Baraboo, Wisconsin. Ms. Preston cannot not be here for health reasons, but has sent us a letter that I will submit for the record. Ms. Preston was involved in the famous BancBoston case, brought in Alabama state court, which involved the bank's failure to post interest to mortgage escrow accounts in a prompt manner. Although Ms. Preston did receive a settlement of about \$4, approximately \$95 was deducted from her account to help pay the class counsel's legal fees of \$8.5 million. Notably, Ms. Preston testified before this committee five years ago asking us to stop these abusive class action lawsuits, but it appears that - at least thus far - her plea has not been heard.

I would like to ask unanimous consent that written statements from Martha Preston, the Chamber of Commerce, America's Community Bankers, Irving Cohen, Patrick Baird and the American Council of Life Insurers be inserted in the record for today's hearing.

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