Testimony of

Mr. Lawrence Mirel

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Thank you, Mr. Chairman and members of the Committee. My name is Lawrence Mirel. I am the Commissioner of Insurance and Securities for the District of Columbia. The position I hold was originally created by Congress as the Office of the Superintendent of Insurance for the District of Columbia in 1901 and became part of the District's "Home Rule" Government upon the passage of the Home Rule Act of 1973. As you know, the business of insurance is regulated primarily by the states. Although the District of Columbia is not a state, I have the authority of a state insurance commissioner, and I am a full and active member of the National Association of Insurance Commissioners. My job is to enforce the insurance laws and the securities laws of the District of Columbia as enacted over the years by the Congress of the United States, as the District's primary legislature, and by the Council of the District of Columbia since that body was created in 1974.

I am concerned with the impact of class action lawsuits against insurance companies that limit and interfere with my ability--and the ability of my state insurance commissioner colleagues--to carry out our statutory duties. These duties include protecting the public and assuring that insurance is available to and affordable by consumers.

Insurance is a highly regulated business, and it needs to be. There is no other business in which a customer pays now for protection against some future event without knowing when, or even if, it will occur. As insurance commissioners, we must make sure that when a covered claim is made the company that took the consumer's premium money is able and willing to pay that claim. We are also responsible for making sure that insurance is available and affordable for our citizens, and that insurance companies are able to offer their customers good products at fair prices in accordance with clear and uniformly applied laws and regulations.

As state insurance commissioners, our primary function is to protect the public. I and my colleagues see ourselves as consumer advocates, and the laws we administer give us that responsibility and authority. Our expert staffs are knowledgeable about the stringent laws that govern the operation of the business of insurance, and about the complex financial rules that insurance companies must follow. We receive and act upon consumer complaints against insurance companies. We make sure that insurance contracts are fair, understandable, and in accordance with the law. We go after companies that do not treat their customers properly, or that are engaged in fraud. We have substantial enforcement tools at our disposal, including the authority to fine or even to close down insurance companies that misbehave, and to refer bad actors for criminal prosecution.

Large scale nationwide litigation against major insurance companies frequently goes around or simply ignores the role of state regulators. Class action lawsuits against insurers can, and often do, directly impact our statutory authority to regulate the business of insurance in our jurisdictions. Moreover these suits, whether successful or not, can have a major effect on the cost and even the availability of good insurance products to the public. That is because they are frequently designed to produce a small, sometimes negligible, benefit to a large class of policyholders--and incidentally huge legal fees to the lawyers who bring them--without regard to

the impact on the insurance market as a whole and the cost to the insurance-buying public. Consider the following examples:

- In Texas, two of the state's largest automobile insurance companies decided to settle a $100 million class action lawsuit brought against them in 1996 over a long-standing, industry-wide practice of "rounding up" to the nearest dollar for auto insurance premiums. Although the insurers' premiums were calculated according to specific instructions from the Texas Department of Insurance, mounting legal expenses and negative publicity compelled the companies to settle for nearly $36 million. Policyholders received refunds of about $5.50 each, while the lawyers took home almost $11 million.
- More than 20 nationwide class action lawsuits are currently pending in New Mexico's trial courts claiming that insurance companies are misleading policyholders by not disclosing the "annual percentage rate" of fees charged for processing installment payments of premiums. In the District of Columbia, and in most if not all states, companies are allowed to charge small processing fees for allowing customers to make "modal payments" on their annual premiums, so long as those charges are disclosed and are reasonable. I would not permit companies selling in the District of Columbia to show these fees at an "annual percentage rate" because APRs imply that a loan was made, and there is no loan. Modal payments are simply a convenience to customers who would rather not make lump-sum annual payments. There has never been a complaint about such charges in the District of Columbia or any other jurisdiction, as far as I know. Yet not only was the issue not raised with the New Mexico Insurance Commissioner before suit was filed, but when he tried to intervene in the case his petition was denied.

Facing potentially billions of dollars in liability costs, as well as the threat of massive costs to defend themselves against these suits, insurance companies are under tremendous pressure to settle. One modal premium case, against Primerica, has already been settled, with $7.5 million paid to the plaintiffs attorneys and nothing to class members. Another proposed settlement of $10 million in a modal payment suit against Massachusetts Mutual, all of which was to go to the plaintiffs attorneys, was withdrawn when Trial Lawyers for Public Justice--a plaintiffs' lawyers trade association--denounced it as "outrageous" and "an abuse of both the class-action device and class members."

- A billion-dollar judgment in Madison County, Illinois, against State Farm, the nation's largest auto insurer, that would provide miniscule payments to the six million plaintiffs, but huge fees for the lawyers who brought the suit, has caused State Farm to discontinue nationwide its practice of replacing damaged auto parts with parts made by companies other than the original manufacturer of the automobile. Now on appeal before the state's Supreme Court, the trial court decision has been strongly denounced by consumer advocates. Clarence Ditlow, director of the Center for Auto Safety, a non-profit group founded by Ralph Nader and Consumers Union, has expressed fear that the decision will end the use of after-market parts, which are allowed in most states and the District of Columbia. Mr. Ditlow believes such a move could cost consumers an extra $2 billion to $3 billion a year for auto repairs, which of course means higher auto insurance premiums.

On this issue I can speak as a consumer as well as an insurance commissioner. Recently, I was involved in an automobile accident where the other driver was at fault. I have State Farm insurance, and my premiums will be increased if the Madison County case is upheld and State Farm is required to pay the $1 billion judgment. The person who hit my car, however, was not insured by State Farm. His insurance company replaced my crumpled fender with a non-original

equipment part. I did not object because the non-o.e.m. part was a perfectly reasonable alternative to the much more expensive "original" equipment fender, and the car in any event was five years old and did not need a "new" fender. But I was going to have to pay for the cost of a lawsuit in Illinois while not receiving any of the supposed "benefits" provided by that suit. There are other examples as well.

- A suit currently before the California Supreme Court claims that State Farm is keeping too much money in reserves, thereby depriving its policyholders (State Farm is a mutual company) of the benefits of that money in the form of refunds or reduced premiums. The suit ignores the fact that insurance commissioners, such as myself, require insurance companies to maintain adequate reserves, so that we can assure the public that their covered claims will be paid. Who should decide what level of reserves are "adequate" to protect the State Farm policyholders in the District of Columbia, the statutory Commissioner of Insurance for the District of Columbia or a jury of laymen in California?
- Or the case currently pending in Georgia against GEICO claiming that GEICO is defrauding its insureds by paying only the cost of fixing a damaged car, and not the loss of value of the car because it has been damaged in an accident--even though the insurance contract, which has been approved by insurance commissioners of the various states where GEICO operates, specifically requires the company to fix the car, not to pay for any diminished value of the vehicle.

Let me be clear about my position. I am not opposed to class action lawsuits. Class action suits, when used properly, have an important role to play in our legal system. But I am concerned that they do not substitute for, or interfere with, other lawful methods of protecting the public. When suits are filed on behalf of persons residing in more than one state, those suits should be filed in Federal, not state, court so that we do not have a court in one state, applying the law of that state, setting policy for all the other states and the District of Columbia. When suits are filed against a regulated industry, the statutory authority of the regulator--whether state or Federal--must be taken into account, not circumvented. When the costs of large class action lawsuits are substantial, whether the cases are litigated or settled, it must be recognized that these costs will be paid by insurance consumers. When valid insurance company practices, reviewed and approved by state insurance regulators, are challenged in class action litigation, we must recognize that the result could be the discontinuation of products that are desired by the public and are beneficial to the public.

I commend the Senate Judiciary Committee for holding hearings on this important topic, and for considering the "Class Action Fairness Act of 2001."

S. 1712 is a good start toward finding the proper balance between the use of class actions to vindicate the common claims of large numbers of people and the potential adverse impact of such suits on other citizens and consumers.

In addition, S. 1712 has a set of provisions that directly protect consumers and that would be of very substantial value in the most abusive insurance litigation.

Among other things, the bill:

? Requires closer judicial scrutiny of class action settlements that provide class members with only coupons or other forms of non-cash relief.

? Requires that notices of settlement be written in plain English so that they can be understood by the ordinary consumer. We've all received these sorts of notices in the mail, and we know they give every appearance of having been written to be incomprehensible.

? Bars class action settlements that actually cost the class members money.

? Bars class action settlements that provide more benefits to certain class members on the basis of proximity to the courthouse -- the worst sort of "home cooking" that is fostered by the existing system.
? Requires that notice of proposed class action settlements be provided to state and federal regulators so that we have an opportunity to do something about truly collusive and abusive deals.

I am particularly pleased to see that the bill recognizes the roles played by Federal and state regulatory officials in protecting the public by requiring notice to such regulators. (Section 1717). I would like to suggest one amendment to that section. It would be helpful to have the District of Columbia included in the definition of "Appropriate State Official." That can easily be done by inserting the words "or the District of Columbia" after the word "State" on page 10, line 17.
I want to conclude by expressing my hope that class action reform not be looked at as a partisan issue. I was appointed to my present position by the Democratic Mayor of the District of Columbia, Anthony A. Williams. In an earlier part of my career I worked here in the Senate for Democratic Senator George McGovern. Before that I had been a special assistant to another Democrat, Abraham Ribicoff, when he was Secretary of Health, Education and Welfare and had worked on his campaign for the Senate. I do not think that concerns about possible abuses in the use of class action lawsuits should be limited to one party or one level of government. We are all concerned about one thing--protecting the public in the most effective and efficient way we can. Thank you for your time, and I am happy to answer any questions you may have about my testimony.

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