

Testimony of

# **The Honorable Patrick Leahy**

July 31, 2002

I hope this hearing will present a fair and balanced view of class action litigation in our state and federal courts.

It is my intention to undertake a deliberate and careful review of information from parties actually involved in class action litigation to provide a realistic picture of the benefits and problems with class action litigation.

Unfortunately, I believe that some special interest groups have distorted the state of class action litigation by relying on a few anecdotes in their ends-oriented attempt to justify moving almost all class action cases involving state law into federal court.

Instead, I hope this hearing will focus fairly on the hard evidence and facts in most class action cases. We should remember that our state-based tort system remains one of the greatest and most powerful vehicles for justice anywhere in the world. One reason for that is the availability of class action litigation to let ordinary people band together to take on powerful corporations or even their own government.

Defrauded investors, deceived consumers, victims of defective products, asbestos survivors, smokers, and thousands of other ordinary people have all been able to rely on class action lawsuits under our state-based tort system to seek and receive justice.

I am old enough to remember the civil rights battles of the 1950s and 1960s and the impact of class actions to vindicate basic rights through our courts.

The landmark Supreme Court decision in *Brown v. Board of Education* was the culmination of appeals from four class action cases, three from federal court decisions in Kansas, South Carolina and Virginia and one from a decision by the Supreme Court of Delaware.

Only the Supreme Court of Delaware, the state court, got the case right by deciding for the African-American plaintiffs. The Supreme Court of Delaware, a state court, understood before any federal court that Aseparate but equal is inherently unequal.@

More recently, the tobacco class action litigation has contributed to fundamentally change the very dynamics of tobacco and public health. For the first time, that class action litigation uncovered and presented serious and credible evidence about the tobacco industry=s 45-year campaign of deception about the dangers of cigarettes. As a result, the class action settlements negotiated by the state attorneys general and the private bar have brought about profound changes in the tobacco industry. The tobacco industry is now finally admitting on its Internet web

sites that smoking causes cancer and is addictive. Before the litigation, the executives of these same companies denied under oath to Congress that smoking was addictive.

The very existence of the multi-state tobacco settlements is a credit to class actions under our state-based civil justice system.

In fact, without the use of class actions, does anyone believe that the tobacco companies would have ever come to a negotiating table? Without the willingness of private attorneys acting on behalf of their clients, taking significant financial and professional risks, and pursuing these matters so diligently, the states would not have settlement payments for the next 25 years, which will be devoted to promoting the public health of their citizens.

Thousands, if not millions, of lives will be saved because of future public health improvements made possible by the tobacco class action settlement.

Another example of class action litigation serving the public interest is the Firestone Tire debacle. The recent national tire recall was started, in part, from the disclosure of internal corporate documents on consumer complaints of tire defects and design errors that were discovered in litigation against Bridgestone/Firestone, Inc.

Plaintiffs' attorneys turned this information over to the National Highway Traffic Safety Administration, triggering a NHTSA investigation.

On August 9, 2000, Bridgestone/Firestone recalled 6.5 million tires after they were linked to 101 fatalities, 400 injuries and 2,226 consumer complaints. Later, the NHTSA warned that another 1.4 million Firestone tires on the road may be defective.

As reported by TIME Magazine at the time, it is doubtful that the internal corporate consumer complaint information would have ever seen the light of day absent the civil justice discovery process. We all know that without consolidating procedures like class actions, it might be impossible for plaintiffs to obtain effective legal representation. Defense lawyers tend to be paid by the hour--and well paid.

Plaintiffs' lawyers in this type of setting tend to work without pay for the possibility of obtaining a portion of the proceeds, if successful. It may well prove uneconomical for counsel to take on governmental or corporate defendants if they must do so on a case-by-case, individual basis. It may be that individual claims are simply too small to be pursued.

Sometimes that is what cheaters count on and how they get away with their schemes. Cheating thousands of people "just a little" is still cheating. Class actions allow the little guys to band together, allow them to afford a competent lawyer and allow them to redress wrongdoing.

For instance, class actions made it possible for individual tobacco victims to band together to take on the powerful tobacco conglomerates in ways that individual smokers could not afford. It allows stockholders and small investors to join together to go after investment scams.

It would be criminal to leave some people with valid claims with no effective way to seek relief. I am extremely hesitant to restrict these legal rights and remedies without substantial evidence that such restrictions are justified and carefully circumscribed.

To those who think it is good politics to attack the plaintiffs' lawyers who risk much so that their clients may obtain a measure of justice, I hope they will think again.

I am hesitant to restrict legal rights and remedies in an era of corporate irresponsibility and executive misconduct. I attended yesterday's White House signing ceremony of the Sarbanes-Oxley Act and heard bipartisan demands for holding corporate wrongdoers accountable for their actions. I agree that now is not the time to shield corporate wrongdoers from justice.

Instead, Congress should be taking all the steps needed to hold accountable for their actions those who have defrauded so many and threatened the economic security of small investors, those on pensions, those whose savings for their children's college education has been lost and those hardworking Americans who are being left with over \$7 trillion in stock market losses.

The legal rights and procedures that protect consumers, investors and employees matter now more than ever.

Just a few months ago, a group of investors recovered millions in lost investments under state corporate fraud laws in a state class action case. In Baptist Foundation of Arizona v. Arthur Andersen, mostly elderly investors banded together to successfully recoup \$217 million from Arthur Andersen for questionable accounting practices surrounding an investment trust.

This Arthur Andersen case is just one example of how state-based class action litigation may help hold corporate wrongdoers accountable and help defrauded investors recoup their losses.

I look forward to hearing from our witnesses as the Committee begins the process of undertaking a fair and balanced review of class action litigation in our state and federal courts. In so doing, I want to say that while I may disagree with Senator Kohl about the problem and needed solution in this area, I do so respectfully. It is his request that we honor by holding this hearing. I am happy to accommodate him in this regard.

I hope that we can find common ground on another issue of significance with respect to litigation and that is with respect to asbestos litigation. I want to work with all Senators on both sides of the aisle in the coming months to see if we cannot devise a better process for fairly compensating those suffering and developing afflictions from asbestos. This is a matter to which I would like to see us turn our attention in September and beyond. The Supreme Court issued us a challenge to help with asbestos litigation and with the good faith of lawmakers and those from all sides of the issues we can make a real difference.

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