

Trial Lawyers for Public Justice



Class
Action
Abuse
Prevention
Project



What is Trial Lawyers for Public Justice?

Trial Lawyers for Public Justice (TLPJ) is the only national public interest law firm that marshals the skills and resources of trial lawyers to create a more just society. Through creative litigation, public education, and innovative work with the broader public interest community, we:

- ◆ protect people and the environment;
- ◆ hold accountable those who abuse power;
- ◆ challenge governmental, corporate, and individual wrongdoing;
- ◆ increase access to the courts;
- ◆ combat threats to our civil justice system; and
- ◆ inspire lawyers and others to serve the public interest.

TLPJ achieves its mission by calling on a nationwide network of over 2,500 trial lawyers — members of The TLPJ Foundation — who support TLPJ's work through contributions and by serving as volunteers on TLPJ's cases.

TLPJ prosecutes cutting-edge cases in the areas of toxic torts, environmental protection, consumer rights, workers' rights, civil rights and civil liberties, and the preservation of the civil justice system. In addition, TLPJ has developed a number of special projects to ensure that the courts provide everyone with equal access to justice. Our **Class Action Abuse Prevention Project** is designed to combat an alarming new trend in civil litigation: the use of class actions to strip victims of their rights.

Is TLPJ opposed to class actions?

Not at all. TLPJ believes that class actions are absolutely essential to the achievement of justice. We know that, in many circumstances, including where large numbers of people have suffered small amounts of damages or require injunctive relief, class actions are the only way that justice can be obtained. In fact, TLPJ has brought class actions to win justice for victims in numerous areas, ranging from consumer fraud to disability rights to race and sex discrimination. And we intend to continue to prosecute class actions to preserve and protect victims' rights.

Why did TLPJ launch a special project to challenge class action abuse?

Historically, class actions have been a powerful tool for vindicating victims' rights. That's why wrongdoers have traditionally opposed their use. Recently, however, particularly in mass torts, wrongdoers have recognized that class action abuse can be a powerful tool for *eliminating* victims' rights. The results are predictable and outrageous. Through class action abuse, companies that have harmed millions are avoiding accountability, capping their liability, and depriving their victims' of their day in court. Widespread wrongdoing is going uncorrected, unpunished, and undeterred. And class actions themselves are being brought into undeserved disrepute. To stop these dangerous developments — and ensure that class actions can continue to be used to achieve justice — TLPJ launched the Class Action Abuse Prevention Project.

What is the Class Action Abuse Prevention Project?

The Class Action Abuse Prevention Project is a nationwide campaign dedicated to monitoring, exposing, and fighting class action abuse nationwide. Through the Project, TLPJ seeks to **enforce** class members' existing legal rights by objecting to illegal or unfair class action settlements; **develop** the law by winning judicial recognition of additional protection against class action abuse; **educate** the plaintiffs' bar in particular, as well as lawyers, the judiciary, and the public generally, about class action abuse and possible ways to prevent it; and **help** others to do all of the above.

To achieve these goals, we:

- ◆ monitor class action cases throughout the country and take legal action to challenge specific abuses on behalf of objectors or as *amicus curiae* (friends of the court);
- ◆ monitor and respond appropriately to proposed changes to the Federal Rule of Civil Procedure that governs class action cases (Rule 23); and
- ◆ educate the trial bar and the public about class action abuse through publications, information packages, and public speaking.

What specific abuses does the Class Action Abuse Prevention Project fight?

Through the Project, TLPJ has targeted and fights a number of specific abuses, including:

- ◆ efforts to limit a class member's right to "opt out" of a class action for damages and pursue his or her own day in court;
- ◆ attempts to use class actions to settle the "future" personal injury claims of people

who are not currently injured - or, in some cases, may not yet even exist;

- ◆ “settlement-only” class actions that could never be litigated as class actions and are being used solely to cap the defendant’s liability;
- ◆ efforts to use no-opt-out class actions to bar injured people from seeking punitive damages in their individual cases against the same defendant;
- ◆ settlements that release class members’ claims in exchange for “coupons” that provide little or no meaningful relief to the class — and, in some cases, extraordinarily handsome fees for class counsel;
- ◆ unnecessary claims procedures, such as requiring credit card customers to file claims forms, instead of simply crediting their recoveries to their accounts; and
- ◆ improper secrecy provisions, including gag orders on class members or their counsel and attempts to conceal terms of a settlement or the amount of attorneys’ fees.

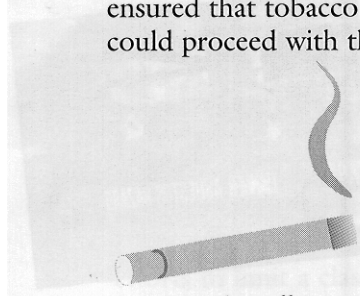
What are some highlights of the Class Action Abuse Prevention Project?

- ◆ In one of our first *amicus* efforts, the Project helped defeat the proposed class action settlement of literally millions of present and future asbestos victims’ claims in *Amchem Products, Inc. v. Windsor*. In a series of *amicus* briefs from the federal district court in Philadelphia to the U.S. Supreme Court,



TLPJ argued that the proposed settlement violated the class members' constitutional rights. The U.S. Supreme Court ultimately threw the settlement out.

- ◆ We also helped defeat a second attempt to limit future asbestos victims' rights through our amicus briefs in *Ortiz v. Fibreboard Corporation*. This proposed class action would have denied consumers the right to pursue claims individually and would have capped the defendants' liability. The U.S. Supreme Court rejected this settlement as well.
- ◆ We won a huge victory for consumers by challenging a proposed nationwide settlement against BankAmerica in *Graham v. Security Pacific Services* in Mississippi federal district court. The original settlement would have paid approximately \$2 million to class members, \$5.4 million to class counsel, and deprived all Mississippi class members of their right to opt out. After we were done, the final settlement paid \$7.9 million to the class, \$1.92 million to class counsel, and allowed all class members to opt out. The funds were automatically distributed, no class members had to file claims forms, no money reverted to the bank, and class members from all states received the same relief.
- ◆ In *Walker v. Liggett Group, Inc.*, we ensured that tobacco victims nationwide could proceed with their claims against the Liggett cigarette company, defeating a proposed no-opt-out settlement that would have capped the company's liability and provided virtually no relief to the class.



- ◆ In *Kalhammer v. First USA Bank*, in San Francisco federal court, we defeated outrageous secrecy provisions and also won huge improvements to a proposed nationwide settlement of claims that First USA cheated its credit card holders. The original settlement barred public disclosure of both the total settlement amount and total attorneys' fees. It also provided current First USA cardholders with "rebate certificates" for five dollars or less, but gave *nothing* to former cardholders.



In response to our challenge, the settlement was amended to eliminate the secrecy, give automatic credits to the vast majority of the class, and require First USA to pay a minimum of \$6 million.

- ◆ In *Cash v. Farmland Industries*, we prevented an outrageous proposed class action settlement that could have forced class members to sell their homes to and release all their present and future injury claims against the defendant. The proposed settlement also included a secret side deal for the named class representatives. Because of TLPJ's objections, the proposed deal was abandoned, and class members retained the right to keep or sell their homes and pursue their claims individually.
- ◆ In *Wilson v. Massachusetts Mutual Life Insurance Co.*, we defeated a shocking unfair nationwide settlement of insurance victims' claims that would have paid nothing to 6.5 million class members, paid two representatives a total of \$350,000, and paid class counsel a fee worth over 11 million.

How can we work together to fight class action abuse?

Working together, we can all help to prevent class action abuse. Here are some things you can do to help:

- ▶ **Let Us Know About Potential Cases.** If you know of a class action abuse, or are being pressured to agree to an abusive provision or settlement, please contact us immediately. To get our help, please send a brief letter stating your name, address, and telephone number, outlining the nature of the class action and the potential abuse(s). If you have a copy of a proposed settlement or class notice, send that along too. Feel free to include any other information you think is relevant and, if possible, identify any imminent deadlines. You can address the letter to:

Case Intake: Class Action Abuse
Trial Lawyers for Public Justice
1717 Massachusetts Avenue, N.W.
Suite 800
Washington, DC 20036
Fax: (202) 232-7203

- ▶ **Invite TLPJ to Participate in Seminars and Conferences.** TLPJ staff attorneys and members are available to speak on class action abuse at conferences or seminars on class action issues. Please let us know if you would like our participation — we're glad to help!
- ▶ **Invite TLPJ to Submit Educational Articles or Op-Eds on Class Action Abuse.** Education of the public and the bar about class action abuse is another important part of our work. Please let us know if we can provide an article for your publication.

- ▶ **Order our Class Action Abuse Prevention Project Information Package.** TLPJ has compiled an Information Package that contains copies of key press reports, legal decisions, and briefs to help attorneys, judges, the public, and the press understand the dangers of class action abuse and how to fight it. Copies of the original package and any updates to it are available to both TLPJ Foundation members and non-members.



Please keep us in mind when you encounter class action abuse. If you believe “Someone should do something about this” and think we could help, please let us know. We want to help.



Support TLPJ's Class Action Abuse Prevention Project

Join The TLPJ Foundation.

I want to make the following Special Gift contribution, over and above my annual membership dues, to support TLPJ's Class Action Abuse Prevention Project.

- \$2,500 \$1,000 \$500 \$250
- \$100 Other _____

I want to fight for public justice, and support TLPJ's Class Action Abuse Prevention Project, by becoming an annual member at the following level:

- | | |
|---|---|
| <input type="checkbox"/> Member: \$250 | <input type="checkbox"/> Associate Member: \$100* |
| <input type="checkbox"/> Supporting Member: \$500 | <i>* limited to non-lawyers, law professors, government and public interest lawyers, and lawyers in practice less than five years</i> |
| <input type="checkbox"/> Sustaining Member: \$1,000 | |
| <input type="checkbox"/> Advocate: \$2,500 | <input type="checkbox"/> Student Member: \$25 |
| <input type="checkbox"/> Benefactor: \$5,000 | Year of graduation _____ |
| <input type="checkbox"/> Patron: \$10,000 | |

Name _____

Firm _____

Address _____

City/State _____ Zip _____

Phone _____ Fax _____

E-mail _____

Referred By _____

Please make your tax-deductible contribution payable to:

The TLPJ Foundation
1717 Massachusetts Avenue, NW, Suite 800
Washington, DC 20036

- My check is enclosed Please bill me
- Charge my VISA/Mastercard/American Express

Account # _____ Exp. Date _____

Signature _____

Send form to the above address or fax it to us at 202-232-7203.

