Class action lawsuits are a powerful legal device. Properly used, they can do great justice. But lately class actions have been taking a beating. Abused by corporations trying to limit their liability for massive wrongdoing, some class actions are being settled for peanuts, with the defendants obtaining a full release, the victims getting little or nothing, and class counsel receiving a hefty fee. Once viewed as a vehicle for the mass achievement of justice, class actions are now sometimes perceived as a tool for imposing injustice. The situation has gotten so bleak that some are pushing to eliminate class actions entirely – or at least substantially curb their use.

Is this the right solution? In a word: No. The problem is class action abuse, not class actions. Without class actions, many victims will be powerless to stop corporate and government misconduct in areas ranging from race and sex discrimination, disability rights, dangerous consumer products, environmental degradation, to widespread fraud and deceit in consumer transactions. Especially in cases where large numbers of people have suffered small amounts of damages or require injunctive relief, class actions are often the only way that justice can be obtained. Thus, the key is to stop class action abuse – not to throw the baby out with the bathwater.

To this end, seven years ago, Trial Lawyers for Public Justice (TLPJ) launched a major project dedicated to monitoring, exposing, and fighting class action abuse nationwide – our Class Action Abuse Prevention Project. As a national public interest law firm that prosecutes numerous class actions and is funded primarily by membership contributions from trial lawyers and *cy pres* awards, TLPJ did not take this step lightly. Nevertheless, we were so concerned about the harmful effects of class action abuse — both on class members’ rights and on the public’s perception of class actions — that we felt dramatic action was needed. The Project has achieved many dramatic successes – although more work still needs to be done.

**TLPJ’s Class Action Abuse Prevention Project**

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 lawyers, the judiciary, and the public about class action abuse and possible ways to prevent it; and help others to do all of the above.

**Abuses We Target**

While the following list is not all-inclusive, the primary abuses that concern us are:

- efforts to limit class members’ rights to opt out of class actions for damages and pursue their own compensatory and/or punitive damages claims on an individual basis;
- 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 would and could never be litigated as class actions, but are being used to cap the defendant’s liability through the class action device;
• settlements that release class members’ damages claims in exchange for “coupons” that provide little or no meaningful relief to the class – and, in some cases, provide extraordinarily handsome fees to 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.

Project Highlights
In the past seven years, we have had great success fighting these class action abuses and establishing new law to help others fight them as well. To cite just a few examples:
• In a series of *amicus* briefs, TLPJ challenged – and ultimately helped persuade the U.S. Supreme Court to reject – the proposed class action settlements of millions of present and future asbestos victims’ claims in *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997), and *Ortiz v. Fibreboard Corporation*, 527 U.S. 815 (1999). These two Supreme Court decisions established important new procedural protections that help to limit class action abuse.
• In *Walker v. Liggett Group, Inc.*, 175 F.R.D. 226 (S.D.W.Va. 1997), and, subsequently, *Fletcher v. Brooke Group Ltd.*, CA. No. CV 97-913 (Ala. Cir. Ct. Mobile County), we ensured that tobacco victims nationwide could proceed with their claims against the Liggett cigarette company, defeating proposed no-opt-out settlements in West Virginia federal court and Alabama state court, respectively, that would have capped the company’s liability and provided virtually no relief to the class. The decision in *Walker* was the first in the country to reject a proposed class settlement based on the U.S. Supreme Court’s decision in *Amchem*.
• In *Kalhammer v. First USA Bank*, No. 95-4563 (N. Dist. Ca.), in San Francisco federal court, we defeated outrageous secrecy provisions and 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, and prevented class counsel and class members – but not First USA – from talking to the press about the deal. It also provided current First USA cardholders with “rebate certificates” for five dollars or less, but gave nothing to former cardholders. According to experts, the rebate certificates would have yielded less than $400,000 in actual relief to the class. 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.
Lessons Learned

In the seven years since we launched the Project, we have learned a great deal. First, our experience and work have convinced us that, far more than we even knew, class actions achieve enormous good in this country. Their continued vitality could hardly be more important to the achievement of justice.

Second, while we and other opponents of class action abuse have made a real difference, class action abuse remains a serious problem. It only takes place in only a small percentage of class action cases, but it still does take place – and it shouldn’t.

Third, the driving force behind most class action abuse is the desire of wrongdoers to cap their liability. Defendants do not generally want cases to be litigated as class actions because they recognize that class actions, properly used, can be a powerful tool for vindicating victims’ rights. They do, however, often want cases to be inappropriately settled as class actions because they realize that class action settlements can be an equally powerful tool for limiting or even eliminating their victims’ rights.

Fourth, regardless of the defendants’ motives or desires, abusive class action settlements cannot take place without the cooperation of class counsel. Unfortunately, some class action counsel are far too willing to agree to a class settlement in exchange for a quick or hefty fee. And, regrettably, many more feel forced to agree to objectionable or inadequate settlement terms because they sincerely believe – rightly or wrong-ly – that the judge will not allow them to pursue the class’ legitimate claims and that any recovery for the class (and a fee) is better than nothing for the class (and no fee at all).

Fifth, while plaintiffs, defendants, and their attorneys all contribute to class action abuse, judges have the power to prevent it. Unfortunately, some judges do not understand how they can stop class action abuse, others do not seem interested in stopping it, and others actually take actions that encourage it, such as certifying classes for “settlement purposes” that could never be litigated as class actions, approving settlements that contain woefully inadequate relief for the class, and/or signing off on huge attorneys’ fee awards that create an enormous incentive for abuse.

Finally, while TLPJ is dedicated to fighting class action abuse, any knowledgeable class member, defendant, attorney or judge can make a difference in this area. Abusive settlements cannot take place without the participation of all parties, their counsel, and the judge – so any of these participants can help stop it. If you receive a notice of an objectionable class action settlement affecting you, object! Don’t just rely on us or other public interest groups to fight class action abuse.

Conclusion

Recent events have highlighted how easy it is for our system of justice to be undermined. Most parties, lawyers, and judges involved in class action litigation understand the enormous social value it serves. To reinforce and preserve that value, we all need to work together to fight class action abuse. If we do, all of us and our system of justice will be better off.

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