Class Action Bill

Senate Judiciary Committee Holds Hearing On Proposed Class Action Legislation

Special interest groups are distorting the state of class action litigation in their "ends-oriented attempt" to move state class actions to federal court, Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.) told a packed hearing room July 31.

The Senator's comments came as the Judiciary Committee held its first—and most likely only—hearing this Congressional session on legislation to expand federal court jurisdiction over large, multistate class actions.

"Our state-based tort system remains one of the greatest and most powerful vehicles for justice anywhere in the world," Leahy said in prepared remarks before the committee heard testimony on the Class Action Fairness Act (S. 1712). The bill would relax current rules for transferring state class actions to federal court and require increased judicial scrutiny over class action settlements.

Committee Sources Cite "Problems." Judiciary Committee sources told BNA Leahy had "problems" with the measure and, as a result, further Senate action this year was unlikely. "I am hesitant to restrict legal rights and remedies in an era of corporate irresponsibility and executive misconduct," Leahy said at the hearing.

The Republican-controlled House of Representatives passed a companion bill (H.R. 2341) in March. The Senate bill was introduced in Nov. 2001 by Sen. Charles E. Grassley (R-Iowa).

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Leahy said he scheduled the morning hearing at the request of fellow Judiciary Committee member Sen. Herb Kohl (D-Wis.), who favors the legislation. "Consumers are getting the short end of the stick in class action cases, recovering coupons or pocket change, while their lawyers reap millions" Kohl said.

Former Solicitor General Favors Measure. Walter Dellinger, former Solicitor General in the Clinton administration, spoke in favor of the measure, noting the proposed bill "only addresses where a particular type of class action should be brought, not whether it should be brought."

Dellinger, now with O'Melveny & Myers in Washington, D.C., asserted that "if Congress were starting anew to define what kinds of cases should be included within the scope of diversity jurisdiction, interstate class actions would surely top the list, since they typically involve the largest amounts in controversy."

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FORMER SOLICITOR GENERAL WALTER DELINGER

Dellinger said he disagreed with proponents of the bill who say "all state courts are incompetent." Dellinger said that even if only three state judges are issuing bad class action rulings, "we have a national bucket with three holes in it."

Dellinger rejected the claim that federal judges were overburdened with new cases, pointing out that, since 1984, state court filings have increased by 28 percent versus four percent in federal courts. He also noted that two key committees of the Federal Judicial Conference, which represents the views of federal judges, recently voted in favor of expanding federal court jurisdiction over class actions. Dellinger testified on behalf of the U.S. Chamber of Commerce.

Corporate Wrongdoing Not New, Witness Says. Opposing the legislation, F. Paul Bland, staff attorney with Trial Lawyers for Public Justice, told the panel that daily news stories "make it appear Enron and Worldcom invented corporate wrongdoing. But for consumers, corporate fraud is a long-standing problem." Because such fraud is frequently concealed from the average consumer, Bland said, "often a class action is the only way to address the problem."

"Not so long ago, Congress responded to claims raised about certain class actions by making it much more difficult for consumers and investors to bring securities class actions in state court," Bland said. "We fear that these actions may have contributed to the erosion of standards for corporate governance that led to much of the fraud that has recently harmed the economic security of so many Americans."

Thomas J. Henderson, chief counsel for the Lawyers' Committee for Civil Rights Under the Law, said the proposed legislation would hamper efforts to enforce civil rights laws. The bill's so-called "protections" for class members, Henderson said, "are too small and transparent a fig leaf to mask the great disservice this legislation would work for those who need resort to class actions to vindicate their rights."
Insurance Regulator Favors Notice Requirements. Favoring the proposed law changes, Lawrence H. Mirel, commissioner of the District of Columbia's Department of Insurance and Securities Regulation, said state court class actions "often ignore the role of state regulators."

The suits, he said, "are frequently designed to produce a small, sometimes negligible, benefit to a large class of policyholders without regard to the impact on the insurance market and the cost to the insurance-buying public."

Mirel praised provisions in the bill requiring that state regulators receive notice of class actions "so that we have an opportunity to do something about truly collusive and abusive deals."

Also appearing before the committee was Hilda Bankston, a former owner of the Bankston Drugstore in Jefferson County, Miss., a county where plaintiffs frequently file class actions against drug companies to obtain more favorable state court rulings, according to Bankston. Her drugstore was named as a defendant in class actions involving fenfluramine/phentermine, Procardia, Resuln, and Baycol by plaintiffs' attorneys searching for a "lawsuit friendly" environment, she said.

"No small business should have to endure the nightmares I have experienced," Bankston told the senators.

Shaneen Wahl, a former breast cancer patient, testified that filing a class action against her insurance companies was the only way she obtained relief from the "predatory premiums" she was charged.

By Ralph Lindeeman