

Class Actions: Pros & Cons - views of a private practice lawyer

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Class Actions, in certain cases, are like Democracy

“Democracy is the worst form of Government except for all those other forms that have been tried from time to time.”

(Winston Churchill, Speech in the House of Commons, 11 November 1947)

BUT

“Democracy must be something more than two wolves and a sheep voting on what to have for dinner.”

(James Bovard, Lost Rights: The Destruction of American Liberty)

SO

A class action, constrained to maintain highest possible justice, is by default the best form of redress in certain cases.

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Class Actions – the basics

What :

A form of lawsuit in which a large group of people collectively bring a claim to court and/or in which a class of defendants is being sued.

Why :

Several individuals have the same legal problem, but separate lawsuits aren't practical.

Common types of class actions in the US:

- Competition law / antitrust claims
- Product liability claims
- Corporate and securities issues
- Employment claims

Class Actions – the basics

How : Typically, many individual actions aggregated into one

By motion

Via independent panel

Counsel Appointment

Lead Claimant appointment

Interim Orders only

Class Actions – the basics

4 Class action prerequisites :

- Numerosity
- Commonality
- Typicality
- Adequacy.

Court certification :

A court must certify the class for the lawsuit to go ahead as a class action. Prior to certification, a class is referred to as 'putative'.

Next steps for the case:

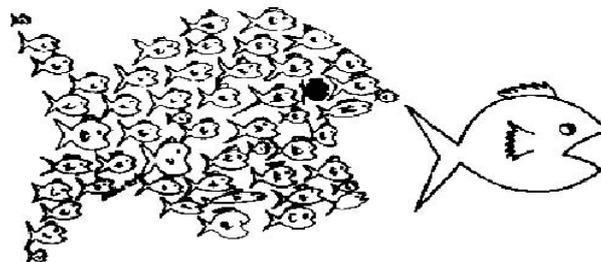
- Both sides continue investigating the claims, which takes time.
- A judge or jury may decide who wins
- Class actions often end with a settlement, rather than judgment.

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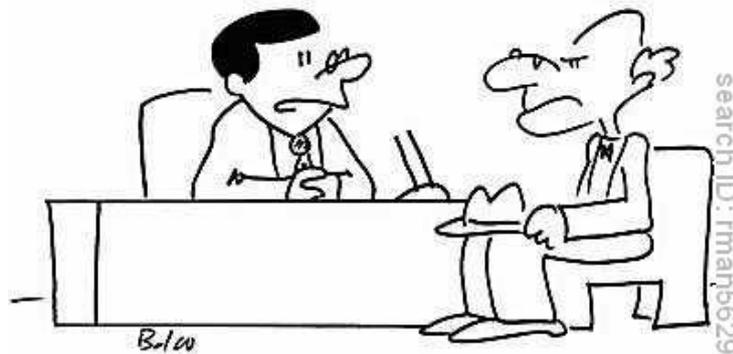
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"No, Mr. Gredley — a class-action suit doesn't mean that you sue everybody else."

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Practical differences between the US and EU

Overall nature of claims, from the viewpoint of competition law:

US:

- predominantly class actions, some filed as soon as potential infringements are uncovered or reported;
- Typically cartel claims, some abuse of dominance;
- Pass-on of damages not a defence (S.Ct.).

Europe:

- Predominantly consumer-oriented, contemplated for follow-on claims after a decision from a competition authority;
- Economics do not always support action against cartel: resulting in unjust enrichment;
- Pass-on a qualified defence.

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Practical differences between the US and EU

Collective actions

- US utilises opt-out system – MDL, Co-Counsel & appointment & Class Certification
- European countries predominantly utilise opt-in, although some examples of opt-out, e.g. Portugal.

Growing convergence between US and EU approaches?

- Opt-out system proposed in the BIS consultation; European initiatives. Would introduce effective mechanism for indirect purchaser claims from consumers and SMEs
- Collaboration between competition authorities and private parties at the investigative stage?
- Global settlements?

Case Study 1: Marine Hose

- During 1986 to 2007 a worldwide cartel existed amongst the leading manufacturers of marine hose to fix prices.
- The District Court of Florida certified a class consisting of dozens of U.S. purchasers in an order on July 31, 2009.
- The court also gave preliminary approval to \$22 million in settlements.
- In 2009 Hausfeld LLP has reached a groundbreaking global settlement agreement with Parker ITR.
- The settlement allows any purchaser of marine hose from Parker anywhere in the world, other than direct purchasers of marine hose in US commerce, to claim compensation in respect of losses arising from the cartel, irrespective of where they reside or where the marine hose was purchased from.

Case study 2: Air Cargo

- Between January of 2000 and February of 2006, major international cargo airlines conspired to inflate the price of shipping goods by air.
- The conspiracy increased global shipping prices, costing businesses and individuals that ship goods by air billions of dollars in damages.
- Following raids by law enforcement agencies around the world on February 14, 2006, Hausfeld LLP filed class action lawsuits in the United States.
- The class has reached settlements totalling nearly half a billion dollars with twenty of the defendants in the case.

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