

H.R.1115 - Class Action Fairness Act of 2003

Position Paper: Act is Fair

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In May of 2003 the House of Representatives passed H.R.1115, the Class Action Fairness Act. The Act proposed to change the way that interstate class action lawsuits were managed within the courts and to regulate the compensation of the class members. The legislation proposed a Class Action Bill of Rights: Judicial scrutiny of coupon settlements, protection against loss by class members, protection against discrimination based on geographic location, prohibition on the payment of bounties, and clearer and simpler settlement information. Though opponents of the bill include attorneys groups and consumer rights advocates, the Act actually empowers class members and streamlines the class action process forcing large settlement suits to go through the federal court system.

BENEFITS OF H.R.1115

The first protection for class members is a mandatory judicial review of coupon settlements. Because of low redemption rates, coupon settlements provide very little value to class members. In *Dunk vs. Ford Mustang*,¹ consumers were given a non-transferable coupon for \$400 off a new Ford car bought within 12 months. The consumer watchdog group Public Citizen estimated the total value of the coupons at \$1 million and believed that only 3%-5% of the consumers would actually get any benefit from the coupons. However, the trial lawyers for the plaintiffs received \$1.5 million in fees – 50% more than the plaintiffs' awards.² Coupons are easily abused by corporations and plaintiff's attorneys negotiating settlements not in best interests of class members.

Secondly, the Act provides a protection against loss by class members. In other words, the net amount of the settlement minus the lawyer's fees cannot be negative.

Because plaintiffs have to opt-out of a class action lawsuit (as opposed to opting-in), they

should be excluded from some of the risks involved in litigation. In *Hoffman v. BancBoston Mortgage Corp.*,³ BancBoston was accused of keeping too much money in its client's escrow accounts. The plaintiffs prevailed, and won around \$2 per person. However, lawyer fees were up to \$91 per person, creating an average loss of \$89 per class member. The protections the Act affords are therefore fair, because class members would be protected from losing money when they are involuntarily added as plaintiffs.

The third protection is against geographical discrimination. Class members cannot be compensated favorably based solely on their geographic location. "The provision, which responds to cases in which settlements have discriminated on the basis of geography, provides assurance that out-of-state class members are not disadvantaged by the parochialism of local judges."⁴ This is fair because it equalizes the settlement for all members of a class – if the class members were not equal then separate lawsuits should be filed.

The Act also includes a provision that disallows the payment of bounties to the class representatives or named plaintiffs. According to the Class Action Fairness Coalition, "[s]uch bounties are often used to induce named plaintiffs to agree to a settlement that enriches them and the attorneys at the expense of other class members"⁵. One example is "a nationwide class action in Texas regarding supposedly faulty laptops, [where] most class members received small cash payments and coupons worth no more than a few hundred dollars; the two named plaintiffs took home **\$25,000** each."⁶ Paying named plaintiffs more causes a conflict of interest between the good of the plaintiffs and the other class members and should be stopped.

In addition, the Act asks that clearer and simpler settlement information is provided to the plaintiffs. According to Stephen Gardner, a lawyer in Dallas who has handled many consumer cases, "A lot of settlement notices are engineered by the parties to keep class members in the dark about how much money the lawyers are making versus how many dollars they are going to get".⁷ With this bill, the communications must be "in plain, easily understood language," be "clear and concise," and contain specific items that are important to the members of the class. With mandatory disclosure of information in a class action lawsuit, consumers will be better informed of their rights and the lawsuit/settlement terms.

Finally, H.R.1115 requires federal jurisdiction for cases exceeding \$2 million. Currently, federal diversity jurisdiction states that individual plaintiffs must have claims of over \$75,000 before the suit can be heard in federal court. However, a class action lawsuit with 1 million plaintiffs each claiming \$1000 worth of damages must be heard in state court because the individual plaintiffs did not reach the \$75,000 threshold.

CASE ANALYSIS

Rinaldi v. Iomega Corp

In 1998, a suit was brought in the Delaware Superior Court against Iomega Corporation, a computer storage device maker, for fraud, negligence, and breaching implied warranties for defects in their Zip drive product line.⁸ The suit, representing 28 million zip disk purchasers, claimed that certain defective disks would render the Zip drive not operational. The lawsuit was settled in 2002 without Iomega admitting any fault. The settlement called for the plaintiffs to provide a proof of a Zip drive purchase after 1995 to Iomega in order to receive a coupon good for \$12.50 - \$40 off a subsequent

limited time purchase of a particular Iomega item. If the plaintiff could not produce a proof of purchase, then Iomega would provide the plaintiff a coupon worth approximately 40% less. Additionally, Iomega agreed to donate \$1 million of Zip drives and associated equipment to schools, agreed to send additional limited time coupons worth \$4-\$14 to class members if less than 1.2 million responded to the first offer, and paid attorney fees of \$4.1 million.

Had this lawsuit been litigated after the passage of H.R.1115, the following changes would occur:

In Rinaldi, the plaintiffs chose Delaware after “forum shopping”. None of the named plaintiffs lived in Delaware, nor was Iomega headquartered in Delaware.⁹ However, Delaware provided a consumer fraud act that the plaintiffs could use. Because the total value of this class action exceeded \$2 million, H.R.1115 would require remand to Federal Court. Therefore, “forum shopping” would be unnecessary.

The settlement in Rinaldi was of low value to the plaintiffs. When a drive exhibited the “clicking” behavior described in the class action, both the drive and the subsequent disks inserted into the drive were destroyed, resulting in a loss to the plaintiff of at least \$150, not counting the value of the data on the disks. To continue using Zip media, the plaintiff must trash the zip drive and purchase a new one. However, the settlement provided for a coupon of \$5-\$40 off a new Iomega product costing from \$50-\$300, nowhere near the actual loss that they sustained.

The passage of H.R.1115 would require judicial scrutiny of the coupon settlement. The court would examine the merits of the coupon offer versus providing cash to the plaintiffs. This could have provided a fairer settlement for the plaintiffs.

An additional benefit provided by H.R.1115 is a standardized way of providing settlement information to class members. The forms released to the class members were the legal documents filed with the Superior Court of Delaware – not easy to read or understand. If the plaintiffs were provided a “clear and concise” settlement statement, then more members could take advantage of the award.

Bridgestone-Firestone

On Monday March 15, 2004, a Texas State Court awarded a total of \$149 million settlement of 30 class action lawsuits filed within Texas.¹⁰ The settlement was for the owners of the Firestone AXT, AXT II, and Wilderness XT tires which were connected to over 270 traffic deaths in the United States. Most fatal accidents involving the tires also involved Ford Explorers.

The suit was between Bridgestone-Firestone and owners of the AXT, AXT II, and Wilderness XT tires who had not suffered any physical injury due to the tires¹¹. In the award settlement, the named plaintiffs received approximately \$2500 each, while the remaining class members could have their tires replaced. Considering that the damages were equal for the named plaintiffs and non-named class members, both groups should have received the same settlement. If argued under H.R.1115, the named plaintiffs would not receive a greater award than other class members. The “bounty” paid to the named plaintiffs encourages them to agree to a settlement which benefits them personally but may not be in the best interest of the other class members.

As the law is now written, the Texas case could not go to the Federal Court system because the individual award was much less than \$75,000. On March 17, 2004, a California Superior Court Judge ruled that a similar case against Bridgestone-Firestone

was not worthy of class action status.¹² The California Judge claimed that the plaintiff's attorney did not prove that one class action suit was "reasonable... against a tire that comes in more than 100 styles"¹³ Had the Bridgestone-Firestone case been filed under the guidelines of the federal court system, as proposed by H.R.1115, the discrepancies between state courts would not arise.

Dukes v. Wal-Mart Stores, Inc

In Dukes v. Wal-Mart Stores¹⁴, six current and former employees of Wal-Mart charge that Wal-Mart discriminates against its female employees in promotions, compensation and job assignments in violation of the Title VII of the Civil Rights Act of 1964¹⁵. The class action suit claims that female employees of Wal-Mart were paid less than comparable male employees every year and in every Wal-Mart region.

The judicial scrutiny of coupons and non-cash settlements section of H.R.1115 will help to ensure that the court approves a settlement between the parties only if the settlement terms are fair, reasonable, and adequate to the class members. In order to settle this case, the court could require Wal-Mart to pay its female employees wages comparable to male employee wages at every employment level and sales region. In addition, the court could require that Wal-Mart set up a company hotline to report further discrimination offenses, hire an outside consultant to monitor the company policies, and develop educational programs for employees on the prevention of employment discrimination. The court is also likely to force Wal-Mart to change the aspects of its culture and environment (such as holding business events in Hooter's restaurants) that are inhospitable to women¹⁶.

The Act will also protect the class members in the Wal-Mart case from suffering monetary if there are excessive payment obligations to their lawyers after reaching a settlement. Because the court will only approve a proposed settlement if the net benefits to the class members outweigh the lawyers' fees¹⁷, class members' economic positions will not be worse due to their participation in the class action. The Act will prevent a settlement awarding plaintiff's legal counsel millions of dollars while the class members are left with insignificant compensatory and non-cash benefits. This is particularly fair and beneficial for the plaintiffs in this case since the class members already claim an economic loss due to Wal-Mart's discrimination.

The expansion of federal court jurisdiction extended by the Act would permit the Wal-Mart case to be heard in a federal court since the matter in controversy exceeds \$2 million and the class members are spread across the country. Removal of this case to a federal court would be fair for all the class members because it avoids a situation where a state court approves a settlement favoring just the members in its state at the expense of other members. Hearing this case in a federal court also precludes the possibility of another state court reaching a different decision on a duplicate class action, hearing a similar lawsuit from a different group of Wal-Mart employees¹⁸.

The Act advocates clearer and simpler settlement information. Since most of the class members affected by this case will not have a legal background, the plain text requirements imposed by this act would be a significant advantage for the members. For instance, if the settlement information contains information on how to take advantage of job advancement opportunities in standardized easy-to-read English, more class members are likely to take advantage of their right and apply for the advancement opportunities.

In addition, H.R.1115 will also prohibit payment of bounties to the six named plaintiffs who represent about 1.5 million current and former Wal-Mart employees. The six women named in the action could not be enticed to settle the suit by receiving a larger award. By adding this restriction, the best interests all class members will be considered.

The Act also protects the class members against discriminatory settlements based on their geographic location. By prohibiting discrimination based on the geographic location, this act will ensure that the class members in a Wal-Mart region that is closer in geographic proximity to the court will not receive superior settlement benefits when compared to other members. This ensures that Wal-Mart employees in states such as Maine, who live far away from where the lawsuit was filed in California, will receive an equitable settlement.

MISCONCEPTIONS ABOUT H.R.1115

The opposition says H.R.1115 is too expensive. The Congressional Budget Office determined that the passage of the Act would raise costs for District courts by \$6 million per year.¹⁹ However, the consumer watchdog group Citizens for a Sound Economy reports that civil damages are currently at \$180 billion per year.²⁰ This bill would force the large cases into Federal courts, which tend to award smaller damages. The cost for this bill is offset by the economic savings. In addition, overworked state court systems would become less burdened. Therefore, passing this bill would provide relief at the state level and save the economy money.

Because Federal class action certification is very stringent, opponents fear that many cases won't meet the new standard and then be denied class certification and dismissed. However, states currently have so many different requirements for class

action status that “forum shopping” is rampant. As seen in *Rinaldi v. Iomega*, the litigants chose to file their case in Delaware due only to favorable laws in that state. “Forum shopping” creates an undue burden on the court system and allows plaintiffs to file the dispute in a district that may only have a nominal stake in the case. H.R.1115 forces large class action cases to go through a standardized process, eliminating the uncertainty of pursuing class action litigation. By preventing forum shopping and standardizing the process, the results will be significantly fairer to all parties involved.

A nationwide consumer’s group has pointed out that the Act allows defendants to appeal class action certification and enforce a stay of discovery during the appeal, which would “give defendants time to destroy and hide documents”.²¹ However, although the law does allow for a defendant to appeal certification, the law explicitly allows discovery in cases where discovery is necessary to preserve evidence. A defendant who destroys evidence while a lawsuit is pending can be charged with destruction of evidence. Therefore, defendants cannot participate in document destruction without ramifications.

Judge Thomas Dickerson suggests that coupon settlements do not require regulation²² and should be designed so that the defendant should “keep on issuing” the coupons until a certain value has been redeemed, such as in *The Coca-Cola Co. Apple Juice Consumer Litigation*.²³ However, there’s no guarantee that the litigants who were harmed by the action of the plaintiff would each receive equal payment (some may redeem the coupons multiple times while others may not). The abuse of coupons is good evidence that they must be regulated or disallowed as a settlement type. Because coupon settlements are often of no value to class members, these settlements should require judicial review to ensure fairness for all plaintiffs.

CONCLUSION

The Class Action Fairness Act of 2003 is designed to ensure and protect the rights of all class members while deterring the manipulation of the court system by plaintiffs' attorneys and big business. As seen in both the Rinaldi v. Iomega and Bridgestone-Firestone cases, class action settlements often do not provide justice to class members. Although there are some groups that oppose the act, their motives for opposition must be examined. One principle group against H.R.1115 is attorneys, who stand to lose money because frivolous cases won't be granted class action certification. Also, attorneys fear judicial scrutiny of settlements. In the past, settlements have granted attorney's large fees while minimizing the gain to the class members. Judicial scrutiny may change that trend. Another group of opponents, consumer rights advocacy groups, seem more interested in sticking it to big business than assuring the rights of consumers. If they were truly interested in preserving consumers' rights, advocacy groups would acknowledge that the act empowers class members while limiting big business and attorneys from reaching settlements which are favorable only for them. While the fate of The Class Action Fairness Act of 2003 is still uncertain, the benefits it would create are clear. The act is truly in the best interest of the economy, class members and the state court systems. The only parties who stand to lose due to the act are those who are currently manipulating the system for their benefit.

¹ 48 Cal. App. 4th 1794; 1996

² Public Citizen's Involvement in Class Action Settlements - Ford Mustang Settlement. Public Citizen. March 7, 2004.

http://www.citizen.org/litigation/briefs/Class_Action/articles.cfm?ID=552#MUSTANG

³ Ala. Cir. Ct. Jan. 24, 1994, No. CV-91-1880

⁴ American Insurance Association, The Class Action Fairness Act, Section by section summary <http://www.aiadc.org/Files/Private/VirtualLibrary/LongWhitePaper/C05.htm>

⁵ Principle Provision of H.R.1115, June 6, 2003, The Class Action Fairness Coalition <http://www.legalreformnow.com/issues/HousePrincipalProvisions.pdf>

⁶ American Insurance Association, "S.274 and Special Deals for Class Representatives" <http://www.aiadc.org/Files/Private/VirtualLibrary/ShortWhitePapers/A09.htm>

⁷ Meier, Barry.

⁸ Rinaldi v. Iomega Corp. No. 98C-09-064-RRC, Delaware.

http://www.iomega.com/rinaldi/final_notice_settlement.pdf

⁹ Rinaldi v. Iomega Corp, Plaintiffs' Motion to Amend Complaint. C.A. No. 98C-09-064 RRC.

¹⁰ Associated Press, "\$149M Bridgestone-Firestone Class Action Settlement Approved" <http://www.foxnews.com/story/0,2933,114259,00.html>

¹¹ Nashville Business Journal, "Calif. Judge Derails Bridgestone-Firestone Class-Action Lawsuit" <http://nashville.bizjournals.com/nashville/stories/2004/03/15/daily29.html>

¹² "Calif. Judge Derails Bridgestone-Firestone Class-Action Lawsuit"

¹³ "Calif. Judge Derails Bridgestone-Firestone Class-Action Lawsuit"

¹⁴ Dukes v Wal-Mart Stores. Inc. No. 012252 MJJ

¹⁵ <http://www.cmht.com/casewatch/cases/cwwalmart1.htm>

¹⁶ <http://www.walmartclass.com/>

¹⁷ <http://www.theorator.com/bills108/H.R.1115.html>

¹⁸ <http://www.house.gov/judiciary/dinh051503.htm>

¹⁹ H.R. 1115 Cost Estimate. Congressional Budget Office. May 21, 2003.

<http://www.cbo.gov/showdoc.cfm?index=4285&sequence=0>

²⁰ CSE Urges YES Vote On H.R. 1115, The "Class Action Fairness Act". Citizens for a Sound Economy. June 12, 2003. http://www.cse.org/newsroom/press_template.php?press_id=474

²¹ Opposition Letter to the House Regarding The Class Action Fairness Act of 2003. Consumers Union. June 5, 2003. http://www.consumersunion.org/pub/core_product_safety/000190.html

²² Dickerson, Thomas. "Settling Consumer Class Actions with Coupons."

<http://www.courts.state.ny.us/tandv/GGG1.html> April 4, 2000.

²³ No. E-47054 Ga. Super. Ct. Fulton Co. 1998.