STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
ALBANY, NEW YORK 12224

June 22, 2004

Honorable Bill Frist
Majority Leader
United States Senate
461 Dirksen Senate Office Building
Washington, D.C. 20510-4205

Honorable Tom Daschle
Minority Leader
United States Senate
509 Hart Senate Office Building
Washington, D.C. 20510-4103

Dear Mr. Majority Leader and Mr. Minority Leader:

On behalf of the Attorneys General of California, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Montana, New Mexico, New York, Oklahoma, Vermont, and West Virginia, we are writing in opposition to S.2062, the so-called "Class Action Fairness Act," which reportedly will be scheduled for a vote in the next few weeks. Although S.2062 has been improved in some ways over similar legislation considered last year (S.274), it still unduly limits the right of individuals to seek redress for corporate wrongdoing in their state courts. We therefore strongly recommend that this legislation not be enacted in its present form.

As you know, under S.2062, almost all class actions brought by private individuals in state court based on state law claims would be forced into federal court, and for the reasons set forth below many of these cases may not be able to continue as class actions. All Attorneys General aggressively prosecute violations of our states' laws through public enforcement actions filed in state court. Particularly in these times of state fiscal constraints, class actions provide an important "private attorney general" supplement to our efforts to obtain redress for violations of state consumer protection, civil rights, labor, public health and environmental laws.

We recognize that some class action lawsuits in state and federal courts have resulted in substantial attorneys' fees but minimal benefits to the class members, and we support targeted efforts to prevent such abuses and preserve the integrity of the class action mechanism. However, S.2062 fundamentally alters the basic principles of federalism, and if enacted would result in far greater harm than good. It therefore is not surprising that organizations such as AARP, AFL-CIO, Consumer Federation of America, Consumers Union, Leadership Conference on Civil Rights, NAACP and Public Citizen all oppose this legislation in its present form.

1. Class Actions Should Not Be "Federalized"

S.2062 would vastly expand federal diversity jurisdiction, and thereby would result in most class actions being filed in or removed to federal court. This transfer of jurisdiction in cases raising questions of state law will inappropriately usurp the primary role of state courts in developing their own state tort and contract laws, and will impair their ability to establish consistent interpretations of those laws. There is no compelling need for such a sweeping change in our long-established system for adjudicating state law issues. Indeed, by transferring most state court class actions to an already overburdened federal court system, this bill will delay (if not deny) justice to substantial numbers of injured citizens. The federal judiciary faces a serious challenge in managing its current caseload, and thus it is no surprise that the Judicial Conference of the United States has opposed the "federalization" of class action litigation.

S.2062 is fundamentally flawed because under this legislation, most class actions brought against a defendant who is not a "citizen" of the state will be removed to federal court, no matter how substantial a presence the defendant has in the state or how much harm the defendant has caused in the state. While the amendments made last fall give the federal judge discretion to decline jurisdiction in some cases if more than one-third of the plaintiffs are from the same state, and place additional limitations on the exercise of federal court jurisdiction if more than two-thirds of the plaintiffs are from a single state, even in those circumstances there are additional hurdles that frequently will prevent the case from being heard in state court.

2. Many Multi-State Class Actions Cannot Be Brought in Federal Court

Another significant problem with S.2062 is that many federal courts have refused to certify multi-state class actions because the court would be required to apply the law of different jurisdictions to different plaintiffs – even if the laws of those jurisdictions are very similar. Thus, cases commenced as state class actions and then removed to federal court may not be able to be continued as class actions in federal court.

In theory, injured plaintiffs in each state could bring a separate class action lawsuit in federal court, but that defeats one of the main purposes of class actions, which is to conserve judicial resources. Moreover, while the population of some states may be large enough to warrant a separate class action involving only residents of those states, it is very unlikely that similar lawsuits will be brought on behalf of the residents of many smaller states. We understand that Senator Jeff Bingaman will be proposing an amendment to address this problem, and that amendment should be adopted.

3. Civil Rights and Labor Cases Should Be Exempted

Proponents of S.2062 point to allegedly "collusive" consumer class action settlements in which plaintiffs' attorneys received substantial fee awards, while the class members merely received "coupons" towards the purchase of other goods sold by defendants. If so, then this "reform" should apply only to consumer class actions. Class action treatment provides a

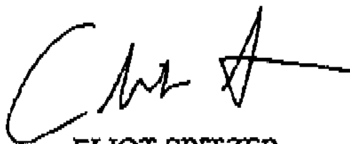
received "coupons" towards the purchase of other goods sold by defendants. If so, then this "reform" should apply only to consumer class actions. Class action treatment provides a particularly important mechanism for adjudicating the claims of low-wage workers and victims of discrimination, and there is no apparent need to place limitations on these types of actions. Senator Kennedy reportedly will offer an amendment on this issue, which also should be adopted.

4. The Notification Provisions Are Misguided

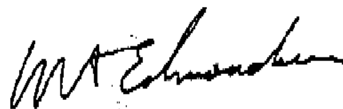
S.2062 requires that federal and state regulators be notified of proposed class action settlements, and be provided with copies of the complaint, class notice, proposed settlement and other materials. Apparently this provision is intended to protect against "collusive" settlements between defendants and plaintiffs' counsel, but those materials would be unlikely to reveal evidence of collusion, and thus would provide little or no basis for objecting to the settlement. In addition, class members could be misled into believing that their interests are being protected by their government representatives, simply because the notice was sent to the Attorney General of the United States and other federal and state regulators.

Equal access to the American system of justice is a foundation of our democracy. S.2062 would effect a sweeping reordering of our nation's system of justice that will disenfranchise individual citizens from obtaining redress for harm, and thereby impede efforts against egregious corporate wrongdoing. Although the Attorneys General of California, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Montana, New Mexico, New York, Oklahoma, Vermont, and West Virginia oppose S.2062 in its present form, we fully support the goal of preventing abusive class action settlements, and would be willing to provide assistance in your effort to implement necessary reforms while maintaining our federal system of justice and safeguarding the interests of the public.

Sincerely,



ELIOT SPITZER
Attorney General of the
State of New York



W.A. DREW EDMONDSON
Attorney General of the
State of Oklahoma