



215 Pennsylvania Avenue, SE • Washington, D.C. 20003 • 202/546-4996 • www.citizen.org

Class Actions Empower Consumers, Help Them to Hold Wrongdoers Accountable

Vincent and Liza Concepcion sued AT&T in 2006, alleging that the company defrauded millions of customers by advertising phones as “free,” then tacked on an undisclosed \$30 charge for the phone. The \$30 charge would, if multiplied across millions of AT&T customers, amount to tens or hundreds of millions of dollars in allegedly wrongful gains. AT&T asked the trial court to dismiss the case, arguing that its contract bans class actions and requires individuals to bring claims to AT&T’s hand-picked arbitration firm. The reason is clear: No individual consumer would bother with a formal legal process to recover just \$30.

The court rejected AT&T’s argument, finding that the class action ban was “unconscionable” under California law. An appeals court agreed. Now AT&T is asking the Supreme Court to overturn California law and the courts applying the law of 19 other states which have held that class action bans may be found unenforceable. It may be the most important consumer case in decades.

WITHOUT CLASS ACTIONS, corporations are effectively shielded from accountability for their wrongdoing because individual arbitrations are an impractical and rarely used option for consumers. The courts applying the law of 20 states have struck down class action bans because the bans would exculpate the corporation from accountability for wrongdoing, essentially functioning as a “get out of jail free” card. The states are: Alabama, California, Illinois, Massachusetts, Missouri, New Jersey, New Mexico, North Carolina, South Carolina, West Virginia, and Washington, Arizona, Delaware, Florida, Georgia, Michigan, Ohio, Oregon, Pennsylvania, and Wisconsin. Further, *every* state supreme court and federal court of appeals to consider the issue has disagreed with AT&T and held that the Federal Arbitration Act does not preempt such rulings under state law.

CLASS ACTIONS hold corporations accountable and deter bad business practices. Consumers filed a class action against the lender Nissan Motor Acceptance Corp. (NMAC) for charging African-American and Latino car buyers higher interest rates than white car buyers with similar financial backgrounds in violation of the Equal Credit Opportunity Act. NMAC settled, agreeing to (1) offer preapproved “no markup” loans to hundreds of thousands of credit worthy African-American and Latino Nissan owners, (2) limit how much it raises the interest rates charged to car buyers, and (3) contribute \$1 million to low-income and minority consumer education programs over a five-year period. *Cason v. Nissan Motor Acceptance Corp.*, Civ. No. 3-98-0223 (M.D. Tenn., settled Feb. 18, 2003).

WITHOUT CLASS ACTIONS, consumers cannot pursue small claims. It is not economically feasible to pursue a claim where the cost of litigation is high in proportion to the value of the claim. Consumers often suffer losses from business misconduct that are small on an individual basis but large in the aggregate. For example, a 2004 Federal Trade Commission survey said that as many as 25 million adults were victimized by consumer fraud in one year. The median loss of money per adult was a relatively modest \$220. However, the combined losses for consumers and illegal gains for perpetrators of fraud could amount to hundreds of millions or even billions of dollars.

CLASS ACTIONS enable consumers to pursue small claims. Customers of auto rental company Hertz alleged that its practices, specifically its “grossly excessive” refueling charges, insurance coverage charges, and hourly charges, were unfair, deceptive, and in breach of contract under New York law. The class action may have involved several hundred thousand Hertz customers who were subjected to the overcharges. The court said that the average \$31 claim for each customer could amount to millions of dollars in overcharges and illegal gains for the company. *Weinberg v. Hertz Corp.*, 116 A.D.2d 1, 499 N.Y.S. 693 (1986).

WITHOUT CLASS ACTIONS, most individuals with small claims cannot find lawyers to represent them in court or in arbitration. Many lawyers turn down potential claims due to the difficulty of litigating complex cases with small recoveries.

CLASS ACTIONS allow individuals to combine resources. Home owners brought claims against their respective lenders for violating state residential mortgage rules. The losses amounted to about \$250 for each home owner. The homeowners sought to proceed as a class, arguing that they lacked the financial resources to undertake the litigation individually in light of the small dollar amounts. The homeowners asserted that the class action would “spread the costs” and help them to better present their claims against the lenders. The court agreed. *In re consol. Mtge. Satisfaction Cases*, 780 N.E.2d 556, 97 Ohio St.3d 465 (2002).

WITHOUT CLASS ACTIONS, the vast majority of consumers would never learn of wrongful corporate conduct or that their rights were violated.

CLASS ACTIONS give consumers notice and allow them to vindicate their rights. Customers accused payday lenders of violating New Jersey consumer protection laws for charging annual interest rates of over 600 percent. The court said that the individual cases involved a small amount of damages per person, which would make individual enforcement difficult or even impossible. The court said that without the class action most consumers would never have known that their legal rights under the state’s laws had been violated. In the class action, potential claimants would be notified of their legal rights and eligibility to participate. As a result, a wider group of consumers would be compensated for their losses. *Muhammad v. County Bank of Rehoboth Beach*, 912 A.2d 88, 100 (N.J. 2006).

WITHOUT CLASS ACTIONS, federal and state governments lack sufficient resources to uncover and prosecute violations of their laws. Especially in this time of budgetary constraints, states have too little ability to prosecute many serious violations of consumer protection, civil rights, and public health laws.

CLASS ACTIONS supplement government efforts to protect consumers from fraud and other unfair corporate practices. Many federal and state consumer protection laws encourage class actions – and for good reason. Although class actions seek remedies for private individuals, they also contribute to the public interest by enforcing important laws and public policies.

For more information on how class actions help consumers, please review the amicus briefs supporting respondents in AT&T v. Concepcion, including the submissions of the Legal Aid Society of D.C., et al., the American Antitrust Institute, and Public Justice. The briefs are available at <http://pubcit.typepad.com/clpblog/concepcion/>.