

Bush signs bipartisan bill to curb class action lawsuits

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On February 18 President Bush signed into law a measure that will severely curb the ability of consumers and workers to use class action lawsuits to seek damages for corporate malfeasance. The bill, the first piece of legislation signed by Bush during his second term, easily passed through the Senate and the House of Representatives with significant support from the Democratic Party.

The law, cynically named the “Class Action Fairness Act,” is a sign of things to come. In his State of the Union speech, Bush announced plans to limit class actions, medical malpractice suits and asbestos claims. All of these “reforms” benefit giant corporations.

The class action law is particularly tailored to protect the insurance, pharmaceutical, petrochemical and tobacco industries. Among the chief beneficiaries of a curb in asbestos suits will be Halliburton, Vice President Dick Cheney’s former company, which has massive asbestos liabilities.

Previous versions of the class action bill have been blocked in Congress by the Democratic Party, which receives a substantial chunk of its campaign financing from trial attorneys, who oppose the legislation. But in the face of overwhelming support from corporate America, many Democrats this time around agreed to the measure. Among Democrats supporting the bill were senators Dianne Feinstein of California, who is very close to the Silicon Valley hi-tech and computer industries, and Charles Schumer of New York. The bill passed by a vote of 72-26 in the Senate and 279-149 in the House.

The most important provision in the bill transfers most major class action suits from state courts to federal district courts. Federal courts have traditionally been more conservative in granting class certification to suits and setting the level of plaintiffs’ awards. The Bush administration, moreover, has been working diligently over the past four years to pack the federal courts with right-wing judges likely to rule in favor of corporations.

The transfer of class actions into the federal courts has been opposed not only by lawyers’ groups and consumer advocacy groups, but also by the federal and state judges’ associations. The Federal Judicial Conference has opposed the bill because of the extraordinary burden it will place on the federal courts.

When a court agrees to give a suit “class certification,” it allows the suit to cover all members of a particular group. For example, if a particular drug is alleged to be harmful, a suit brought against the

pharmaceutical company could be given class certification so that it covers all individuals who were prescribed the drug, even if these individuals have not brought suit against the company themselves.

Unless they choose to opt out of the suit, all members of the class are then included in any award. The awards in class actions tend to be large, because they cover large numbers of people. For this reason, the granting of class certification strengthens the position of plaintiffs and their attorneys, often leading to large out-of-court settlements or court awards.

Under the previous legal framework, suits that covered plaintiffs in different states could be filed in any of the state courts with jurisdiction over some of the plaintiffs. Attorneys sought to file claims in their home state, where they were most familiar with the applicable laws, or sought out states whose courts were more inclined to grant class certification.

To curb this latitude, the new law states that federal district courts will have jurisdiction over any class action in which the dispute exceeds \$5 million. The main exception applies when at least two-thirds of the plaintiffs and one of the defendants “from whom significant relief is sought” are from any single state, in which case jurisdiction is granted to that state. In cases where at least one-third of the plaintiffs and all of the primary defendants are from a single state, the district courts are given the option of declining jurisdiction and sending the case to state courts.

Most large class action suits involve plaintiffs from many states and therefore, under the new legislation, will be channeled to the federal courts. These courts are already overburdened with cases and the influx of new lawsuits will result in cases taking many years to reach trial. The federal courts may opt to tighten requirements for class certification.

Many federal courts already refuse to grant class certification to cases that involve the application of laws from multiple states. Under the new law, many such suits will have nowhere to go. Plaintiffs will not be able to go to the state courts if they do not have a sufficient concentration of co-plaintiffs in a single state, but they will also be barred from going to the federal courts. The only option will be to file individual class action suits for each state—an extremely burdensome task—or to give up the attempt to win class certification all together.

The ultimate aim of the new law is to sharply limit the ability to obtain class certification, and thus frustrate the pursuit of this legal remedy to corporate malfeasance. This was made clear by the

defeat of the amendment sponsored by Senator Jeff Bingaman. The Bingaman amendment would have required federal judges, in cases where laws from multiple states were applicable, to select one state's law to apply to the case. This would have ensured the suits were not simply thrown out.

By moving a greater proportion of class action cases to federal jurisdiction, the new law also opens the way for the passage of future legislation at a federal level that curtails the class certification process. So long as these cases were controlled by state courts, the federal government had little authority over how they were handled. As important as the immediate effects of the law are, even more serious are its further implications.

In addition to granting federal jurisdiction for most large class action suits, the law has two further components. The first involves a new legal category, the "mass action," which the law defines as "any civil action...in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that plaintiffs' claims involve common questions of law or fact." Many courts, for purposes of greater efficiency, group together individual lawsuits that are similar in nature. This is different from a class action, because no class certification is involved. Only those individuals who have brought a suit are included in the final award.

The law treats "mass actions" the same way that it treats class actions, i.e., under similar conditions, mass actions will be sent to the federal district courts. According to the Association of Trial Lawyers of America, the mass action provision "will place many state judges in a terrible dilemma: if they consolidate these mass tort actions to speed up disposition, they will cede control of these cases to federal court. But, if they elect to keep the cases by foregoing consolidation, they increase their workload exponentially and make their state court systems extremely inefficient."

The bill also regulates the fees granted to attorneys who file class actions when the reward is in the form of a coupon given to all members of the class. The reward in a class action may, for example, be a \$50 coupon toward the purchase of another product from the defendant company. Instead of determining attorneys' fees as a proportion of the total value of all coupons awarded, the new law mandates that the fees be determined as a proportion only of those coupons actually redeemed by the plaintiffs. In general, many plaintiffs will not use their coupons, so the effect will be to sharply reduce the fees won by attorneys in cases involving coupon awards.

This measure is presented as an attack on greedy trial lawyers who earn millions, while their clients get worthless coupons. In fact, corporations prefer coupon settlements because they know that many coupons will not be redeemed, and if they are, they will go toward the purchase of the company's own products. The increasing prevalence of coupon settlements reflects the growing leverage of corporations over plaintiffs in the legal process.

The new measure will not increase the awards given to consumers in these cases. It will simply reduce the amount that corporations are required to pay the class action attorneys. This will further reduce the power of plaintiffs in the legal process by undercutting the ability of law firms to bring class action suits.

In an addition to restricting the ability of consumers and workers to seek compensation in court, the bill has an added benefit for Republicans: it attacks a major source of funding for the Democratic Party.

American corporations have lobbied intensively for the new law for years. The US Chamber of Congress spent more than \$53 million in 2004 alone to press for the class action bill and similar legal "reforms."

The Bush administration has presented the legislation as a step towards ending the supposedly massive number of frivolous lawsuits directed at corporations. In fact, according to a 2004 report issued by the consumer advocacy group Public Citizen, "American businesses file four times as many lawsuits as do individuals represented by trial attorneys, and they are penalized by judges more often for pursuing frivolous litigation." In Mississippi, the state that the US Chamber of Congress has called a "judicial hell hole" for corporations, "businesses were 5.8 times more likely [in 2001] to file suit than were individuals."

In fact, the bill will serve to curb entirely legitimate lawsuits brought against companies for unlawful actions. Class action suits are one of the few means by which ordinary Americans can seek compensation for corporate crimes.

In 2003, Public Citizen released a report, "The Special Interests Behind 'The Class Action Fairness Act,'" which listed the industries that had contributed the most in pushing the legislation. These included insurance, banking, retail, pharmaceuticals, petrochemical and tobacco. Corporations from all of these industries have faced class action suits in state courts that led to major settlements.

The insurance industry is facing class action suits in state courts relating to its use of software, known as "Colossus," that systematically reduces the payments made to claimants for injuries. The insurance industry has been the most active section of corporate America backing the new bill.

The banking industry has faced class action suits relating to misleading terms for loans given to consumers.

The retail giant Wal-Mart agreed to a multi-million-dollar settlement in a state court over allegations that it forced its employees to work extra without pay.

Several drug companies agreed to a \$20 million settlement for allegations of price-fixing brought in a Massachusetts state court.

Cigarette companies have faced numerous class action suits brought in state courts over advertisements presenting "light" cigarettes as a safer alternative to regular cigarettes.



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