

# BusinessWeek

## The Debate Room



### Lawsuits: Dismiss Class Actions

**Class actions are pointless. They cost too much, and usually only the lawyers benefit. Pro or con?**



#### **Con: Don't Underestimate an Opportunity for Justice**

by Barbara Hart, Lowey Dannenberg Cohen & Hart

Only the naive or those with hidden agendas would contend that class actions are pointless and only benefit lawyers. While the multimillion-dollar recoveries make headlines, in many instances shareholders, employees, or consumers have recovered tens of thousands of dollars where, but for the class action, their relatively small claims would never have been pursued. The class action is indispensable in just such cases.

Class actions allow plaintiffs who individually suffered relatively small injuries—but together have suffered major losses—to band together and collectively seek recovery from corporate defendants without having to individually incur the great expense of litigation. By allowing the collective pursuit of plaintiffs' claims, class actions shift the balance of power, giving individuals the ability to litigate on an equal playing field with much larger, well-funded corporate defendants.

Private class actions are particularly necessary in times of lax regulatory enforcement often aggravated by underfunding or understaffing, circumstances woefully evident right now at the

Food & Drug Administration and the Securities & Exchange Commission. The benefit of class actions has been continually recognized by courts throughout this great country, and I firmly believe it is most important at a time such as this, when government regulators are constrained by politics and economics.

By providing increased access to the legal system, class actions serve as a pause button on corporate greed that might otherwise go unchecked. It is the class action that keeps more tires from rupturing; more Enrons, Worldcoms, Adelphias, and Qwests (Q) from imploding; more bid-rigging or price-fixing schemes from hurting our free enterprise economy. I say "amen" to any measure that encourages those who consider cutting a corner, skirting a rule, bending the truth—or acting on any other money-driven temptation—to think twice.



### **Pro: Even Lawyers Get Skunked on Class Actions**

by Eugene Anderson, Anderson Kill & Olick

You receive a notification via mail that you—as a stockholder of the Widget Manufacturing Co.—are entitled to payment from the settlement of a stockholders' class action against Widget. You wend your way through pages of legal gobbledeygook and find that you might receive a portion of the settlement by inserting your mother's maiden name, her date and place of birth, and on and on and on. Getting into an Ivy League college is easier than cashing in on a class action settlement.

Personal experience has forged my attitude about class actions. Forty years ago, I represented a financier claimant in a lawsuit against a major financial scam operation. Our financier's case was consolidated with a class action against the same scam. I cooperated with the class action lawyers and thought that we were brothers. Their part of the arrangement was that the class action lawyers would keep all the case files. After several years of litigation, I learned that the class action lawyers had settled their case with the defense lawyer. (I still suspect that there was a symbiotic relationship there.)

All discovery files, documents, etc., had been returned to the defendant. These included my firm's detailed notes regarding the documents and somewhat less detailed notes about witnesses. I never suspected that the defendant would ask for the files, and was completely confounded when I learned that the class action lawyers had agreed.

At the next hearing the judge was furious at me and so was my client. Eventually my client settled for peanuts. My firm got the crumbs on the floor.

Forty years later, I am a happy lawyer, and the class action attorney is living at government expense in a low-security Federal prison. Somehow I can't help but believe our disparate attitudes toward class actions account for the differences in our respective epilogues.

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