



Collective Redress in Europe: Summary of EJF's Position

Introduction

European Justice Forum (EJF)¹ is a coalition of international companies and organisations that support fair and balanced civil justice systems. EJF supports accessible and rapid resolution of claims that have merit, but at the same time it calls for an equally rapid and effective dismissal of claims that do not have merit. EJF seeks to avoid Europe experiencing the damage created by class actions in the United States.

European legislators are pursuing two policy goals:

- to ensure that – where it is merited -compensation is paid to more individuals and businesses more frequently, especially where there are multiple small claims; and
- to rectify wrongful market activity, through equalising imbalances, deterring wrongdoing and otherwise affecting behaviour, so as to encourage maximum competition and innovative, vibrant markets.

Until recently, the mechanism principally used by the authorities to achieve these ends was to adopt the US class action model. But now, partly influenced by EJF, a new model is emerging among policy makers. This model is based on;

- Encouragement of voluntary settlement - ADR;
- Assistance by public authorities in encouraging restitution for consumers;
- Oversight by the court to ensure due process and to ensure that once a matter is resolved, no further proceedings are started;
- Relegation of collective litigation to the last resort.

This new model offers a more flexible and effective way of achieving consumer redress and avoiding the risks presented by class actions. The new model needs to be further developed so as to include safeguards to avoid unintended consequences.

The principal safeguards that EJF is calling for are:

- maintenance of the traditional European approach that enforcement of rights should be for the public authorities, thus minimising the need for any private litigation to enforce those rights;
- recognition of the fact that there are some types of actions that *must not* be

¹ For further information please see our website: <http://www.europeanjusticeforum.org> or contact the EJF Secretariat at info@europeanjusticeforum.org

submitted to any collective process, because the individual claims and characteristics of individual plaintiffs need to be assessed - product liability claims being a prime example;

- preservation of a defendant's right to establish its legal rights and obligations in court in every case where the defendant wishes to do so;
- recognition that, if a claim has merit and a company wants to resolve the matter voluntarily, such resolution is beneficial to all parties and can have the advantage of avoiding litigation and minimising potential reputational damage. In those circumstances, plaintiffs must show reason why the claim cannot be settled before they are entitled to start a class action;
- public authorities playing a neutral role both in filtering out meritless claims and, in other claims, in encouraging voluntary restitution where the parties are pursuing that course;
- at the same time, preventing public authorities from dictating the terms of any settlement or the amount of any compensation or exerting coercive pressure;
- ensuring that the courts provide oversight and endorsement of voluntary agreements so that no one else can make new claims based on a matter that has been settled;
- reserving any class action procedure to the last resort and, if collective litigation is to be employed, ensuring that the necessary safeguards and controls are in place; and
- in cases involving both the imposition of financial penalties by a regulatory authority *and* the award of damages for any consequent loss suffered by third parties, ensuring that the combined economic impact is taken into account so as to prevent organisations being unjustly burdened.

With these safeguards, it should be possible to promote resolution of disputes more quickly and cheaply than with litigation; to minimise the risk of frivolous or unmerited litigation; to ensure that rights to defend and due process are upheld and that the costs of dispute resolution processes are kept reasonable.