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High Court Limits Class Action Suits

Washington

The Supreme Court ruled yesterday that class action suits seeking monetary compensation on behalf of a large group of people must be thrown out of court unless all those people received notice of the lawsuit and the person who brings its pays for that notice.

The decision will almost certainly make it more difficult to use the class action, a relatively new legal weapon for people with a small individual stake in a large important issue common to many others.

(But most class action suits brought against the government will not be affected, said Sidney Wolinsky of Public Advocates, a San Francisco public interest law firm that has filed many class action suits.

(This is because most such suits involve correction of an injustice and not monetary compensation for wrongs. Suits for injunctive relief have never required notification of all plaintiffs of the class, he said.)

Mark Green, a Ralph Nader aide, said in Washington that "This decision effectively sabotages most consumer class actions" — actions usually involving monetary considerations.

The Supreme Court ruling was unanimous in its general conclusions.

The majority held that federal court rules clearly required notifying all identifiable parties to a class action, so that each of them can bring in their own attorney or drop out if they prefer not to be bound by the outcome.

The high court ordered dismissed a class action brought eight years ago by a group of stock traders who buy fewer than 100 shares at a time. Traders charged that two brokers who handle virtually all this "odd-lot" business were violating the antitrust laws and charging excessive fees.

The vote on the case was 6 to 3, with Associate Justices

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William O. Douglas, William J. Brennan and Thurgood Marshall signing a partial dissent. Their quarrel with the majority was relatively small, however, centering on an argument that the particular case could be reshaped rather than dismissed.

The lawsuit was brought by Morton Eisen, who contended that he had lost $70 through excessive odd-lot brokerage fees, but he sued on behalf of a class of some 6 million other small investors, of whom at least 2.25 million were directly reachable through mailing lists.

A United States District Court estimated that it would cost about $225,000 to notify all these people, and one of the principal issues in the case became the question of who was responsible for this expense, Eisen or the two brokerage houses — Carlisle & Jacquelin and Decoppet & Doremus — or perhaps all three.

Writing for the majority, Associate Justice Lewis F. Powell Jr. said that "the express language and intent" of the applicable rule procedure "leave no doubt that individual notice must be provided to those class members who are identifiable through reasonable effort."

Powell also declared that Eisen must bear the full cost of such notice "as part of the ordinary burden of financing his own suit." The U.S. district court had shifted 90 per cent of a much more restricted notice procedure to the brokers being sued.

"There is nothing . . . to suggest that the notice requirements can be tailored to fit the pocketbooks of particular plaintiffs." Powell wrote. The decision does not apply to class action suits which seek injunctions rather than money damages.

In his dissent, Justice Douglas argued that the case should be sent back to district court to have the class of plaintiffs divided in to a smaller, more manageable group, rather than dismissing it altogether.

"The class action is one of the few legal remedies the small claimant has against those who command the status quo," Douglas said. "I would strengthen his hand with the view of creating a system of law that dispenses justice to the lowly as well as to those liberally endowed with power and wealth."

The decision was the latest in a series placing restrictions on class action suits in federal courts.

In 1969 the high court held that in law suits arising out of state laws members of a class could not pool their claims to reach the $10,000 minimum amount in controversy which is usually required in federal courts. The decision shunted most consumer law suits into state courts. The federal minimum does not apply in securities and antitrust cases.

Last year the Supreme Court tightened the rules for class actions in federal courts still further by ruling that every member of the class must satisfy the $10,000 floor.

New York Times