

Can consumers join together to bring suit?

When a business descends to unfair and deceptive tactics, it usually does not single out just one consumer for this treatment. When a business follows a practice of deceiving its customers or treating them unfairly, it is important for consumers to be able to join together to bring suit. Class actions are an efficient way for consumers to obtain redress when an unfair or deceptive practice affects many people. They are particularly important when the dollar amount per person is small. As Congress has recognized, class action lawsuits “permit the fair and efficient resolution of legitimate claims of numerous parties by allowing the claims to be aggregated into a single action against a defendant that has allegedly caused harm.”³⁰

Aggregation of claims into a single case recognizes the economic reality that each individual loss is likely to be too small to merit the cost of pursuing it. Moreover, it is patently unfair to consign consumers to the sole option of individualized suits, when the supplier followed a standard practice and cheated many consumers in the same way.

It is through class action status and class-wide discovery (the procedures by which both sides obtain information from each other before trial) that the defendant’s allegedly harmful practice and its application to large numbers of similarly-situated consumers can be determined carefully and accurately. Ferreting out proof of the defendant’s practices can be time-consuming and extraordinarily expensive. To relegate consumers to individual suits, where each would have to bear this expense over and over again, would be to deny them any realistic ability to obtain redress.

Despite the importance of class actions in achieving consumer justice, some states prohibit UDAP class actions. Singling out consumer fraud for kid-glove treatment is certainly questionable as a policy matter. Worse, it leaves consumers without a practical remedy in many circumstances, particularly for small-scale fraud practiced on a large number of people.

In eight states—**Alabama, Arkansas, Colorado, Georgia, Louisiana, Montana, South Carolina, and Tennessee**—the UDAP statute denies consumers the right to join together in a class action. This type of restriction clearly applies in state court, and some courts hold these restrictions apply in federal court as well.³¹ Since consumer fraud is often committed on a broad scale, with a fraudulent product or scheme foisted on thousands of consumers, requiring each of these consumers to hire an attorney individually and bring an individual suit makes no sense. In addition, two states—**Mississippi and Virginia**—do not allow class actions of any sort in state courts. (This restriction is somewhat less severe in the UDAP context, because it is unlikely to apply in federal courts.)

Arizona, Delaware, Mississippi, South Dakota, and Wyoming do not allow a court to order reimbursement of the consumer’s attorney fees when the consumer wins a UDAP case. In **Alaska and Florida**, a consumer who loses a UDAP case can be forced to pay the defendant’s attorney fees even if the case was filed in good faith.