

[← NEWS](#)

Share

Bookmark

Dec. 13, 2007

Attack on Class-Action System Puts Blame on the Innocent

Letters to the Editor - Writers offer a withering response to a recent call for reforming California's class-action system and some words of praise for one of the legends of ADR.



Aashish Y. Desai

Desai Law Firm PC
3200 Bristol Street #650
Costa Mesa , CA 92626

Phone: (949) 614-5830

Fax: (949) 271-4190

Email: aashish@desai-law.com

University of Houston
Law Center; Houston TX

[See more...](#)

Attachments



LETTERS TO THE EDITOR

In response to Michael Newman's utterly baseless attack on class actions ("Reforming Class Action, Nov. 20), I note the following: Newman either does not understand the law of class actions or cares little about it.

In fact, the law surrounding California class actions is not based on "42 words" of the Code of Civil Procedure. California law requires that a class be defined in a manner that is "precise, objective and presently ascertainable." *Vasquez v. Superior Court*, 4 Cal.3d 800 (Cal. 1971).

Indeed, the community-of-interest requirement consists of three factors: (1) the common questions of law or fact predominate over individual questions; (2) the class representatives offer claims or defenses that typify the class; and (3) the class representatives (and class counsel) can adequately represent the class. *Reyes v. Board of Supervisors*, 196 Cal.App.3d 1263 (1987). Where California law has not developed, courts routinely apply federal case law to fill in the blanks.

Thus, the suggestion that a free-wheeling group of crazy liberal judges is causing pain to model corporate citizens is absurd. To prove his point, Newman cites the fact that trial courts are "generally not permitted to consider the merits" of a case when ruling on class certification. This comment clearly does not prove any point, other than perhaps Newman's own lack of understanding. If full merits were considered at certification, the court would have to permit plaintiffs to take merits discovery. This, of course, would lead to depositions of executives, production of corporate records and mammoth discovery battles, all of which would lead to a tremendous amount of corporate money spent defending against the putative class action.

By contrast, class certification that is merely procedural can be determined with far less discovery, and yes, often without a determination of the merits (which is good for corporations). If the case is truly without merit, the corporation can obtain summary judgment after certification, and here's the good part: It will be binding on all of the class members so there will be no more litigation, period. How is that, in any way, unfair?

As for the statistics about the so-called "tort tax," they are ridiculous. First, very few class actions involve any type of torts because courts are just not certifying mass tort actions. More important, our tort system does not "drain" any money from our economy. It is the party causing the harm who negatively affects our economy.

The drunk executive who runs over a pedestrian, rendering her a quadriplegic (and therefore unable to provide for herself) "drains" money from our economy and, therefore, deserves an adverse ruling from our judicial system. What does Newman suggest we do: Model our legal system after Iraq, where people do not have real judicial access? Or perhaps we should be more like China, where the nation is run more like a business and corporations routinely trample on child labor laws, environmental regulations and human rights? No thanks, not for me.

Newman also claims that California has the "fifth-worst" class-action law in the country. Really? How does he know? Is this true for antitrust law, securities regulation, consumer protection, fair wage laws or discrimination class actions? Where does anyone compile such statistics, and on what basis do they compile their rankings?

Oh, yeah, the article cites John Sullivan's ironically named "Civil Justice Association of California" as an authority. I would not trust this highly partisan group to tell me the price of a pepperoni pizza, much less to compile statistics on complex class-action law.

Finally, Assembly Bill 1505 (the so-called "Class Action Fairness Act") was preposterous. It was simply a way for corporations to violate labor and consumer laws without redress. For example, it wanted to limit certification to cases in which all the class members had the exact same amount of damages. Well, there goes all of the wage-and-hour enforcement in California. If corporations break the law, they should be, like the rest of us, held accountable. No free rides, Mr. Newman.

Aashish Y. Desai

Irvine

Richard Millen Offered Mediation Inspiration

I would like to add my kudos to those expressed by others about Richard Millen and the incredible influence that he has had on the mediation community ("He's the Yoda of Mediation World," Nov. 9). Millen generously shared his experience, philosophy and words of wisdom when I first came to Los Angeles County Bar Association Dispute Resolution Services. These have stayed with me and continue to provide inspiration to our community mediation program.

Dispute Resolution Services started out as the Neighborhood Justice Center. Reports of the demise of the center are greatly exaggerated. We are thriving and actively providing community mediation services for residents of Los Angeles County from service sites in Pasadena, Long Beach, West Hollywood and downtown, as well as school campuses in Santa Monica, Carson and Los Angeles.

Millen's approach, which focuses on the importance of communication and the emotion of human relationships in resolving conflict, provides the foundation for our work in the community.

Next year will mark the 30th anniversary of Dispute Resolution Services' founding as Los Angeles County Bar Association's Neighborhood Justice Center. We are proud that volunteers like Richard Millen, along with other lawyers and bar leaders, had the foresight and insight to understand the value that the mediation process can bring to individuals and the civility that it can bring to our neighborhoods and communities.

Tobi Inlender

Dispute Resolution Services Inc.

#304720

Troy Senikn

Daily Journal Staff Writer

For reprint rights or to order a copy of your photo:

Email Jeremy_Ellis@dailyjournal.com for prices.

Direct dial: 213-229-5424

Send a letter to the editor:

Email: letters@dailyjournal.com

Enewsletter Sign-up

Related Content

ARTICLE

Civil Litigation

Reforming Class Action

Nov. 20, 2007

By Michael A.S. Newman