



LCJ Highlights Need for Review of Rule 23 to Curtail Abusive Consumer Class Action Cases

New Report from Jones Day Finds that Low Take Rates and High Plaintiff Lawyer Fees Undermine “Superiority” Requirement in Many Consumer Class Actions

Arlington, VA – July 21, 2021 – Lawyers for Civil Justice (LCJ) – Today, Lawyers for Civil Justice (LCJ) stressed the need for review of Rule 23 of the Federal Rules of Civil Procedure (FRCP) to curtail recurrent abuse of the class action device in cases alleging consumer fraud. Rule 23 requires, in part, that a class action may be created only if it “is superior to other available methods for fairly and efficiently adjudicating” claims.

A newly released white paper from Jones Day demonstrates the need for review of Rule 23. The report, “An Empirical Analysis of Federal Consumer Fraud Class Action Settlements,” analyzes consumer fraud class action cases settled in 2019 and 2020 and updates the firm’s original report analyzing such cases from 2010 to 2018. Its findings raise serious questions about whether the class action device is “superior” to other methods for resolving claims in these cases. For instance, class member participation, or “take” rates, average less than 5% in the settlements analyzed. The report shows that, “on average, class members receive 30% or less of a monetary award,” while the class lawyers routinely keep a greater percentage of the monetary awards than class members.

Lawyers for Civil Justice General Counsel Alex Dahl issued the following statement after the release of the Jones Day report:

“The Jones Day findings make clear that Rule 23 is falling short of its purpose of ensuring that proposed class actions are a superior method of resolving disputes,” said Dahl. “We echo the report’s conclusion that Rule 23(b)(3) should provide better guidance to courts making class certification decisions.”

In order to remedy these issues, Jones Day recommends three amendments to Rule 23:

- Further guidance on how to determine what constitutes a “superior” method to adjudicating claims;
- Not allowing attorneys’ fees to be determined until all class data is submitted and untethering the approval of these fees from class relief; and
- “More specific guidance on how courts should calculate attorneys’ fee awards.”

To read the full text of the June 2021 Jones Day report click [here](#), and for the original report analyzing settlements from 2010 – 2018 click [here](#).



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