

Alfred P. Carlton, Jr.
President

AMERICAN BAR ASSOCIATION

750 North Lake Shore Drive
Chicago, Illinois 60611
(312) 988-5109
FAX: (312) 988-5100
E-mail: abapresident@abanet.org

July 10, 2003

Dear Senator:

We understand that S. 274, legislation to expand the jurisdiction of the federal courts over class action cases, may be brought to the floor of the Senate at any time. I am writing to express the views of the ABA regarding class action jurisdiction legislation.

ABA policy adopted by the House of Delegates was developed by an ABA task force composed of a diverse group of sixteen lawyers and judges with expertise in class actions.

The ABA believes that some concerns over class action practice could be addressed by expanded removal and "minimal diversity" federal court jurisdiction. In order to "preserve a balance between legitimate state-court interests and federal-court jurisdictional benefits," the ABA believes that, in drafting such legislation, such factors as the following should be considered: the aggregate amount in controversy, the number of plaintiffs in the alleged class, the percentage of the class who are citizens or residents in the forum state, whether the defendants are all residents of the forum state, standards for removal and existence of overlapping classes or cases, and how the entire mix of all factors balance legitimate state-court interests and federal-court jurisdictional benefits.

The ABA does not support or oppose specific legislation pending in this Congress. We do, however, encourage Congress to consider all the factors mentioned in the ABA policy as it refines this legislation.

The ABA supports amending the Federal Rules through the Congressionally-enacted judicial rulemaking process of the Rules Enabling Act. Therefore, we recommend dropping the non-jurisdictional provisions dealing with procedural changes in class-action practice contained in S. 274. Although many of these changes are appropriate, amendments to Rule 23 addressing many of these matters have been approved by the Committee on Rules of Practice and Procedure of the Judicial Conference and the Supreme Court of the United States and are now pending before Congress. The new amendments to Rule 23 address similar concerns, and the ABA favors giving the courts an opportunity to apply the new rules. The House-passed bill, H.R. 1115, contains provisions that would provide for interlocutory appeal of grants or denials of class certification as a matter of right, and making a stay automatic. Based on this ABA policy, we recommend that the Senate not include these provisions in its legislation. These provisions conflict with the earlier amendments to Rule 23 that make appeals and stays discretionary with the district or appellate court.

Thank you for considering the views of the ABA on this important matter.

Sincerely,



Alfred P. Carlton, Jr.