

ATLA BOARD OF GOVERNORS

October 5, 1996

Washington, D.C.

POLICY ON CLASS ACTIONS

This policy is adopted to address specific issues arising in current class action practice and in current proposals to change class action practice. It is consistent with ATLA's Policy on the Adjudication of Mass Tort Claims, which was adopted on July 28, 1994.

1. Class actions can be important procedural vehicles utilized by consumers and others to halt and deter wrongful conduct. However, class actions have the potential to affect individual rights, and potentially may interfere with an individual plaintiff's exercise of the right to legal counsel and the right to trial by jury. Accordingly, tort and consumer causes of action should be prosecuted as class actions only when society's interest in deterring wrongful conduct can be maintained, when individual litigation to redress wrongful conduct would be impractical, and when the rights of the victims to fair and timely compensation can be protected.
2. In general ATLA opposes changes to court rules governing class actions or the use of procedural devices in class actions that would diminish the right to trial by jury and/or equal access to the courts. ATLA believes the constitutional right to trial by jury in civil cases is a fundamental right. Meaningful exercise of that right requires: (1) that plaintiffs have autonomy in the decision to pursue remedies individually or as members of a class; (2) that they have autonomy to seek a jury trial; (3) that any waiver of the right to a jury trial should be a knowing and informed choice of the plaintiff; and (4) that plaintiffs are entitled to counsel of their choice whose loyalty is undivided by any conflict of interest. Accordingly, ATLA opposes the implementation of class action procedures unless each claimant is afforded the fullest opportunity to exercise a knowing and intelligent waiver of jury trial and a meaningful opportunity to opt out of the binding effect of such proceedings.
3. Except as indicated in ¶4, below, ATLA opposes class actions which purport to adjudicate the rights of future claimants who have not yet been injured, whose injuries could not reasonably have been discovered, or who could not reasonably discover the causal link between the conduct of the wrongdoer and the injuries. The right to jury trial for such persons must be preserved and such persons should be afforded the opportunity to opt out of the class action without penalty during a reasonable period of time following the date they are injured, could reasonably discover their injury, and could reasonably discover the causal link between the

conduct of the wrongdoer and their injury. To the extent that a proposed "settlement class," or a proposed court rule amendment permitting certification of such a "settlement class" might lead to adjudication of rights of future claimants as described above, or to collusive settlements, ATLA opposes certification of such a class and opposes any court rule that would allow such certification.

4. ATLA opposes "limited fund" class actions and settlements unless a genuine danger exists that claims against the defendant so far exceed resources available to the defendant that a substantial number of plaintiffs would be deprived of a source of compensation under traditional tort proceedings, and only where such plaintiffs are accorded the same rights in regard to the defendant as any other secured creditor.
5. ATLA opposes any court rule amendment that would permit judges to consider, as criteria for class certification: (1) the merits of a proposed class action, (2) the "probable relief" to be granted under any class action sought to be certified, or (3) the costs or burdens of class litigation.
6. ATLA opposes any court rule that would establish special appeal procedures for class actions, or which would confer special rights on parties with respect to appeals from orders granting or denying certification of a class.