

CALL FOR NOMINATIONS
Nominations for the Eighth Annual Michigan Lawyers Weekly Women in the Law awards are now open!
Nomination forms are available at www.milawyersweekly.com. Nominations are due July 7, 2017.
For sponsorships and other event information, call Charlene Boccaccio at 248-865-3112.
SAVE THE DATE: 9.7.17 <http://milawyersweekly.com/women-in-the-law-2017/>

M I C H I G A
WOMEN IN THE LAW
2017

Class-action bill pending in U.S. Senate

Lawyers take note of potential changes impacting litigation

By: tfranz@mi.lawyersweekly.com in News Stories May 12, 2017

A bill awaiting action in the U.S. Senate could bring several changes to class-action lawsuits nationwide.

The “Fairness in Class Action Litigation Act of 2017” was introduced Feb. 9 by Rep. Bob Goodlatte, R-Virginia, and it passed the U.S. House of Representatives March 9 by a 220-201 vote.



A summary of the bill on the official Congress website highlights three key changes that would impact class-action litigation.

The top change listed states that in a class action seeking monetary relief for personal injury or economic loss, each proposed class member suffered the same type and scope of injury as the named class representatives.

The bill states that it aims to limit attorneys’ fees to a reasonable percentage of any payments received by class members and the value of any equitable relief. It also states that no attorneys’ fees based on monetary relief may be paid until distribution of the monetary recovery to class members has been completed, or exceed the total amount distributed to and received by all class members.

Plaintiffs’ concerns

Michael L. Pitt, managing partner of Pitt McGehee Palmer & Rivers in Royal Oak, has worked on many class-action suits from the plaintiff’s side. Pitt has expressed numerous concerns about the bill and its potential impact on future class-action litigation.

“The changes are significant and they really would have the effect of cutting out class action as an effective method of seeking redress for many sectors of our society where claims for personal injury or property damage are asserted,” Pitt said.

Pitt has been working on the Flint water case, and pointed to it as an example of individuals in a class-action lawsuit who have suffered different injuries.

“We have people in the same household who are class members, children who have been exposed to lead in the water have suffered serious damage as a result of lead poisoning. We have adults who have developed neurological disorders. You have a mom and dad who own the house, their property value has plummeted, you have property damage, the corrosive water has damaged interior plumbing and in some cases, exterior service lines, those need to be replaced,” Pitt said.

“This hypothetical family would not be able to participate in the same class action because they don’t have the same type and scope of injury.”

Pitt said that the bill would result in a decreased desire to pursue class action because of the increase in delays sparked by the new legislation.

“What I see here is the amount of delay that’s built into class-action litigation will frustrate many plaintiffs’ lawyers and many plaintiffs in pursuing class actions because any time there’s a ruling the defendants don’t like, they have a way to stay the proceeding and drag it out endlessly,” Pitt said.

As for the bill's impact on attorneys, Pitt said class-action lawyers should begin developing strategies to keep class actions out of federal court, since the bill deals with federal court procedures.

"State court procedures are far superior to the (federal) procedures and you have to come up with a strategy to avoid bringing these cases into federal court. Federal court does have certain advantages because of the multi-district litigation for large mass tort-type cases, but if you're going to be handcuffed by the procedures, then we have to come up with strategies that would avoid federal court at all costs," Pitt said.

Defense eyes reform

John M. Sier of Kitch Drutchas Wagner Valitutti & Sherbrook in Detroit leads his firm's commercial litigation practice. With experience on the defense side for class actions, Sier expressed frustration with the amount of suits taking place today.

"Virtually any letter that gets sent out by a collection agency somehow becomes a class action," Sier said. "There is some room for improvement here."

Sier said that the area of attorneys' fees is a key portion of the bill that would restore some balance to class actions.

"When they start tying the attorneys' fees to the awards, that's one aspect of the bill that I'm sure has gotten a lot of resistance from the other side," Sier said. "There's a lot of cases where the settlement is a coupon, but the attorneys' fees are \$3 million. I think the bill is trying to seek some sort of proportionality."

"We would like to see some additional clarifications to make class actions truly class actions when they're necessary, but perhaps that issue of proportionality will put back some reasonableness back into the consideration," Sier added.

As for what lawyers should do in regard to the new legislation, Sier said defense lawyers should get involved to ensure the bill items they wish to see pass the Senate get approved.

"It's something they can look at, it's in the Senate, and anything that we want to make sure makes it through, we need to let the senators know," Sier said. "From the defense side, all you can do is read the bill and see this is what they're planning to do, now it's passed (the House) on a largely partisan vote, but whether it survives through the Senate is another question."

If you would like to comment on this story, email Thomas Franz at tfranz@mi.lawyersweekly.com.

Tagged with: [BOB GOODLATTE](#) [CLASS ACTION](#) [US HOUSE OF REPRESENTATIVES](#) [US SENATE](#)

ABOUT TFRANZ@MI.LAWYERSWEEKLY.COM



IT'S TIME TO GET OFF THE FENCE.

[CLICK TO SUBSCRIBE](#)

5/14/2017

Class-action bill pending in U.S. Senate – Michigan Lawyers Weekly

Rochester, MI 48307

(800) 678-5297 fax: (248) 865-3117

