

COMMENTS ON CONSUMER ORGANIZATION FOR CLASS ACTION

1. I am proposing that a new category of organization be chartered to represent consumer interests. This would be public but non-governmental, and be roughly analogous to a labor union. However it would not have exclusive bargaining authority.

I will not attempt a full definition of the qualifications of a CO. It would have to have

- a) substantial number of members
- b) be open to and under the full control of a large consumer membership
- c) qualify as a non-profit educational or research organization -- however it should have a well-defined latitude in pressing for legislative action in a non-partisan fashion
- d) its income and resources must be primarily dedicated to research, public information, and class action litigation for consumer interests.

It would have the authority to represent consumer classes in such actions; and furthermore to retain settlements to finance its further actions on behalf of consumer interests, up to, say \$100 per capita, amounts where the cost of redistribution would be a significant fraction of the damages.

It would also be legitimized to represent consumer interests in other areas, like the privilege of access to CATV channels, or in some circumstances to request "equal time" to respond to misleading advertising.

2. There may well be several competing organizations. Then, of course there will be problems of allocating settlements among them. (This problem will trouble any class action procedure). The matter should be left to judicial discretion, for the time being, though the law might well indicate the relevance of factors like

- a) the research and legal investment made by a given CO in a particular action, and
- b) the number and characteristics of the membership of various CO's as injured parties.

3. In my original writing, I suggested the authority of the CO to initiate a class action suit as a compromise between the original Eckhardt-Tyding proposals and the Administration bill which required triggering by an FTC or prosecutory action. The CO approach, i.e., allowing a CO to initiate a suit without such triggering should answer the argument about nuisance and strike suits, but as you pointed out, the courts themselves will probably inhibit these.

I would therefore rescind my emphasis on the CO approach as a compromise, and indeed there is no reason why individual initiatives for class actions should be preempted by chartering the CO's. The difference would be that the CO has a built-in claim to retain and reinvest the class settlement,

which of course the individual plaintiff does not. The CO could still have some additional privileges, like the right to proceed where the per capita injury is less than \$10, that might be denied to individual initiators on grounds of de minimus (relief).

May I stress that the real purpose of this proposal is to institutionalize a new, balancing force in the economy, the now-fragmented consumer interest. A government bureau cannot do this, even if it is an independent agency rather than a political arm of the President. (A consumer affairs representative should be in the White House, as a channel of information to the Executive.)

Environmental abuses often merge with consumer abuses (though the first-order interests are sometimes at odds). The identical approach might well be available for actions in the area of environmental exploitation.