

## ORDER FOR ADJOURNMENT

Mr. GRASSLEY. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order following the remarks of the Senator from Delaware, Mr. CARPER, for as much time as he may want to Use.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Delaware.

## CLASS ACTION FAIRNESS ACT

Mr. CARPER. Mr. President, over the course of the next several days, a number of unkind things are likely to be said about class action lawsuits, usually by people who do not support this legislation which is before us.

I simply suggest that some of the criticism we are going to hear is merited, but, quite frankly, some of it is not. The legal process that we call class action can be traced back to the old English courts of chancery.

Despite the criticism leveled at class action lawsuits today, these lawsuits frequently have served a public good. They have proven a powerful weapon against unscrupulous or reckless businesses, discouraging those businesses from selling dangerous products or from cheating customers.

Class action lawsuits reduce the likelihood that rogue companies can harm thousands of innocent people, confident in the belief that none of those people could ever afford to hold those companies accountable in court for their misdeeds.

There are many examples over time where the bad guys were caught in the act, where they were taken to court and where they were ordered to pay up.

The film "Erin Brockovich" tells a story about one such time. Not long ago I picked up a video at Blockbuster of the film starring Julie Roberts in the title role that some of us may have seen. The film tells the story of how one woman convinced hundreds of people residing in a place called Hinkley, CA, to join in a lawsuit. Together, they sued a utility company that was making people sick by polluting their water supply. Erin Brockovich's leadership won damages of \$333 million for the victims of that pollution. That true story is just one example of the good that class action litigation can accomplish.

While I will not take the time this evening to talk about those other examples, let me say there are plenty of them. Unfortunately, though, there are also a growing number of examples that are not as uplifting or not as inspiring as the tale told in "Erin Brockovich."

Let me mention several of those, too. Ironically, one of them also involves Blockbuster. That company was sued over its policy of charging customers for overdue rentals. The result was that plaintiffs, of which I may unknow-

ingly have been one, will get two free movie rentals and a dollar-off coupon. Meanwhile, attorneys received more than \$9 million in fees and expenses.

Let me also mention Poland Spring. Poland Spring, if you are not aware of it, is a bottled water company. They were sued a couple of years ago in a place called Kane County, IL. Allegedly, the company's water was not pure and did not come from a spring. During the course of litigation, Poland Spring settled. The consumers alleging that they had spent their money on a product they did not actually receive were not compensated. Instead, they were awarded coupons which they could apply toward the purchase of the same Poland Spring water of which they originally weren't happy. The attorneys who negotiated the settlement on their behalf meanwhile were awarded \$1.35 million. Poland Spring itself admitted no wrongdoing and has no plans, at least to my knowledge, to change the way they bottle and market their water.

Here is another one: General Mills was sued because an unapproved food additive apparently was used in some oats that were used to make Cheerios. Although I am told there was no evidence of customer injury, a settlement was reached in the class action lawsuit. It provided for \$1.75 million in fees for the plaintiffs' attorneys. The plaintiffs? They received a coupon for more Cheerios.

In another class action suit involving Chase Manhattan Bank, plaintiffs' attorneys collected, I am told, over \$4 million. The plaintiffs? They could collect 33 cents apiece if they were willing to pony up the money for a postage stamp.

With the next one, I think it may actually get worse. In a different class action lawsuit against the Bank of Boston over escrow accounts, plaintiffs apparently didn't win a dime. In fact, their accounts were debited to help pay attorneys' fees of \$8.5 million.

Let me mention just one more. A couple of years ago, Intel was taken into court in I believe Madison County, IL, for asserting that the company's Pentium IV chips were faster than the company's Pentium III chips.

Let me say that I have no idea which chip is faster. I do have a hunch, though, that the Madison County Courthouse probably isn't the best forum in which to make that determination. For that matter, neither were any of the other local courts in which the previous five cases that I have mentioned here were brought.

Don't get me wrong. Class action lawsuits are still being brought for noble purposes that none of us would question for a minute. Last month, in fact, a class of 1.6 million current and former female Wal-Mart employees alleging gender discrimination at that company were certified as a class. Ironically, I believe it was in a Federal court in California.

There is a growing phenomena, however, that is troubling, at least to me

and I suspect to other fairminded people, including, I would be willing to bet, a number of plaintiffs' attorneys. We have witnessed the emergence in different parts of America of something called magnet courts. Oftentimes, they are county courts with locally elected judges and a reputation for verdicts that can put the fear of God in companies when cases are filed in one of them. Once a plaintiffs' class is certified in one of those courts, the companies generally realize that their goose is about to be cooked and the work of reaching a settlement begins in earnest.

The attorneys who in many cases assembled the plaintiff class of aggrieved consumers from across the country oftentimes make out pretty well in those settlements. As you might imagine from the examples I have cited above, the people those attorneys represent sometimes do not.

Those who are supporting the legislation before the Senate this evening do so in the belief somebody needs to do something about the growing trend toward forum shopping we are witnessing around the country.

In addition, somebody needs to do so while preserving access to the courts when people are harmed. My colleagues, that somebody is us.

The legislation before the Senate tonight, the Class Action Fairness Act, does not get rid of class action lawsuits. And it should not. For years, they have been an efficient way for small and large groups of consumers who have been harmed or shortchanged by some product or service to pursue legislation against the company, when those consumers lack the wherewithal to pursue justice on their own.

What the legislation now before the Senate seeks to do is ensure class action lawsuits that are national in scope are decided in Federal courts. When the bulk of plaintiffs comes from across America, a decision can have an impact on all or most of the 50 States. Federal judges, not State, not county judges, should hear those cases more often than not.

These issues are not new. They have been the subject of a number of congressional hearings over the years. These issues have been debated and voted on in the relevant committees in both the House and the Senate. These issues have been debated in the U.S. House of Representatives and last year the House approved and sent to the Senate a bill that sought to address the concerns we are raising this evening.

The Senate Judiciary Committee reported out a more balanced bill, I believe, than the one we received from the House last year. That Senate bill was further improved through bipartisan negotiations last fall after efforts to proceed to class action fell one vote short in the Senate.

It will come as no surprise that not everyone likes the measure before the Senate this evening. As is often the case with highly contentious issues,