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February 14, 2017

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Conyers
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Goodlatte and Ranking Member Conyers:

The U.S. Chamber Institute for Legal Reform (“ILR”) strongly supports H.R. 985, the “Fairness in Class Action Litigation Act of 2017.” This legislation would address multiple problems associated with overbroad and procedurally abusive class actions and mass tort multi-district litigation (“MDL”) proceedings. Every year, these proceedings cost American businesses millions of dollars in legal fees, divert finite resources away from true victims, and often result in settlements where nobody wins, except the lawyers. ILR, an affiliate of the U.S. Chamber Commerce, is dedicated to making our nation’s civil justice system simpler, faster, and fairer for all participants. The U.S. Chamber of Commerce is the world’s largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

Class action and mass tort MDL abuses harm both American businesses and consumers. They subject businesses to burdensome and expensive litigation that raises prices for consumers and leaves business owners with fewer resources to innovate and hire employees. In the context of mass tort litigation, small business owners are pulled into litigation to keep cases in trial lawyer-friendly state courts instead of more neutral federal forums.

Furthermore, consumers and class members are rarely “winners” in class action cases. Although these lawsuits almost always settle once a class is certified, the settlements rarely deliver any meaningful benefits to class members, while the attorneys “representing” the classes receive potentially millions of dollars in contingency fees. Indeed, in many class settlements, the lawyers receive more money than all the class members combined.

In addition, some federal courts have contorted elements of the Federal Rules of Civil Procedure to certify classes in circumstances where they were clearly never intended to be certified. For example, a person who has a problem with a product (or service) is often allowed to sue on behalf of all other individuals who purchased the product (or service), despite these other individuals never having suffered any injury. Further, some courts have allowed class actions to proceed by certifying only a particular issue for class treatment, making a clear end-run around U.S. Supreme Court-mandated fairness requirements. These are just a few examples of the pervasive abuses in class and mass action proceedings.

The Fairness in Class Action Litigation Act of 2017 (“FICALA”) would help correct many of the abuses that have turned class actions and mass tort MDL proceedings into cash machines for the plaintiffs’ trial bar. H.R. 985 would require conflicts of interest between class members, class representatives, and class counsel to be disclosed. Class members would receive any payment due to them prior to the class counsel taking the lion’s share of any award or settlement amount. Under FICALA, class actions only would be allowed to proceed if class members have experienced the same type and scope of injury as the purported class representative. The bill would also ensure that fairness requirements are adhered to during the class certification stage. MDLs would have various commonsense fairness requirements applied to them. Finally, this legislation would require the disclosure of secret hedge fund investments in class actions, among other provisions.

ILR strongly supports H.R. 985 and opposes any hostile amendments that may be offered when the House Judiciary Committee considers the legislation. We look forward to working with you and your colleagues as the legislation continues to move through the remainder of the legislative process.

Sincerely,

A handwritten signature in black ink that reads "Lisa A. Rickard". The signature is written in a cursive, flowing style.

Lisa A. Rickard

cc: Members of the Committee on the Judiciary