Class Action Lawsuits To Bring New Action to N.C. Courts

by Katherine White

This regular Insight *feature focuses on how the judicial system affects public policymaking. This column examines a recent N.C. Supreme Court decision opening up the state courts to more class action lawsuits.*

Who would think that the fine print on a standard mobile home sales contract could lead to a major change in the way North Carolina's court system handles lawsuits? But that's the effect of an April 1987 N.C. Supreme Court decision opening the doors of state courtrooms to more class action lawsuits — and bringing North Carolina in line with the majority of the other states in allowing class actions.

The standard form contract, with small print on the back and front, is as common as dirt. Banks, credit card companies, car dealers, and health clubs all have them — documents with language that has been examined under a legal microscope to ensure prompt and certain payment of borrowed money and to comply with federal lending regulations.

The Crow family of Lumberton signed such a standard contract in August 1981 to finance its new mobile home. After putting $3,000 down and going $19,000 in debt, the Crows promised to pay $328.03 per month for 15 years. In early 1983 they failed to make two payments and lost their home at a public sale. That can happen when debts aren't paid, but this time the finance company that held the mortgage allegedly violated state and federal consumer protection laws by charging an excessive rate of interest and by selling the home before the Crows had the chance to make good on the back payments, as federal law requires. The Crows chose to buck the odds and file a class action lawsuit against the finance company.

What was unusual in this case is that North Carolina courts traditionally have prohibited class action suits, where one person can file suit on behalf of himself and all others who have similar claims.[1] In the *Crow* case, others had signed similar contracts with allegedly illegal provisions. As a group, the class can recover damages that will be distributed to all members. The potential for large judgments in class actions is enormous. In a case similar to the Crows', 1,450 people from Georgia, Mississippi, and Florida received a $6.3 million settlement in 1984.[2] But no one gave the Crows much of a chance to sue successfully in a class action because of the long-observed North Carolina prohibition on *most* such suits.[3] Now the odds have changed, thanks to the Supreme Court decision allowing such suits to be filed.

Class actions of this kind have been allowed in federal court, but until the *Crow* decision, the North Carolina courts had never before entertained such a class action suit. For the Crows and people like them, the April 1987 N.C. Supreme Court decision on the procedural question of whether the Crows could file a class action converted the Crow's individual claim of $4,000 into a potential $400,000-plus claim for a whole class against Citicorp Acceptance Co., Inc. The substantive questions in the case itself — whether there were actual violations of law — haven't yet come to trial.

Before the decision, the state courts allowed only those people who had a so-called "community of interest" to sue as a class.[4] For example, the N.C. Supreme Court allowed the beneficiaries of the Duke University endowment to pursue a claim when

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the trustees of the endowment decided to change the terms of the trust agreement when making investments.[5] Because the beneficiaries of the endowment had an interest in how the funds were handled, the Court concluded that they could bring the action as a class. The Crows' situation was different. They, and others, signed the same standard form, but the terms and collateral differed in each contract.

Until the Crows sued, the N.C. Supreme Court had never defined what kinds of classes could appear in a lawsuit. "Until today, we have not considered the proper definition of a 'class,'" wrote Justice Burley B. Mitchell for a unanimous court. "We now hold that a 'class' exists . . . when each of the members has an interest in either the same issue of law or of fact, and that issue predominates over issues affecting only individual class members," he wrote.[6]

Thus, the Crows' loss of a mobile home has become the consumer's gain in the courts. Before, only the Attorney General's office could pursue such claims in state courts for groups of people who felt they had been wrongfully subjected to unfair trade practices, or to interest that was higher than the state's legal rate, says Travis Payne, a lawyer for the Crows. And with short staffing, the Attorney General's office couldn't pursue every claim that came to its attention, Payne adds.

Now, however, a private lawyer can serve the same function as the Attorney General's office and file a claim against a company that covers all the people who have signed lending contracts with allegedly illegal provisions in them.

The North Carolina Clients Council in Raleigh, a nonprofit organization of low-income people across the state (associated with N.C. Legal Services Resource Center), says the decision means that poor people will have better access to the courts. "There are approximately one million low-income persons in North Carolina. The number of lawyers who are able and willing to advocate on their behalf is limited," the Council said in a friend of the court brief. "The remedy of a class action is an important tool to redress the grievances experienced by large numbers of persons."[7] Of course, the case benefits others — middle- and upper-income citizens as well — who would be able to file class action suits.

The change doesn't suit everyone. Paul H. Stock, executive vice president of the N.C. League of Savings Institutions, says the *Crow* decision "is an abuse of the class action system." Stock says that a class action lawsuit on a form contract brings together a group of people who may not have been damaged by the contract. For example, he says, many who have signed agreements similar to the Crows probably have not missed a payment and, therefore, have not been subject to an alleged violation of federal law. Even where violations of federal law have been proved in cases similar to the Crows, Stock says, "Those violations have been no more than technicalities. The whole thing is pretty scary."

Others disagree. Jack Long, a Special Attorney General in Georgia with a private law practice, helped Payne represent the Crows in this lawsuit. Such cases are Long's specialty, and Georgia law enables Long to have a private practice on the side. The ability to bring a class action helps "get a hold of the super [big] business," Long says. "The only way you get to business for violations of people's rights is through the class action."

The remedy also allows cases to be filed for a group of people with relatively small individual claims that might not be worth pursuing on an individual basis. How small is unclear. The N.C. Supreme Court concluded last year that a possible recovery of 29 cents per class member was too small.[8] In *Crow*, the Court did not reach the issue of what monetary claim for each class member made a class action permissible.

The N.C. Bankers Association, the N.C. League of Savings Institutions, BarclaysAmerican/Financial, Inc., and N.C. Citizens for Business and Industry say the decision means that their potential liability on consumer form contracts goes beyond anything "contemplated by the institutions and businesses or the legislature."[9] The standard contract, with its fine print, has developed over the years. "This uniformity affords reduced costs to the lending industry and, therefore, reduced costs to the consuming public," the lenders said in a brief to the Court. "Thus, considerations of public policy dictate that the community of interest required of members of a putative class be more than a mere similarity in their relationship with a lender."[10]

Lenders don't want their standard form contracts subjected to close scrutiny by a class of people challenging them. The possible monetary award to the class could strip the companies of profits — "staggering and unintended liabilities," as Citicorp put it to the Court.[11] The N.C. Supreme Court was not persuaded, however.

"Uniform contracts, like all other contracts, must conform to law. Moreover, the precise historic purpose of class actions has been to permit claims by many plaintiffs or against many defendants to be brought and resolved in one action. To date this Court has not allowed unintentional illegality in the

language of standard or uniform contracts to be raised as a shield to prevent [consumers] from prosecuting a suit as a class action. We decline to do so now," Justice Mitchell wrote.[12]

The lending institutions that fought the *Crow* case before the Supreme Court argue that the General Assembly is the proper forum to decide whether such large class actions can be maintained in state courts. The Supreme Court observed that the General Assembly could have barred such actions "expressly and unequivocably" when the legislature passed the class action rule in 1967.[13] The failure of the legislature to set such limits convinced the Court that "it intended to allow them."[14]

One further wrinkle in the class action arena could have an impact on state courts: A 1985 U.S. Supreme Court decision allows state-level class action lawsuits by classes that include individuals who are not citizens of that particular state.[15] As defendant Citicorp noted in its brief before the N.C. Supreme Court, "Our trial judges can expect to be called on to manage class actions that are not even restricted to N.C. citizens, but encompass absentee plaintiffs from all over the country."[16]

In the past session, the General Assembly did not revise the language for class actions — but then, no one asked the legislature to do so. The *Crow* opinion was handed down during last spring's General Assembly session, shortly before the deadline for filing new legislation. Perhaps in the 1988 or 1989 sessions of the General Assembly, an attempt will be made to change the *Crow* decision by legislation. At that time, the General Assembly will have to balance the public's interest in allowing class action lawsuits to challenge alleged wrongdoing against the costs to the businesses involved.

FOOTNOTES

[1]*Mills v. Cemetery Park Corp.*, 242 N.C. 20, 30, 86 SE 2d 893, 900 (1955), which spelled out how class actions in "community of interest" cases would be permitted.

[2]*Quiller v. BarclaysAmerican/Credit, Inc.*, 727 F 2d 1067 (11th Cir. 1984). Attorneys fees of $1.2 million are included in the settlement amount.

[3]N.C.G.S. 1A-1, Rule 23, Rules of Civil Procedure.

[4]*Ibid.*

[5]*Cocke v. Duke University*, 260 N.C. 1, 131 SE 2d 909 (1963).

[6]*Crow v. Citicorp Acceptance Co., Inc.*, 319 N.C. 274, 354 SE 2d 459 (1987).

[7]Friend of the Court (*amicus curiae*) brief filed by the North Carolina Clients Council, N.C. Legal Services Resource Center, P.O. Box 27343, Raleigh, N.C. 27611, pp. 2-3.

[8]*Maffei v. Alert Cable TV*, 316 N.C. 615, 342 SE 2d 867 (1986).

[9]Friend of the Court brief filed by the lenders, at p. 18. BarclaysAmerican/Financial, Inc. is a named defendant in a lawsuit similar to *Crow v. Citicorp*, called *Bass v. BarclaysAmerican/Financial, Inc.*, No. 85 CVS811, Durham County Superior Court.

[10]*Ibid.*, Lenders' Brief, at p. 19.

[11]Defendant Citicorp Acceptance Co., Inc., brief at p. 19.

[12]*Op. cit., Crow*, at p. 286.

[13]*Ibid.*, Rule 23, Rules of Civil Procedure.

[14]*Op. cit., Crow*, at p. 286.

[15]*Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 86 L. Ed. 2d 628 (1985).

[16]Defendant Citicorp Acceptance Co., Inc., brief at p. 17.

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Aging

[The Center] is to be highly commended for the excellent job [it] did in planning and conducting the Forums on Aging [in October 1986]. The forums brought together older adults, politicians, government officials from all levels, private service providers, and advocates to identify and discuss current issues and problems facing older citizens. They made a number of important points and recommendations and having this variety of people sitting together discussing the issues was in itself valuable. I was impressed with the outcome. These are the sorts of efforts we need to be making in North Carolina so that we can prepare to meet the needs of our older citizens.

Bill Finger's presentation to the General Assembly's House Committee on Aging in April was very well received. The committee members were excited by your report on the outcomes of the forums and the recommendations you made to them about further steps to be taken in preparing to meet the needs of our growing elderly population. It proved to be a catalyst for the introduction of several pieces of legislation that, if ratified, should prove useful to meeting those needs.

It has been a pleasure working with you on these issues. You have made valuable contributions towards improving services for older people in North Carolina.

John Tanner, Head
Adult & Family Services Branch
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Note: In July 1987, Tanner was named Deputy Director of the Division of Aging in the Department of Human Resources. On June 4, 1987, the N.C. General Assembly passed legislation modeled after a recommendation in Finger's presentation that the Department of Human Resources develop a comprehensive plan for meeting the needs of elderly citizens. That plan, to be developed by Dec. 31, 1987, will be presented to the 1988 General Assembly.

— The Editors