

LAWYERS FOR CIVIL JUSTICE

*Defense Trial Lawyers Supporting
Civil Justice Reform*



LCJ MISSION STATEMENT

Lawyers for Civil Justice (LCJ) is a national coalition of defense trial lawyer organizations and corporations which seeks to restore and maintain balance in the civil justice system for the benefit of the public.

The purpose of LCJ is to accomplish civil justice reform through:

- *Coalitions among defense trial lawyer associations and corporate interest;*
- *Participation in the legislative process in a way that persuasively presents the defense perspective; and*
- *Anticipating, tracking and addressing proposals which affect the civil justice system.*



“Although LCJ represents an independent voice of the defense bar, it has often been a powerful ally in many state and federal legislative and rulemaking initiatives and deserves the strong support of the business community. The experienced defense practitioners involved in LCJ have focused their energy on enacting meaningful class action reform, adopting rules and legislation that will ingrain Daubert standards into state law, and protecting the privacy rights of defendant corporations who are frequently victimized by open ended discovery.”

*Jeffrey W. Jackson
Vice President – Counsel
State Farm Mutual Automobile
Insurance Company*

Overview

The uniqueness of LCJ is that it brings a nationwide organized infrastructure of committed defense counsel to support civil justice reform.

LCJ is a partnership of corporations and defense attorneys who share a strong commitment to civil justice reform. By maximizing the synergies between industry and the defense bar, it provides vital support for an array of legal reform initiatives.

History & Mission

LCJ has established a long history of support of crucial legislative and procedural reform initiatives.

In 1987, LCJ was formed by the leadership of the organized national defense bar: DRI, Federation of Defense and Corporate Counsel (FDCC), and the International Association of Defense Counsel (IADC) along with the financial support of several “Fortune 500” companies. The purpose of the organization was to develop

a network of broader support for ongoing legal reform initiatives by tapping into the resources of the defense bar organizations and the over 20,000 legal practitioners which they represent.

Historical Goals

LCJ was formed to address the ever increasing expansion of liability of defense litigants and the soaring costs of litigation. Initial goals included:

- Increase public awareness of ever expanding size of damage awards;
- Limit/eliminate punitive damages;
- Limit unwarranted discovery;
- Encourage the judiciary to take a more active role in case management;
- Deliver quality legal services at a reasonable cost;
- Limit or eliminate joint and several liability;
- Eliminate the collateral source rule;

- Control contingent fees; and
- Improve the quality of judicial education and selection; and increase judicial compensation.

Structure & Membership

LCJ is incorporated in the District of Columbia as a non profit 501(c) 6 organization.

Governed by a Board with equal representation from among the corporate and the defense bar member organizations, LCJ relies on a smaller Executive Committee for overseeing daily operations.

Membership is comprised of corporations, defense organizations and their designated representatives. Carefully selected defense law firm representatives may join as *associate members*. Members meet twice a year and elect officers annually. An array of “working committees” provide support to implement LCJ policy.

A grassroots defense bar network underpins LCJ programs, developed with the support of each sponsoring defense organization.

LCJ and Other Organizations

LCJ recognizes the importance of effective coordination with both defense bar and industry organizations including the U.S. Chamber of Commerce, the Civil Justice Reform Group, American Tort Reform Association, and the Product Liability Advisory Council.

Current Agenda

Each year, LCJ members determine priorities of legislative and procedural rule making initiatives. Top priorities include:

- **Class Action Reform** to increase judicial support for concepts of federal diversity jurisdiction and other class action/mass tort reforms.

- **State Procedure Rules Project**

to encourage states to amend the evidence rules in key states to properly regulate the admission of expert and scientific evidence in state courts. Beneficial rules can be enacted in other areas such as class actions, privacy and confidentiality and traditional and electronic discovery.

- **E-Discovery**

to encourage the Judicial Conference to establish procedural rules that will minimize the costs and burdens associated with retention and discovery of electronic evidence; and,

- **Privacy/Confidentiality**

to provide urgently needed support to the long standing effort by the defense bar and business community to strengthen protection for the privacy and confidentiality of all litigants by counteracting ATLA’s nationwide campaign to create a “presumption of public access” to *all* information produced in litigation.

“I have been particularly impressed with the LCJ Network of defense bar leaders who are not afraid to take on the plaintiffs’ bar in both the legislative and judicial arenas. LCJ represents a true partnership of corporate defense counsel and defense trial lawyers. I believe this program deserves our full support.”

William J. Ruane

*Associate General Counsel –Litigation
Wyeth*

Current Agenda: A Detailed View

I. Class Action Reform and Removal Legisla- tion

Neutralize Judicial Opposi- tion to Class Action Reform (“Judges Project”)

LCJ encourages *judicial* support for federal class action reform by convincing the Rules Committees of the Judicial Conference to adopt more favorable policy as a means of addressing problems associated with duplicative and overlapping class actions.

LCJ’s long experience and excellent working relationship with the Judicial Conference Rules Committees going back to the late 1980’s provided the basis for the successful “Rules Projects”. It resulted in presenting formal testimony and comment of practitioners and academics throughout the country to support fairer policy on class actions. LCJ ensures these goals can be achieved by:

- providing experienced defense practitioners who testified at Judicial Conference hearings advocating class action reform.
- developing solid academic scholarship which ultimately proved crucial to the development of new policy.
- actively participating in the elaborate committee process of the Judicial Conference to advance policy reform through intensive advocacy with key judges.

Supporting the “judges project” has taken on added importance in light of renewed class action reform efforts. Reestablishing public support among judges for class action reform has stimulated stronger bi-partisan support for such legislation. Legislators, who have rationalized opposition to the reform legislation by relying on earlier, Judicial Conference policy positions can no longer justify their opposition on those grounds.

Policy on Class Actions/ Mass Torts

LCJ policy embraces the following objectives on class actions/mass torts:

- (1) Establish by rule or legislation that mass torts actions should not be tried on a consolidated or class basis because such trials result in the deprivation of both plaintiffs' and defendants' due process rights.
- (2) Support passage of diversity removal legislation, together with other approaches that would streamline and improve coordination and cooperation among federal and state courts to consolidate mass torts for pretrial purposes but not for trial;
- (3) Support passage of legislation that would require all plaintiff lawyers to obtain written authorizations from putative class members before filing class actions and that would limit solicitation of class members;
- (4) Develop a mechanism which would create a defendant only initiated

settlement device or "bill of peace" to allow defendants to invoke a court process for consolidating all litigation and settling all claims.

LCJ encouraged the DRI, FDCC, and IADC to pass resolutions supporting class action removal legislation. LCJ presented testimony on behalf of the defense bar organizations before the U.S. Senate Judiciary Committee in support of removal legislation and several defense bar members have worked with their House and Senate representatives to support class action removal legislation. LCJ also cosponsored a Congressional symposium on the need for class action reform.

II. State Procedural Rules Project

The Project will initially focus on amending the evidence rules in key states to properly regulate the admission of expert and scientific evidence in state courts.

Many state courts have ignored, misapplied or overlooked the strict standards for admission of expert, scientific, and technical evidence laid down by the U.S. Supreme Court in three cases -- Daubert, Kumho, and Joiner (the "Daubert trilogy") and recently codified by amendments to Federal Rules of Evidence numbers 701, 702, and 703. In addition, the LCJ project also will identify and assess opportunities for rule changes in other areas, as appropriate, while initially maintaining primary focus on improving standards for "expert" testimony.

III. Court Confidentiality

LCJ has been a central Force in Opposing Court Rules and Legislation that would Restrict Court Confidentiality

“The LCJ’s combined membership of corporate counsel and defense attorneys makes it a uniquely effective driver of civil justice reform. When a state legislature proposes legislation limiting protective orders, the LCJ can mobilize local defense attorneys to testify about the dangers of such limitations. When the Federal Judicial Conference’s Civil Rules Advisory Committee discusses amending the Federal Rules of Civil Procedure to deal with electronic discovery, the LCJ is able to mobilize corporate counsel nationwide to submit comments to ensure that the Committee understands the defense point of view. ”

*Charles A. Beach
Coordinator, Corporate Litigation
Exxon Mobil Corporation*

LCJ has played a key role in defeating the ATLA / media sponsored anti- privacy legislation and rule changes in over forty states since 1989 and LCJ acts as a central force in countering an intense nationwide campaign to create a “presumption of public access” to all information produced in litigation.

The plaintiffs’ bar and the media have utilized an appeal to end “secrecy in the courtroom” as a means to propel legislation and rulemaking changes that would restrict the discretion of judges to protect litigants’ privacy and to preserve the confidentiality of sensitive information exchanged in the course of litigation. Efforts to prohibit the sealing of settlements and other court records by state and federal local court rules continue unabated.

By restricting the courts’ traditional discretion to issue protective orders and seal settlement agreements the privacy of corporate defendants is significantly undermined. Because of the liberality of pretrial discovery, it is necessary for the trial court

to have authority to issue protective orders and seal settlement agreements.

LCJ opposes proposals to restrict judges from sealing confidentiality agreements or issuing protective orders.

LCJ’s Privacy Protection Group has moved swiftly by quickly coalescing teams of lobbyists and prominent local defense bar members, organized by LCJ to oppose anti-privacy initiatives.

The LCJ privacy protection program includes:

The “Early Warning System” — a nationwide network of defense counsel to monitor developments in state legislatures in order to provide early warning of legislative and rule making action.

Nationally Recognized Spokespersons — to work, in concert with key defense counsel to educate policy makers of the importance of court confidentiality and preserving judicial discretion to issue protective orders and seal settlement agreements.

Counseling/Networking — the first point of defense in bunting aside dangerous restrictions on protective orders and confidentiality agreements.

Information Kits — updated information which is available to the business community and local defense counsel.

IV. E- Discovery

Amend the Federal Rules of Civil Procedure to Address Problems Caused By Electronic Discovery

LCJ supports Electronic Evidence and Discovery reform as a major evidentiary rule reform initiative for reducing burdens and costs associated with electronic discovery. Since the use of electronic mail has increased geometrically, the costs and burdens associated with document production threaten the ordinary operation of the business enterprise.

The LCJ Electronic Discovery (E-Discovery) Working Group, in coordination with other organizations has proposed specific amendments to the

discovery rules which would:

- Reduce the burdens of storing, reviewing and producing electronic information;
- Minimize costs associated with the production of electronic documents;
- Minimize business disruption when companies are forced to produce vast amounts of electronic evidence;
- Resolve questions pertaining to the preservation of electronic data; and
- Prevent unnecessary disclosure of privileged documents, communications and trade secrets.

LCJ advocates amending the Federal Rules of Procedure and Evidence to address electronic discovery problems and supports specific rule amendments to address these concerns.

The LCJ E-Discovery Working Group has taken action which has included:

- (1) Production of scholarly papers; oversight and coordination of counsel

and academicians to review, analyze and convert data into policy proposals; and provide the real life examples which illustrate the burdens, costs and problems associated with production of electronic discovery;

- (2) Establishing a network of defense practitioners to review the recommendations and provide input into the Judicial Conference

- (3) Creating additional opportunities to interact with members of the Judicial Conference Advisory Committee on Civil Rules.

LCJ Meetings and Committees

Each year, LCJ meets with legislators, policymakers and judges to promote reform in the civil justice system. Several committees address specific issues and members of the LCJ write position papers, testify before various panels, and file amicus briefs in cases of interest to its membership.

In recent years, LCJ has included distinguished speakers and participants including Congressional leaders, state and federal judges, and academicians.

The LCJ Distinguished Speakers Program

Recent Participants:

*Honorable Shira Scheindlin
Federal District Court
New York*

*The Honorable Charles E.
Grassley
United States Senator from
Iowa*

*The Honorable Orrin Hatch
United States Senator from
Utah*

*The Honorable Howell Heflin
Former United States Senator
from Alabama*

*The Honorable Chris Cox
United States Representative
from California*

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United States Representative
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*The Honorable Don Nickles
United States Representative
from Oklahoma*

*The Honorable Bill Pryor
Alabama Attorney General*

*The Honorable William Weld
Former Governor of
Massachusetts*

*The Honorable
Chief Justice Elliott Maynard
West Virginia
Supreme Court of Appeals*

*The Honorable John Carroll
Chief U.S. Magistrate Judge
Middle District of Alabama*

*The Honorable David F. Levi
United States District Court
Eastern District of California*

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Thomas R. Phillips
Chief Justice
Texas Supreme Court*

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*The Honorable Richard W. Riley
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