

## Class Actions

### Examples of Class Action Cases

***Motor Fuel Temperature Sales Practices Litigation.*** Zelle is defending a major integrated oil company in a case involving claimed violations of consumer protection statutes and various common law claims under the laws of 25 states. The core allegation is that it is deceptive to sell motor fuel at retail in uniform volumetric gallons without adjusting for the effect of temperature on the energy content of the fuel.

***In re Trans Union Privacy Litigation (N.D. Ill.).*** Zelle represents plaintiffs in this class action against Trans Union LLC alleging violation of federal privacy protection statutes in the sale of consumers' personal and financial information. Trans Union is one of the largest credit reporting agencies in the country. The settlement was finally approved by a federal court in Chicago on September 10, 2008, after nearly ten years of hard-fought litigation. The settlement class includes all consumers who had an open credit account or an open line of credit from a credit grantor (including, for instance automobile loans, bank credit cards, department store credit cards, other retail store credit cards, finance company loans, mortgage loans, and student loans) located in the United States anytime from January 1, 1987 to May 28, 2008. Under the settlement, class members are entitled to six or nine months of Trans Union's credit monitoring, credit score and other credit-related services, and a possible cash payment.

Trans Union is also required to pay \$75 million into a Settlement Fund, which represents disgorgement of all Trans Union's relevant, realized profits, and which will be used to donate \$150,000 to non-profit organizations; to pay for settlements or judgments for damage claims related to lawsuits brought individually by Class members against Trans Union, if any; to pay class counsels' attorneys' fees and their expenses; and to pay the costs of notice and administering the settlement. Any Settlement Fund money remaining after deducting the costs for the above items will be distributed either to class members who register for a possible payment or to non-profit organizations as determined by the court. No amount of the \$75 million will revert to Trans Union.

***Fiber Optic Right-of-Way Cases (Multiple State and U.S. Federal Courts).***

In these actions, plaintiff class members allege that the defendant telecommunications companies installed fiber optic cable on or next to railroad, pipeline, energy, or other utility companies' rights-of-way which run through the class members' property and that defendants' installation, maintenance, and operation of their telecommunications networks without the plaintiff class members' consent constitute a trespass that has unjustly enriched defendants. Zelle attorneys and their co-counsel have obtained certification of plaintiff classes and settlements have been reached with certain defendants on certain claims.

***Shareholder Litigation (Del.Ch.).*** Zelle attorneys represented the chief executive officer and another officer in this class action against them for breach of fiduciary duty in connection with a leveraged buyout. The case was settled in the midst of intensive discovery related to plaintiffs' motion for a preliminary injunction.

***Real Estate Limited Partnership Litigation (N.D.Tex.).*** This was a securities fraud class action by purchasers of interests in 121 limited real estate partnerships. Zelle attorneys, together with two other counsel, represented the class. The district court's opinions granting class certification and denying summary judgment are highly favorable to securities plaintiffs and deal with a host of important issues, such as class-wide proof of reliance and causation, typicality of claims, statutes of limitations, scienter and materiality. The case was settled favorably for the class.

***Mortgage Fund Limited Partnership Litigation (D.Ariz.).*** This was a securities fraud class action by purchasers of limited partnership interests in blind pool mortgage funds. The complaint alleged an elaborate Ponzi scheme whereby monies obtained from investors were used to pay distributions to investors in prior limited partnerships. Zelle attorneys represented the plaintiff class. This case settled while summary judgment motions were pending.

***Fiduciary duty claims (Cal. Super. Ct., San Francisco Cty.).*** Zelle attorneys represented a corporation in this shareholder class action charging breach of fiduciary duty in connection with the consolidation of a number of limited partnerships. An important issue in the case was whether a breach of fiduciary

duty claim can be asserted where full disclosure was made to shareholders and their approval was obtained before the corporation took the actions which are asserted to be breaches of duty. The case was settled.

***Industrial Revenue Bond Litigation (D.Ariz.)***. This was a securities fraud class action by purchasers of industrial revenue bonds that were intended to finance the development of a residential care facility and nursing home. Zelle attorneys represented the plaintiff class. The case was settled on a favorable basis, against most of the defendants, along with a related case involving a separate, but similar bond issue.

***Tucker Act Right-of-Way Cases (Multiple U.S. Federal Courts)***. Zelle attorneys and their co-counsel are prosecuting several class action lawsuits which challenge the authority of the U. S. Government to take and use property under the Tucker Act (28 U.S.C. 1491). The Surface Transportation Board (STB) has established a policy of "Railbanking" whereby the government asserts an interest in certain abandoned railroad rights-of-way for the purpose of preserving them as transportation corridors. Theorizing that the now abandoned corridors may be needed again for transportation purposes in the future, the government has taken possession of several thousand miles of abandoned railroad rights-of-way. In many cases, the STB has classified the abandoned right-of-way for an "alternative use" which almost always involves the designation of the abandoned right-of-way as a recreational trail.

At the time of their construction, railroads often took deeds for their rights-of-way which provided that, should the right-of-way ever become abandoned, the interest in the real estate which formed the right-of-way would revert back to the underlying or adjoining property owners. Zelle attorneys and their co-counsel are representing classes of property owners whose deeds include such reversionary interests, and are challenging the government's taking of these rights-of-way as improper.

***Winery Limited Partnership Litigation (Cal. Super. Ct., Sonoma Cty.)***. Zelle attorneys represented a plaintiff class in this securities fraud case brought on behalf of a nationwide class of investors in limited partnerships formed to purchase and operate wineries. The case was settled favorably to the class.