

The Present State and Prospect of Class Actions in Korea

One statistical study shows the number of lawsuits in Korea is ten times higher than that of neighbouring Japan. Since the 1980s, many Koreans who have suffered relatively small financial or non-monetary damages have begun to file class actions seeking relief.



By Sin Seob Kang
Shin & Kim

Since the 1960s, Korea has experienced rapid industrialization, urbanization and the development of an increasingly information-based society. During the process of this social change, traditional norms such as social customs and religion have receded, and laws and regulations have steadily replaced more traditional social models.

It is said that, when compared to people in neighbouring Asian countries, Koreans are highly prone to solving disputes through lawsuits or legal proceedings. One statistical study shows that the number of lawsuits per capita in Korea is ten times higher than that of Japan, which suggests that social norms in Korea are now very dependent on laws and regulations. Koreans are now more apt to solve a variety of disputes through legal action rather than through traditional methods, and this tendency is getting more pronounced as time goes by.

Since the 1980s, many Koreans who have suffered relatively small financial or non-monetary damages have begun to file class actions seeking relief. As the internet has offered a forum for victims to easily exchange information, composing a group of similarly situated individuals in order to file a lawsuit has become easier. "Anti" websites have begun appearing to impeach the reputations of individual companies, and many victims who suffer even slight damages have the opportunity to organize groups to protect their interests. Furthermore, as non-governmental organizations have increased and become more active in giving professional advice to

such groups, the number of class actions has increased.

Korean courts have responded by organizing special courts, using expert testimony and creating procedural exceptions to deal effectively with the class actions. In particular, the Korean National Assembly enacted the *Securities Class Action Act of 2004*, which went into effect in 2007 and specifies a variety of special cases for class action against disputes arising from securities trading. The current state of various class actions follows.

Securities-related class actions

Many securities-related class action lawsuits in Korea have taken place since the 1990s. Many victims who suffered small financial damages filed claims for compensation related to securities trading against investment managers, securities brokerages, asset management companies and accounting firms, and complete

and partial judgements have been made accepting the demands of such plaintiffs. Moreover, many attorneys and law firms specializing in securities-related plaintiff actions have emerged and now play an important role in the growth of securities-related lawsuits. There is now a consensus that class actions will continue to be an active and growing legal field in Korea.

The *Securities Class Action Act of 2004* is a procedural act that defines special litigation procedures for special cases. Korean companies are particularly concerned about class actions related to fraudulent accounting practices under the new law. However, no securities class action related to accounting fraud has been brought to court since the law went into effect in 2007. Corporate accounting records for 2006 began to be published at the end of March 2007, but because it takes time for would-be securities-related plaintiffs to analyze such accounting books, many observers think that class actions involving alleged accounting fraud will begin to emerge next year.

Since the 1980s, many Koreans who have suffered relatively small financial or non-monetary damages have begun to file class actions seeking relief.

However, because the act strictly manages institutional devices to prevent class action abuse, more conservative observers predict that securities-related class action suits in Korea will not rise to the level as seen in countries such as the United States. Accordingly, it remains to be seen how class actions regarding accounting fraud will develop in Korea over the next one or two years.

Consumer class actions

The enactment of the *Product Liability Act of 2000* led many experts to predict that class actions involving product liability would be abused and become a considerable burden for Korean companies. However, such predictions proved to be a tempest in a teacup, as few class actions relating to product liability claims were brought to court.

For example, a group of smokers brought a claim against one tobacco producer on the basis of the product's link to lung cancer. However, there were not enough plaintiffs to qualify as a class action. Moreover, the trial that did ensue lasted for seven years and recently ended with the rejection of the plaintiffs' claims. Indeed, it is now expected that such "tobacco claims" will be difficult to pursue in court, although the current case is pending appeal.

Owners of apartment units are actively lodging class actions against construction firms for construction defects in apartment buildings. The number of class action lawsuits in the field has had a boost as attorneys specializing in construction class actions have emerged. Such construction class actions are uncommon in many foreign countries and are a result of the rapid urbanization of Korean communities and the quick construction of mass apartment complexes. These class action suits are a huge burden for construction firms, but they are seen as an important catalyst for improving the quality of residential culture in Korea.

Class actions on environmental disputes

Since the 1980s, most class actions in Korea have been active in the environmental area due to the construction of dams, tide embankments and nuclear power plants. To date, most cases have related to the construction of dam and tide embankments to control tidal flow, the temperature of seawater and marine ecosystems. Such structures have made traditional fishing difficult or impossible, resulting in damage to fisheries and the fishing economy. Groups of fishermen have filed class action lawsuits against large project companies and have won many such cases. The results of such class actions caused many project companies to be liable for billions of

SHIN & KIM

法務法人 世宗

TEL: (82-2) 316-4114 FAX: (82-2) 756-6226 Email: shinkim@shinkim.com
Ace Tower 6th Floor, 1-170, Soonhwa-dong, Chung-ku, Seoul 100-712, Korea

Shin & Kim is one of the largest and most resourceful international law firms in Korea with over 200 professionals. The breadth and diversity of experience offered by our professionals have kept the firm at the forefront of changes in global financial markets and int'l business environment as well as in Korea.

General Contact:

Doo-Sik Kim (Managing Partner)

Major Practice Areas

Antitrust & Competition / Bankruptcy and Corporate Restructuring / Capital Markets / General Corporate & Commercial Transactions / Cross-Border Investment / Domestic & International Arbitration / Energy & Infrastructure / Environment / Finance, Banking & Securities / Information Technology & Telecommunications / Intellectual Property / International Trade, Customs, Shipping & Insurance / Labor and Employment / Litigation / Mergers & Acquisitions / Privatization / Real Estate and Construction / Regulatory & Governmental Matters / Structured Finance / Tax and Accounting / China Practice / Japan Practice

won, which have led these companies to pay closer attention to projects that threaten environmental change, particularly dams and tide embankments.

Before the 1980s, there were few claims of residents near industrial complexes over pollutant- and smoke-related damages to health. Now, however, it is difficult to find class action lawsuits for the different reason that these same companies have invested heavily in minimizing the discharge of such pollutants.

From the beginning of 2007, the most attractive class action lawsuit was the case filed against seven automobile manufacturers by victims who alleged that they suffered from respiratory diseases due to vehicle exhaust emissions. It is difficult to predict the outcome of this case because the lawsuit is in its early stages, and similar lawsuits will certainly follow depending on the outcome. As for the automobile manufacturers, the case will certainly create a huge burden on par with similar tobacco cases.

Burden of proof in class actions

There are no general laws or regulations regarding the procedure for class actions in Korea, though there is a special act for procedures relating to securities-related class actions. Nonetheless, it is not difficult to file a class action lawsuit because the *Civil Procedure Act* has several provisions that allow for them, such as the selected party system. As with individual lawsuits, the burden of proof in class actions is on the plaintiff. Accordingly, the court requires more than simple general causation and instead requires specific causation in relation to each plaintiff. In other words, the court does not recognize any conversion or reduction in the burden of proof for class actions. As a result, the burden of proof acts to prevent the filing of many class actions. In the case of securities-related class actions, because the burden of proof is converted, plaintiffs cannot claim that they do not share responsibility.

The product liability act led many to predict that class actions would become a considerable burden for Korean companies. Such predictions proved to be a tempest in a teacup, as few class actions relating to product liability claims were brought to court.

Conclusion

Despite the fact that they are not generally recognized as requiring special procedures, class action lawsuits in Korea have become increasingly active. In particular, the future of securities-related class actions will likely be determined over the next two to three years.

Class actions will require companies to specifically prepare against such lawsuits. The time has come for companies to adopt corporate transparency and professional management for survival. Only when such a corporate culture is adopted can corporate investors and consumers co-exist.

About the author

Sin Seob Kang is a partner at Shin & Kim. Kang's practice focuses on litigation involving securities, derivative products and real estate and real estate investment trusts. He has been involved in derivative product litigation for JPMorgan against Korean banking facilities, in beneficiary certificate repurchase litigation related to DaeWoo-Credit, in financial litigation for Korean securities companies against Korean banks, and in trust litigations. He established the first judicial precedent on a trust company's legal responsibility for development-trusts.

Asialaw subscribers receive the *Korea Review* free of charge.

To find out more, please contact us by
email: enquiries@alphk.com or by phone: +852 2842 6910