미국 연방지방법원의 대표당사자소송운영의
경험을 통해 본 우리 집단소송제의
바람직한 운용 및 입법방안*

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[Abstract]
Class action is a very special and exceptional procedure in the U.S.A. also. In addition to it, U.S. legal practice has a great difference from Korean legal practice, which mainly originates from German legal system.

Korean legal system has a great difference with U.S system in the role of plaintiff lawyers and discretionary power of judge. Korea has no jury system. In America, some class actions can be consolidated for pre-trial purposes through the device of multidistrict litigation (MDL), whereas Korea extremely restrict basic multiparty litigation itself.

Korea has no general class action law at present, Korea has only securities class action law with a more restricted prerequisites than America in certifying the case. For this restriction and private plaintiff lawyer’s financial weakness, no case has been filed at now in the field of securities class action in Korea.

In America, typically, federal courts are thought to be more favorable for defendants and state courts more favorable for plaintiffs. From this point of view, the Class Action Fairness Act of 2005 increases defendants' ability to remove state cases to federal court. Korean pro-defendant lawyers insist on this as an indication of declining of U.S. class action.

In contrast with U.S., Korea has not so big law market, not so much strong financial ability of lawyers or law firms to carry out class actions of his own

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ability. Plaintiff lawyer's financial conditions are too weak and they are too afraid to be branded “hostile lawyer to big company”, which is major source of profit to the lawyers. Nearly no lawyers endure risk to carry out such a risky proceedings like class actions on behalf of a group of individuals or business entities that have suffered a common injury or injuries. They would rather receive traditional service fees, which can be charged regardless of win or lose of his case.

In this context, Korean class action dissenter's arguments, U.S. class action system leads to "race to court" in Korea also, is out of the point. In addition to the lawyer's financial weakness, Korean judges, as a will be lawyer in the future, are too much careful to allow multiparty litigation also. They are too afraid to interpret the law text liberally. They think judge themselves have to get the highest level of self-restraints in every case.

For this reason, Korean judges are hard to imagine on ‘certifying a lawsuit’(소송허가[So-song heo-ga] in Korean).

In the U.S. Federal court, after a class action complaint filed, scheduling and discoveries are followed by judge, magistrate judge or special master. Korea has no system like this.

In America, on the motion of certifying the class, defendants objected to whether the issues are appropriately handled, to whether the named plaintiffs are sufficiently representative of the class, and to their relationship with the law firm or firms handling the case. The prominent Judge Weinstein has the ability of the law firm to prosecute the claim for the plaintiffs, and their resources for dealing with class actions,

Judge weinstein has been excellent talents in understanding less well situated people and negotiating with interests concerned at the same time. He sought substantial justice instead of superficial justice in the real case. His judicial philosophy was firmly based on the principle of democracy in the judicial process. He put stressed on the 'of, by, and for the people' standard as a fundamental judicial principle.

I have totally agree to judge weinstein's democratic judicial philosophy, which is also the most deficient elements in Korean judicial system, I want to study more about his democratic philosophy and find Korean style class action system for the people of Korea as a way of judicial reform in the case of complex and repetitive mass case.