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Bank of America, JPMorgan Slave Trade Cases Reinstated by Court

By Andrew Harris - December 13, 2006 17:18 EST

Dec. 13 (Bloomberg) -- Bank of America Corp., JPMorgan Chase & Co., CSX Corp. and 12 other U.S. companies must defend claims they misled consumers by allegedly concealing their involvement in the 19th century American slave trade.

The U.S. Court of Appeals in Chicago today reinstated a group of consumer fraud suits filed by black Americans claiming the companies have sought to conceal from consumers their connection to slavery. The court affirmed an earlier ruling that barred claims for reparations from the companies.

``When a person is wronged he can seek redress and if he wins, his descendants may benefit, but the wrong to the ancestor is not a wrong to the descendants," U.S. Circuit Judge [Richard Posner](#) wrote for the unanimous three-judge panel.

The consumer fraud portions of the case now return to the trial court, where plaintiffs' lawyers said they will push ahead with the discovery process, the exchange of evidence before trial. The proposed class of plaintiffs could be entitled to hundreds of millions of dollars in compensatory and punitive damages, defense lawyers claimed, without providing details.

Some of the defendants said they have previously acknowledged past connections to the slave trade. The first slavery reparations case was filed more than four years ago by Deadria Farmer-Paellmann, a New Jersey lawyer who claimed her grandfather was a South Carolina slave whose life was insured by Hartford, Connecticut-based Aetna Inc., one of the 15 companies named in the complaints.

Similar Suits

Several similar suits followed and were consolidated by the Federal Judicial Panel on Multidistrict Litigation, which assigned them to U.S. District Judge [Charles Norgle](#) in Chicago. He dismissed the cases last year, holding that the subject matter of the litigation is too old for a court to give a fair remedy.

``There is a fatal disconnect between the victims and the plaintiffs," Posner said, affirming the lower court's rejection of the reparations claims. ``This causal chain is too long and has too many weak links for a court to be able to find that the defendants' conduct harmed the plaintiffs at all, let alone in an amount that could be estimated without the wildest speculation."

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The appeals court said the allegations of harm to the plaintiffs as consumers do meet the legal requirement for them to proceed, unlike claims for reparations by the descendants of American slaves.

``A seller who learns that some class of buyers would not buy his product if they knew it contained some component that he would normally have no duty to disclose, but fearing to lose those buyers, falsely represents that the product does not contain the component, is guilty of fraud," Posner wrote.

No Opinion

The judges noted that they don't ``offer an opinion on the merits of the consumer protection claims, but merely reject the district court's ruling that they are barred at the threshold."

The ruling is ``an important step in forcing companies to acknowledge what they've done," Farmer-Paellmann's attorney, [Bruce Afran](#), said. The plaintiffs' lawyers haven't decided if they will appeal today's ruling.

Afran said the proposed class of plaintiffs would include ``African-American consumers and others who have been deceived and who would not otherwise have purchased services or goods from these companies."

Alan Madans, an attorney with the Chicago law firm of Rothschild Barry & Myers, who argued on behalf of the corporate defendants, declined to comment on the ruling, saying he hadn't yet discussed it with his co-counsel and clients.

One of Madans' co-defense attorneys, [Owen Pell](#) of New York-based White & Case, didn't return a call seeking comment.

Disclosed

JPMorgan spokesman [Tom Kelly](#) in Chicago declined to comment on today's ruling. He noted that the bank last year disclosed that two Louisiana banks later acquired by New York-based JPMorgan did accept slaves as collateral.

Aetna has openly acknowledged its historic involvement in the slave trade, spokeswoman Cynthia Michener said in an e-mail. As early as 1956, in a book commemorating the company's centennial, the company said it had insured the lives of at least 24 slaves, she said.

The insurer has acknowledged ``an awful period in this country's history," she said.

Scott Silvestri, a spokesman for Charlotte, North Carolina-based Bank of America, and Garrick Francis, a spokesman for Jacksonville, Florida-based CSX, both declined to immediately comment.

The case is In Re: African-American Slave Descendants Litigation, 05-3265, 05-3266 and 05-3305, in the U.S. 7th Circuit Court of Appeals at Chicago.

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