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## Class Action Lawsuits: An Introduction

The general rule in American litigation is that lawsuits are brought only on behalf of the named parties. The class action mechanism is an exception to that rule that permits one or more “named plaintiffs” (commonly known as “class representatives”) to sue a defendant on their own behalf and as representatives of a larger group of unnamed individuals or entities (the “class”) who have allegedly suffered the same injury. This In Focus provides a brief overview of the evolution, evaluation, and operation of class action lawsuits in federal courts.

### Background

Class actions aggregate the claims of numerous individuals or entities—even those who may not be aware of their potential claims when the lawsuit is filed—into a single proceeding. In ordinary multi-plaintiff lawsuits, the plaintiffs are named in the complaint and participate directly in the case. In class actions, only the class representatives are named, and they act on behalf of the entire class. Class members generally are bound by the final judgment of the court in a class action even though they did not directly participate in the litigation.

The class action mechanism has roots in early English law, but the modern class action in the United States was created in Rule 23 of the Federal Rules of Civil Procedure, which governs class actions in federal courts. The Supreme Court first promulgated Rule 23 in 1937. Major amendments in 1966 remade the rule into its modern form, including permitting a class action for money damages with “opt-out” rights, which the Supreme Court has described as Rule 23’s “most adventuresome” innovation.” While plaintiff classes are most common, Rule 23 also permits federal courts to certify classes of defendants. Because defendant class actions are rare and raise different considerations than plaintiff class actions, this discussion is limited to plaintiff class actions.

### Purposes of Class Actions

Courts and commentators have recognized that the class action mechanism serves a number of beneficial purposes in the American civil justice system. As the Supreme Court has observed, a central purpose of class actions is to improve the “efficiency and economy of litigation.” When many persons have allegedly suffered the same injury from a defendant’s conduct, aggregating the claims into a single class action lawsuit may allow courts and parties to avoid the time and expense of litigating large numbers of duplicative individual lawsuits.

The Supreme Court has also emphasized the importance of class actions in enabling groups of people to vindicate their rights when each person’s claim may be too small to justify the expense of an individual lawsuit. When a defendant

inflicts small injuries on a large number of people, the cost of litigating will often exceed an individual plaintiff’s maximum potential award, such that it would not be economical for any of the injured parties to sue on their own. Class action lawsuits can spread litigation costs and combine small potential recoveries into much larger amounts that incentivize lawyers to prosecute the case in exchange for a portion of any monetary recovery. The class action mechanism thus provides a means of compensating injured parties who might otherwise go uncompensated. Relatedly, by enabling the enforcement of legal rights against defendants who might otherwise escape liability, class actions may also serve to deter wrongdoing.

In addition to promoting litigation efficiency and the enforcement of legal rights, courts have also recognized that the class action mechanism promotes finality and consistent adjudication. For example, defendants in a class action can obtain a final judgment that binds all class members at once, avoiding potentially inconsistent judgments that could result from litigating numerous individual lawsuits.

### Risks of Class Actions

While class actions may serve beneficial purposes, courts and commentators have also recognized that the class action mechanism is subject to abuse. One concern is that class actions can exert intense pressure on defendants to settle even unmeritorious legal claims. Given the potentially massive liability that defendants may face when numerous parties’ claims are aggregated in a single lawsuit, defendants may feel compelled to settle weak claims where plaintiffs have only a small chance of winning, rather than defend the lawsuit and risk financial ruin if they lose.

Another concern is the risk that lawyers representing a class might put their own interests ahead of the class members’ interests. Individual class members often have only a small financial stake in the outcome of the litigation and thus may not have an incentive to spend time and resources ensuring that class counsel act in the best interest of the class. Meanwhile, litigating class action lawsuits is often expensive and time consuming, and class counsel may shoulder significant costs, such as for fact discovery and expert witness fees. Class counsel typically work on a contingency-fee basis and receive nothing if they lose the case. Courts have thus cautioned that the structure of class action lawsuits creates financial incentives for the plaintiff’s lawyers to negotiate settlements with defendants that prioritize obtaining attorney’s fees over maximizing relief for class members.

## Class Certification Requirements

Before a party may bring a lawsuit as a class action in federal court, the court must first determine that the lawsuit satisfies the requirements in Rules 23(a) and (b) of the Federal Rules of Civil Procedure. The party seeking class certification bears the burden of establishing that the requirements are met, and courts must perform a “rigorous analysis” to determine whether certification is warranted.

First, a class action must meet each of the four prerequisites listed in Rule 23(a):

- **Numerosity**—Rule 23(a)(1). The proposed class must be so large that it would be “impracticable” for all the class members to be joined in a single proceeding. There is not a strict numerical cutoff, but courts have observed that a class of more than 40 members generally satisfies the numerosity requirement.
- **Commonality**—Rule 23(a)(2). There must be “questions of law or fact common to the class.” The Supreme Court has explained that commonality requires that the class members “have suffered the same injury” and that there is at least one common question central to the claims and “apt to drive the resolution of the litigation.”
- **Typicality**—Rule 23(a)(3). The “claims or defenses of the representative parties” must be “typical of the claims or defenses of the class.” This helps ensure that the class representatives’ interests are aligned with the whole class by requiring sufficient similarity between the legal and factual bases of their claims.
- **Adequacy of Representation**—Rule 23(a)(4). The named plaintiff(s) must show that “the representative parties will fairly and adequately protect the interests of the class.” This rule focuses on potential conflicts of interest between the representative parties and the other class members, as well as on class counsel’s competency and potential conflicts of interest.

Second, a class action meeting all the threshold requirements in Rule 23(a) also must fall into at least one of the categories of class actions permitted under Rule 23(b):

- Rule 23(b)(1) permits class actions where separate lawsuits would risk “inconsistent or varying adjudications” that impose “incompatible standards of conduct for the party opposing the class” (Rule 23(b)(1)(A)), or would “as a practical matter be dispositive of the interests” of absent class members or “substantially impair or impede their ability to protect their interests” (Rule 23(b)(1)(B)). An example under Rule 23(b)(1)(A) is a class action by landowners alleging trespass against a defendant claiming to have a right to use their land, and an example under Rule 23(b)(1)(B) is a class action in which many plaintiffs claim entitlement to proceeds from a limited fund that is not sufficient to cover all their claims.
- Rule 23(b)(2) permits class actions for injunctive or declaratory relief where “the party opposing the class has acted or refused to act on grounds that apply generally to the class” as a whole. Examples include

civil rights class actions against defendants alleged to have engaged in class-based discrimination.

- Rule 23(b)(3) permits class actions in which “questions of law or fact common to class members predominate over any questions affecting only individual members,” and proceeding as a class action “is superior to other available methods for fairly and efficiently adjudicating the controversy.” This is the most common type of class action and is used primarily in lawsuits seeking money damages. Rule 23(b)(3)’s “predominance” requirement focuses on whether the proposed class is “sufficiently cohesive” to ensure that litigating on a representative basis will be beneficial. The “superiority” requirement focuses on comparing the advantages and disadvantages of proceeding as a class action to other types of litigation the class members could pursue. Additionally, unlike class actions under Rules 23(b)(1) and (2), class actions under Rule 23(b)(3) require providing notice to absent class members, and class members have the right to affirmatively opt out of the class action if they choose.

Apart from Rule 23’s explicit requirements for class certification, courts also generally require that the class be defined clearly and by reference to objective criteria. Some courts have also interpreted Rule 23 as implicitly requiring plaintiffs to establish a “reliable and administratively feasible” method to identify class members.

## Settlement

Most class action lawsuits settle rather than proceeding to trial. While class action settlements can bind absent class members, Rule 23(e) mandates that class actions may be settled only with court approval. Before parties to a class action may enter into a binding class settlement, the court must hold a hearing to determine whether the settlement is “fair, reasonable, and adequate.”

## Considerations for Congress

The Rules Enabling Act (codified at 28 U.S.C. §§ 2071-2077) authorizes the Supreme Court to create and amend federal procedural rules, such as Rule 23, and it also imposes congressional oversight on the rulemaking process. Congress also may enact legislation directly governing class actions in federal courts. Congress’s ability to promote the use of class actions, including as a mechanism to enforce statutory requirements, is subject to constitutional constraints. Although class action lawsuits often assert claims under federal laws that give private parties a statutory right and the ability to seek civil damages to enforce that right, the Supreme Court has held that federal courts may not award damages to class members based on the violation of a statutory right unless they each have suffered a “concrete injury” that satisfies constitutional standing requirements. This generally requires that the alleged injury “has a ‘close relationship’ to a harm traditionally recognized as providing a basis for a lawsuit in American courts.”

*This In Focus was adapted from a Report authored by former Legislative Attorney Kevin M. Lewis.*

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