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Legal Sidebar

H.R. 1927: Congress Proposes Additional Prerequisite for Class-Action Certification

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The House of Representatives has proposed The Fairness in Class Action Litigation Act of 2015 (H.R. 1927), which, if enacted, would amend Title 28 of the United States Code by adding another prerequisite for class-action certification, in addition to those already mandated by Federal Rule of Civil Procedure 23 (Rule 23). The bill, which was introduced in April 2015, is poised to reach the House floor not long after the Environmental Protection Agency discovered that, for years, Volkswagen (VW) had been falsifying emissions tests for many VW cars sold in the United States. This kind of alleged corporate misconduct, which brings small levels of harm to large numbers of individuals, is often litigated through class-action lawsuits.

Class actions provide a vehicle for an individual (or a small group of individuals)—called the "class representative(s)"—to bring a lawsuit in federal court on behalf of a "class" of similarly situated individuals. Class actions are lauded, by some, because they enable harmed individuals to bring claims too small, monetarily (if brought by just one person), to justify the litigation costs, and they provide an efficient means of litigating common claims. Others, though, decry class actions as creating windfalls for plaintiffs' attorneys and compelling law-abiding companies to settle and pay damages in lieu of paying more to go to trial.

Rule 23 governs class actions. Among other things, Rule 23 sets forth procedures for obtaining class certification, which a district court must grant in order for the case to proceed to the merits. Rule 23(c) instructs that the court determine whether to certify a lawsuit as a class action at an "early practicable time." Before the court can do so, according to Rule 23(a), the party seeking class certification must establish four elements: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy. Numerosity requires that the class is "so numerous that joinder of all members is impracticable." Commonality demands that factual or legal questions are common to the class. Typicality requires that class representatives' claims or defenses are "typical" of those of the class. And adequacy necessitates that the class representatives will "fairly and adequately protect the interests of the class." Additionally, under Rule 23(b), the party must establish that the lawsuit is one of three types, including, as relevant here, that common questions of law or fact "predominate" over individual questions, and that a class action is "superior" to other available methods for resolving the controversy.

H.R. 1927 proposes to impose an additional requirement for class certification when the class seeks monetary relief for personal injury or economic loss: The class representative(s) must "affirmatively demonstrate[]," and the district judge must conclude "based on a rigorous analysis of the evidence presented," that "each proposed class member suffered the same type and scope of injury as the named class representative or representatives." Consequently, the bill appears to codify one side of a circuit split over whether uninjured persons have Article III standing to be members of a class action. The bill also comes on the heels of recent Supreme Court rulings that have narrowly interpreted Rule 23.

The bill's House report pointed to past class actions in which uninjured persons were "lumped" in the same class as injured persons, which, the report argued, "undermine[s] the proper administration of justice and hurt[s] the U.S. economy by "greatly inflating the class size, and unduly pressuring companies to settle, at the expense of consumers who are forced to pay higher prices in order to offset the cost of litigation to U.S. companies." To obtain class certification under the new rule, the report suggested, parties could engage in evidentiary discovery, including, for

example, procuring expert testimony. Additionally, the report estimated that the bill, if enacted, will reduce the number of class actions brought as well as the class size in those actions.

Fourteen Members of the Judiciary Committee disfavor the bill. They argue primarily that the bill is flawed because it undermines the judicial efficiency class actions were designed to produce. In particular, the dissenting Members argue that the bill prevents, instead of promotes, "the efficient adjudication of substantially the same claims based on substantially the same facts by a class representative on behalf of absent class members," who are particularly difficult to identify in the early stages of a class action. Additionally, the dissenting Members contend that efficiency is reduced by requiring the plaintiffs to collect evidence and prove the merits of the case twice (once during certification and again at trial).

Ultimately, the House Judiciary Committee favorably reported the bill and has placed it on the legislative calendar. Reportedly, the bill will be considered on the House floor when Congress reconvenes in early January.

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