

CLASS ACTION LAWSUITS IN THE UNITED STATES

Class Action lawsuits in the United States present unique advantages and disadvantages. While a complex, expensive and lengthy legal proceeding, class counsel can be awarded lucratively if the case concludes with an award to the class members. In these cases, the plaintiffs represent a class of similarly situated individuals and prosecute the case to the benefit of all members of the class. As such, class actions avoid the wasteful cost of multiple separate lawsuits based upon the same wrongdoing, and the risk of inconsistent results from those suits.

These lawsuits can be brought in either a state court or a U.S. Federal court. Where there are multi-state plaintiffs and defendants, the defendants have the right to seek removal of the case from a state court to a federal court. While generally a federal court has discretion to refuse the case, it must accept it if three conditions are met: (1) the combined claims exceed \$5,000,000; (2) there are at least 100 class members; and (3) any class member is a citizen of a different state than any defendant.

Once the case is before the proper court, the court must determine if it is indeed appropriate for certification as a class action. Factors in this determination include the number of parties; whether the action involves questions of law and/or fact common to the class members; whether the claims of the plaintiff representing the class are typical of the class generally; and whether the counsel representing the class is able to fairly and adequately protect the interests of all members of the class. There is no fixed minimum or maximum number of class members. This is a case by case analysis. The smaller the number, the court may be concerned whether a class action is superior to separate lawsuits. Conversely, the larger the number, the court may be concerned with manageability of the case.

Even if the above factors favor the granting of class certification, the court must also find that separate lawsuits by each class member would result in a risk of substantial prejudice, be it to the defendant having to litigate numerous suits based on the same essential claims, or be it to other class members, who may not be afforded relief if other claimants have already secured all available assets from the wrongdoing defendant in prior lawsuits.

Courts must also determine the law applicable to the case. This problem is unique to the United States, where there are significant differences between the states with respect to both the common law and statutory law. Thus, in cases involving multi-state class members and/or defendants, the court must decide which state's law will govern. Again, this is a case by case determination, based on the facts of each matter. If the conflict of laws proves insurmountable, this alone can be a reason to deny class action certification.

The court makes its decision on whether to certify a case as a class action based on all of the above factors, which are argued by counsel after the submission of written legal briefs. A motion for class certification should be made as soon as practicable after the lawsuit is filed. The burden of proof is on the party seeking class certification.

Once class certification is ordered by the court, class counsel must serve notice of the pendency of the case to all known members, by mailing such notice to the class members' last known addresses. The notice must provide class members a description of the nature of the proceedings; their right to be heard and participate in the case; and the opportunity to exclude themselves as a class member by executing and returning an "opt out" form.

Thereafter, class actions are litigated in, essentially, the same manner as all civil lawsuits in the United States. The parties conduct discovery, by way of exchanging written interrogatories and relevant documents, as well as taking oral depositions.

Most class actions take between two and four years to litigate. If the parties agree on settlement terms before trial, the court must approve the settlement. Class members are then informed by written notice of same. If the case does not settle, a jury trial will ensue, unless the parties agree to waive a jury and have the matter decided by either a judge or private arbitrator.

As for attorney's fees to be awarded class counsel, this determination must also be approved by the court, whether it be part of a settlement or after a jury verdict. Most class action cases are litigated on a contingency basis, wherein class counsel agrees to receive a percentage of the monetary amount recovered from the defendant. This percentage is usually 25% to 33%. However, judges have the discretionary authority to reduce the percentage fee actually awarded. Some cases involve contracts that contain attorney's fees provisions, meaning that the prevailing party is entitled to the attorney's fees incurred in the case. This is calculated as the number of hours spent on the case multiplied by counsel's normal hourly rate.

In the United States, there are certainly disadvantages to being a class action lawyer. This is often an immense undertaking against powerful corporate defendants and their resources, including a cadre of well qualified lawyers. Moreover, class counsel often has to advance "out of pocket costs," which will not be recovered unless there is a favorable outcome to the case. Nevertheless, many lawyers have earned millions of dollars prosecuting large class action cases and the practice has also been lucrative to the lawyers employed by the defendants.

While class action lawsuits in the United States are often criticized because the lawyers may earn millions of dollars whereas each member of the class may be awarded only a few hundred dollars, they serve a vital public service by providing the only mechanism through which wrongdoers can be held accountable where their conduct causes damages to many people who would otherwise be unable to pursue claims for the wrongdoing.

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