Careful consideration must be given to the facts, injury, and legal claims that can be asserted on behalf of the class. As is explained in greater detail in Chapters 4 [1] and 10 [2], infra, the class needs to be clearly defined and ascertainable by the definition set forth in the complaint. If the class involves plaintiffs in numerous states, and the laws of more than one state apply to the claims, variations in state law must not be so extensive or complex that the court will be reluctant to handle the matter as a class action. The plaintiff will need to convince the court that spending time on the case will be worthwhile and that the case can realistically be tried, if trial is necessary.

In order to obtain certification of a class in federal court and in most state courts, the plaintiff will have to demonstrate the presence of all four of the prerequisites required by Federal Rule of Civil Procedure 23(a): numerosity, commonality, typicality, and adequacy of representation. Furthermore, the plaintiff must satisfy one of the subparts of Rule 23(b). For example, in a case seeking damages, the plaintiff will have to show that questions of law or fact common to the class members predominate over any questions affecting only individual members and that the class procedure is superior to individual litigations or other alternatives.

The key issue for certification often is whether common questions predominate. This will be easier to show when violations are in standard form contracts or based on standard collection letters than when they occur orally. There is also a big advantage to bringing cases in which questions of individual reliance are irrelevant. If the defendant can bring counterclaims requiring individualized adjudications, this can also detract from the predominance of common questions and provide a reason for the court to refuse certification. On the other hand, individual questions of damages will usually not prevent certification, because these can be dealt with later after liability is established.

Footnotes

145 See § 10.3 [3], infra.

146 See § 10.1 [4], infra.

147 Fed. R. Civ. P. 23(b)(3) or its state equivalent.

148 See § 10.6.3.2 [5], infra.

149 See § 10.6.3.3 [6], infra.

150 See § 10.6.2.2 [7], infra.

151 See § 10.6.3.6 [8], infra.

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