It is critical for the attorney to determine the suitability of potential substantive claims for class certification. To satisfy the Rule 23 requirements of commonality and predominance, the plaintiff must show that the claims of class members share common issues of law and/or fact and that the common issues predominate.

For example, if claims can be supported only by finding that each class member relied on the challenged conduct, these individual determinations might predominate in the view of some courts and certification may be denied. Thus, courts in most jurisdictions are reluctant to certify common law fraud claims because of strict adherence to the requirement of proof of reliance by each class member.

On the other hand, a showing of individual reliance is generally not required under UDAP statutes, and so the requirements of commonality and predominance are more easily satisfied in cases alleging these claims. A showing of individual reliance may also be unnecessary in civil RICO claims. However, allegations of racketeering with the potential for treble damages will result in increased aggressiveness on the part of the defense and, if not found to have a legitimate basis in fact by the court, may result in sanctions.

Claims under the Fair Credit Reporting Act (FCRA), Fair Debt Collection Practices Act (FDCPA), and Truth in Lending Act (TILA) are frequently suitable for class certification, in part because reliance is not an element of a claim under these statutes. Numerous classes have been certified under the FDCPA, the FCRA, and the TILA, usually for statutory damages but at times for actual damages as well.

Footnotes

152 See § 10.6.3 [1], infra.

153 See § 10.6.3.3 [2], infra.


155 Pelletier v. Zweifel, 921 F.2d 1465, 1522 (11th Cir. 1991) (determining sanctions appropriate for filing frivolous RICO claims).


160 See National Consumer Law Center, Fair Credit Reporting §§ 11.2.3.1, 11.2.3.2, 11.2.3.3.2–11.2.3.3.7 [4] (9th ed. 2017), updated at www.nclc.org/library.

161 TILA class actions seeking rescission as a remedy may, however, not be certifiable. See National Consumer Law Center, Truth in Lending § 10.9.9 [5] (10th ed. 2019), updated at www.nclc.org/library.

Source: National Consumer Law Center, Consumer Class Actions [10th Ed.], updated at www.nclc.org/library
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