Another factor to consider is whether the court will be disposed to grant the relief requested based on the violations alleged. When the defendant’s conduct is egregious, and the class members’ injury is significant, courts will often be willing to order large damages awards. On the other hand, courts are uncomfortable with large statutory damages awards for unintentional, technical violations with minimal or no consumer injury.

The Truth in Lending Act and Fair Debt Collection Practices Act contain special class action caps on statutory damages. On the one hand, this avoids the problem of potentially annihilating damages but, on the other, it limits the potential recovery for class members even for truly egregious wrongdoing. Other statutes—for example, the Fair Credit Reporting Act and state usury laws—do not have special caps on class action statutory damages.164

Although the potential size of a damage award is not properly an issue relating to the certifiability of a class or merits of the case, courts are aware of the practical effects of their decisions and may consider whether the alleged violation is serious enough to justify forcing the defendant into bankruptcy or out of business. Section 10.6.2.6[1], infra, contains a review of the case law on the threat of annihilating damages as it is affected by the superiority requirement for class actions.

Footnotes