To determine whether a class action is an effective approach to obtaining relief for the class, it is essential to evaluate the nature and size of all businesses attached to the potential defendants and whether the defendants are likely to have sufficient assets to pay a judgment. If a defendant is operating a legitimate business with real assets, a class action may more likely enable counsel to obtain a collectable settlement or judgment. However, if a defendant is operating what is effectively a criminal enterprise and is squandering investors’ money on a lavish lifestyle, a verdict or settlement may be meaningless because the money wrongfully obtained has simply vanished. Furthermore, if the defendant is operating a scam involving investment fraud, counsel should understand that at some point the Securities and Exchange Commission or state regulatory officers may step into the fray and seize assets counsel thought would be available to compensate the class and pay attorney fees. 179

Apart from evaluating whether a defendant is likely to be collectible, investigation of its assets is also important if the class action seeks statutory damages to which a cap of 1% of net worth applies, as it does for the Fair Debt Collection Act, Truth in Lending Act, and Electronic Fund Transfer Act.

Footnotes


Source: National Consumer Law Center, Consumer Class Actions [10th Ed.], updated at www.nclc.org/library
Source URL: https://library.nclc.org/class/010801-0