



Houthoff Class Action Survey: the United States

The Houthoff Class Action Survey 2024 provides an eye-opening journey into the future of class actions. It includes around 40 interviews with thought leaders from 12 different countries, preceded by an overview of the current class action regime in each jurisdiction. This is the overview for the United States.

In the US, class actions have become commonplace since their introduction over 50 years ago. The class action is a form of representative litigation. It involves one or more plaintiffs (the named plaintiffs) acting as the representatives of a group of people who are similarly situated but not involved in the proceedings (the class). The named plaintiff(s) then proceed in court on behalf of the entire class to obtain classwide relief for a wrongful act allegedly committed by the defendant(s). For the case to proceed as a class action, the representative plaintiffs must convince the court to certify a class. If they are successful at this certification stage, the representative may either negotiate a settlement on behalf of the class or take the case to trial on both their own behalf and on behalf of the class.

Class actions are explicitly permitted in both the US federal and state systems. Federal class actions are governed by Rule 23 of the Federal Rules of Civil Procedure. State class actions are permitted under individual state laws, but most states have a law that is analogous to Rule 23 or have, through case law, adopted similar standards. Rule 23(a) requires: (1) numerosity: the class must be so large that joinder of all members is impracticable; (2) commonality: there must be questions of law or fact common to the class; (3) typicality: the claims or defences of the representative parties must be typical of the claims or defences of the class; (4) and adequacy: the representative parties must fairly and adequately protect the interests of the class.

The class action must also meet the requirements of at least one of the three types of class actions identified in Rule 23(b): (1) the prosecution of separate actions by or against individual class members would create a risk of inconsistent adjudication; (2) the party opposing the class has acted or refused to act on grounds that are common to the class, so that final injunctive relief or corresponding declaratory relief is appropriate with respect to the class as a whole; or (3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members (predominance requirement), and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy (superiority/manageability requirement). Most monetary actions are brought under this last category.

Many courts also impose an ascertainability requirement, which means that class members must be identifiable by objective criteria. Ascertainability is often described as an additional 'implicit' requirement of Rule 23.

In the federal system, there are generally no limitations on the type of relief available in a class action. That is, a class member may be entitled to any relief that would be available to them in an individual action. This may include monetary damages (including punitive damages), restitution, or injunctive or declaratory relief. At the same time, in contrast, some states limit the types of relief that can be obtained in a class action. For example, New York law does not allow class actions to recover a penalty unless expressly authorised by the statute creating the penalty (New York's Civil Practice Law and Rules, Section 901(b)).

Settlements on behalf of the entire class are possible and common, and will be reviewed by a court to determine whether the collective settlement is fair, reasonable and adequate. A collective settlement on behalf of the entire class (and that binds the class) requires approval from a court to take effect, and parties are generally given the opportunity to opt out or object.

Class actions

Scope	General.
Access granted to	Representative plaintiffs ('lead plaintiffs').
Opt-in or opt-out	Opt-out.
Declaratory relief or damages	Both, including punitive damages; some state laws limit the type of relief.
Frequently used	Yes.
Regulatory framework	Rule 23 of the Federal Rules of Civil Procedure; specific state laws.
Alternatives used in practice	Mass actions, which are single lawsuits with a large number of individually named plaintiffs, or mass arbitrations, which involve large volumes of individual arbitrations bringing similar claims.

Class settlements

Binding class members after court approval	Yes.
Opt-in or opt-out	Opt-out.

Third party funding

Regulated by law	Not on a federal level, but sometimes aspects of TPLF are regulated by state law.
Frequently used	Yes.

Good to know

Contingency fee agreements are more frequently used by plaintiffs' lawyers. The funder – if involved – gets paid out of the contingency fee awarded. However, the court determines how much lawyers and investors get from the case, which makes the return risky. Plaintiffs' firms can also still borrow money from banks to fund cases, as an alternative to litigation funding.

In October we organise an interactive seminar where the main results of this research will be presented.

[Read more](#) on our website about this event and [pre-order the Houthoff Class Action Survey 2024](#).

CONTACT

If you have any questions about class actions or the survey, please feel free to contact Albert Knigge or Isabella Wijnberg.



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