

Class Actions: Illinois, United States

In the United States and the state of Illinois, a class action is brought by one person, or a limited group of people, in a lawsuit to represent themselves and absent members who act as passive parties. In general, the named plaintiff(s) and the absent members all share a common characteristic on which the lawsuit is based. A class action is a tool that allows courts to avoid the impracticality of requiring every single member of a class, which can consist of a very large number of people, from actually appearing in court. By combining members with a common legal interest, class actions prevent repetitive litigation, inconsistent judgments based on similar claims, and the need for each individual member to litigate their own claim. Class actions are often based on, but not limited to, claims of contract violation, statutory violation, warranty breach, negligence, fraud, environmental protection failure, breach of employment rights, shareholder suits, and consumer protection violation. Recent years in Illinois have also brought an increase in class actions based on violations of biometric data privacy.

In Illinois, class actions are statutory and based on the Illinois Code of Civil Procedure, sections 2-801 to 2-807, which is essentially a codification of Illinois case precedent, and brought in state courts. Section 2-801 is modeled after Federal Rule of Civil Procedure 23, the federal rule controlling class certification. The state of Illinois also considers any federal court rulings interpreting Rule 23 as persuasive authority when considering the subject of class certification. Although state class actions cover a wide range of causes of action, some suits filed in Illinois may

Scott LaMunyon
November 10, 2021

eventually be heard in federal court and certain claims can only be brought at the federal level. These federal-only claims include federal antitrust claims, securities fraud, and Employee Retirement Income Security Act actions. If a state claim satisfies federal diversity jurisdiction requirements, it may also be removed to federal court. This requires at least one named plaintiff to meet a minimum amount of damages in controversy, which will provide federal jurisdiction over that plaintiff's claim and supplemental jurisdiction over the claims of other plaintiffs in the case, even if they do not all meet the minimum.

The Seventh Judicial Circuit, the federal jurisdiction encompassing Illinois, also considers the cost to a defendant from an injunction toward this jurisdictional minimum. Additionally, there are multiple federal statutes applicable to state class action lawsuits that allow for removal to federal court, including the Class Action Fairness Act of 2005 and the Multiparty, Multiforum Trial Jurisdiction Act of 2002. In general, though, many attorneys for plaintiffs in class actions believe that consumer cases particularly are more likely to find success in state court. Section 2-801 of the Illinois Code of Civil procedure was originally created to provide availability of class actions beyond that provided by Rule 23. One specific advantage available in Illinois state court is a longer period of time, thirty days, to appeal an order granting or denying class certification, as opposed to the fourteen days provided by Rule 23. On the other hand, defense attorneys in class actions fight for removal to federal court in an attempt to gain advantage over plaintiffs.

Section 2-801 of the Illinois Code of Civil Procedure provides the elements required to bring a class action, which include numerosity, predominance, adequate representation, and appropriateness. “(1) The class is so numerous that joinder of all members is impracticable. (2) There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members. (3) The representative parties will fairly and adequately protect the interest of the class. (4) The class action is an appropriate method for the fair and efficient adjudication of the controversy.” 735 ILCS 5/2-801.

According to the Illinois appellate court, forty people in a class would certainly satisfy numerosity, less than twenty-five would likely not, and anything in between depends on the circumstances of each case. Illinois requires that common questions of law or fact “predominate” over any questions relevant only to individual class members, which is more demanding than, and in contrast to, Federal Rule of Civil Procedure 23, which only generally requires common questions. Here, the question is whether the common issues, rather than individual issues, will be the main focus of litigation and includes issues that will mandate the litigation outcome. Specifically under the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*, class certification based on a claim of fraud depends on a case by case factual analysis.

Adequate representation is satisfied where the named plaintiff(s) has a viable individual claim against the defendant and shares the same interests as those not joined to the suit, the attorney representing the named plaintiff is qualified and

competent to litigate the action, and the named plaintiff's interests are not collusive. Illinois requires that a class action be found as an appropriate form of litigation for the claim in question, in further contrast to Rule 23's requirement that a class action be the superior method. Appropriateness is based on factors such as effort, time, expense, equity, justice, and uniformity within court rulings.

Other important topics to note regarding class actions in Illinois include jurisdiction, choice of law, and available relief. Members of a class can be bound by a state court decision if adequate representation and due process requirements are met, even if they do not meet all jurisdictional requirements and even if they are not personally served with notice. When possible and practicable, Illinois courts typically address choice of law by applying the substantive law of the jurisdiction with the most significant connection to the incident and parties. Relief is typically in the form of a settlement and can entail attorneys' and expert fees, punitive and compensatory damages, and more. Settlements in consumer law cases often include a discount on a defendant's products. Equitable relief is also common for consumer class actions, which may bring changes to product designs or market practice.

In general, class actions in Illinois are quite common and a very efficient method to resolve claims held by more than just one or a few individuals. The commonality of state class actions has particularly increased in recent years due to the enactment of Illinois' Biometric Information Privacy Act of 2008 ("BIPA"). BIPA provides those in the state with a private right of action when their biometric data is mishandled by private corporations. The biometric data protected by BIPA

includes eye scans, fingerprints, hand prints, voice prints, facial scans, DNA, and other biological information unique to each individual. BIPA imposes various requirements on companies to obtain written consent to collect biometric data, provide notice of what data is being collected and stored, and inform the individual the purpose of using their data and how it is handled. When a company mishandles biometric data or contravenes BIPA, the individuals involved are able to assert private rights of action, often in the form of class action lawsuits. Between BIPA's enactment in 2008 and 2019, there were 173 class actions filed under the statute. Since 2019, there have been more than 900 class actions filed under BIPA and the number continues to grow.

Sources:

- Arthur R. Miller, *An Overview of Federal Class Actions: Past, Present and Future*, p. 22 (Federal Judicial Center, 1977).
- *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill.2d 100 (2005), *cert. denied*, 126 S.Ct. 1470 (2006).
- *Barbara's Sales, Inc. v. Intel Corp.*, 227 Ill.2d 45 (2007).
- *Biometric Information Privacy Act*, ACLU Illinois (Last accessed Nov. 8, 2021), <https://www.aclu-il.org/en/campaigns/biometric-information-privacy-act-bipa>.
- Class Action Fairness Act of 2005 (CAFA), Pub.L. No. 109-2, 119 Stat. 4, amended 28 U.S.C. §1332.

- *Clark v. TAP Pharmaceutical Products, Inc.*, 343 Ill.App.3d 538 (5th Dist. 2003).
- Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, *et seq.*
- *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 125 S.Ct. 2611 (2005).
- Federal Rule of Civil Procedure 23.
- *Hall v. Sprint Spectrum L.P.*, 876 N.E.2d 1036 (5th Dist. 2007).
- *Goetz v. Village of Hoffman Estates*, 378 N.E.2d 1276 (1978).
- Illinois Biometric Privacy Act, 740 ILCS 14/1, *et seq.*
- Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*
- Illinois Supreme Court Rule 306(a)(8).
- Illinois Supreme Court Rule 306(c)(1).
- *In re Brand Name Prescription Drugs Antitrust Litigation*, 123 F.3d 599 (7th Cir. 1997).
- Jack Levin, *Flawed Illinois law protecting biometric data leads to frivolous lawsuits against businesses*, Chicago Sun-Times (Mar. 31, 2021), <https://chicago.suntimes.com/2021/3/31/22360388/bipa-biometric-information-privacy-act-illinois-chamber-of-commerce#:~:text=From%202008%20to%202019%2C%20there,are%20sky%2Dhigh%20legal%20penalties>.
- Jeffrey D. Colman, Howard S. Suskin, & Gregory M. Boyle, *Class Action*, IICLE Press (Last accessed on Nov. 8, 2021), https://jenner.com/system/assets/publications/77/original/Class_Action.pdf?1319783219.

- Kevin M. Forde, *Class Actions in Illinois: Toward a More Attractive Forum for This Essential Remedy*, 26 DePaul L.Rev. 211 (1977).
- *Miner v. Gillette Co.*, 87 Ill.2d 7 (1981).
- The Multiparty, Multiforum Trial Jurisdiction Act of 2002 (MMTJA), Pub.L. No. 107-273, Div. C, Title I, §11020, 116 Stat. 1826, 28 U.S.C. §1369.
- *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985).
- Restatement (Second) of Conflict of Laws (1971).
- *Rubel v. Pfizer Inc.*, 361 F.3d 1016 (7th Cir. 2004).
- *Smith v. Illinois Central R.R.*, 223 Ill.2d 441 (2006).
- *Snyder v. Harris*, 394 U.S. 332 (1969).
- *Synfuel Technologies, Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646 (7th Cir. 2006).
- *Wood River Area Development Corp. v. Germania Federal Savings & Loan Ass'n*, 198 Ill.App.3d 445 (5th Dist. 1990).
- *Zahn v. International Paper Co.*, 414 U.S. 291 (1973).
- 735 ILCS 5/2-801, *et seq.*