Consistent with the theme of this month’s issue, we were asked to write something regarding numbers. Easier said than done, as lawyers are not typically known for their arithmetic skills.

Still, we frequently have to make quantitative decisions. One in particular stands out: Should similar claims of multiple plaintiffs be consolidated for trial? Frequently, efficiency goals will weigh in favor of consolidation. But that is not always the case. Here is a look at the procedural rules and factors that might weight in favor of separate trials.

Like the analogous rules in Washington, the Federal Rules of Civil Procedure clearly authorize courts to order separate trials. Under Fed. R. Civ. P. 42(b), a district court may order a separate trial of one or more issues or claims “[f]or convenience, to avoid prejudice, or to expedite and economize.”

Under Fed. R. Civ. P. 20(b), courts can order separate trials whenever necessary “to protect a party against … prejudice.” And under Fed. R. Civ. P. 21, “the court may … sever any claim against a party.” While judicial efficiency is a relevant consideration in deciding how best to proceed, federal law is clear that “[c]onsiderations of convenience and economy must yield to a paramount concern for a fair and impartial trial.”

In the Ninth Circuit, one of the most instructive cases is *Coleman v. Quaker Oats Co.*, which involved age discrimination allegations by 10 plaintiffs against a single defendant. The district court refused to try those claims in a single trial, stating that the defendant “would be prejudiced by having all ten plaintiffs testify in one trial.” The Ninth Circuit affirmed the district court’s ruling and similarly recognized “the potential prejudice to [the defendant] created by the parade of terminated employees and the possibility of factual and legal confusion on the part of the jury.”

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The district court’s opinion in *Hasman v. G.D. Searle & Co.*, also speaks to this issue. In that case, three plaintiffs claimed similar injuries from the defendant’s product. Although the issue of general causation was the same in each case, the court recognized that “[c]onsolidation is improper when the introduction of ‘voluminous’ evidence, relevant to one of the consolidated actions but irrelevant to another, impairs the conduct of trial.” Based on these considerations, the court refused to adjudicate the three product liability claims in a single proceeding.

In denying efforts to try such claims in a single proceeding, courts have expressed a number of interrelated concerns, including juror confusion and prejudice. In *Insolia v. Philip Morris Inc.*, for example, the court stated that “[j]udicial resources are wasted, not conserved, when a jury is subjected to a welter of evidence relevant to some parties but not others.” The court further noted that it was “unlikely” that the jurors could retain a “coherent grasp of the minutiae” of the unique circumstances of disparate product liability claims.
In *Cain v. Armstrong World Industries*, the court similarly noted that “when fewer cases are consolidated for trial, the jury is better able to consider the cases separately and return verdicts based on the facts of each case.”

One prominent commentator has succinctly stated the pitfalls of consolidating the claims of many plaintiffs in a single trial:

Even the most carefully constructed trial may become bogged down in the testimony of hundreds of individuals, their families, and treating physicians, concerning exposure or damages. Juries may or may not be good judges of scientific matters, but even with documentary materials and visual aids, they may have trouble keeping straight the specifics regarding large numbers of plaintiffs.

Other commentators have made similar observations, noting that mass aggregation of tort trials increases the likelihood a jury will find a defendant liable.

There are also practical concerns for defendants in consolidated cases. If, for example, some plaintiffs have fraud claims while others do not, or some plaintiffs have punitive damage claims while others do not, evidence regarding those more “egregious” claims may spill over to other plaintiffs and other claims.

Similarly, if some plaintiffs have small claims and others much larger claims, the jury might be less likely to carefully scrutinize the smaller claims. In such cases, it might make more sense to proceed by way of mini-trials: grouping similarly situated plaintiffs together so that the jury can start with simple claims, finding liability and damages as appropriate, and then work its way up to more significant claims.

Plaintiffs, too, suffer unintended negative consequences from consolidation of claims in a single trial. Take, for example, a trial involving dozens, perhaps even hundreds, of plaintiffs who claim that their employer misclassified them as exempt employees in light of their actual job duties and working conditions. Although adjudication of those claims will involve common issues of law and fact, the inquiry into whether a particular plaintiff was misclassified is highly individuated.

If the evidence indicates that many plaintiffs in fact are properly classified as exempt from overtime laws, it is reasonable to conclude that plaintiffs who have meritorious claims might run an increased risk of being confused with those who do not. In that circumstance, the same concerns about fairness to defendants outlined above would militate in favor of separate trials so that each plaintiff’s claim could be tried on its individual merits.

In closing, it is worth considering the adage that there is value in everyone having his or her day in court. Regardless of the outcome, litigants are supposed to be satisfied that they had every opportunity to adjudicate their claims or defenses before a neutral fact finder. But the principle of procedural fairness underlying this goal has the potential to be compromised when some claims or defenses are unduly influenced by evidence and argument concerning different issues.

In situations where there are numerous claimants, it is wise to consider whether there are some issues — perhaps general theories of causation in a mass-torts context or the existence of a discriminatory or unlawful policy in the employment context — that are susceptible to adjudication on a consolidated basis, while also noting whether there are sufficiently individuated factual issues to warrant separate trials.
Your clients will be thankful you did. You can count on it.

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1 Given the similarity between the federal rules and the Washington Civil Rules, federal law principles are applicable to state court matters.
3 232 F.3d 1271 (9th Cir. 2000).
4 Id. at 1296.
5 Id. at 1297.
7 Id. at 460.
8 Id. at 461 (citing Flintkote Co. v. Allis-Chalmers Corp., 73 F.R.D. 463, 465 (S.D.N.Y. 1977)).
9 186 F.R.D. 547 (W.D. Wis. 1999).
10 Id. at 551.
11 Id.
13 Id. at 1456.