LITIGATING TOGETHER:
SOCIAL, MORAL, AND LEGAL OBLIGATIONS

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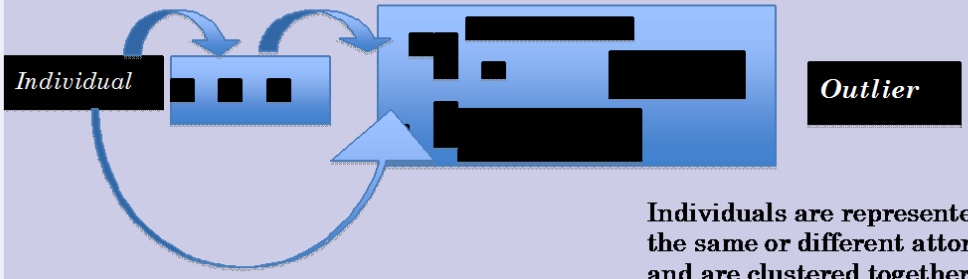
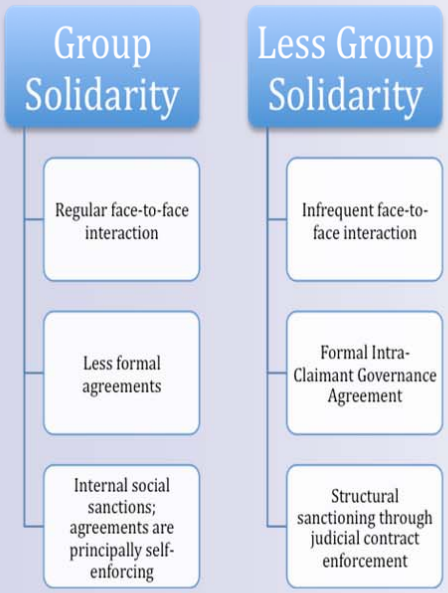
Large-scale litigation, such as the Vioxx, Zyprexa, and asbestos cases, breeds conflict. Conflicts arise between attorneys and their clients (agency problems), plaintiffs and other plaintiffs (group problems), and plaintiffs' attorneys and other plaintiffs' attorneys (competition problems). Although these cases cannot be certified as class actions, they still proceed en masse to achieve economies of scale and present a credible threat to defendants.

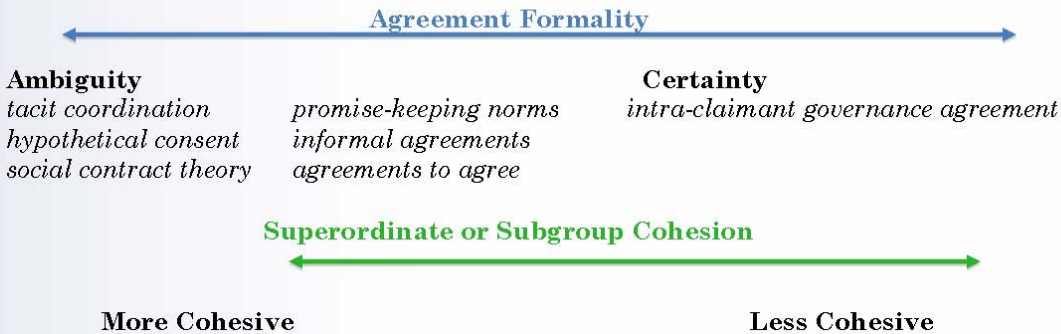
Clusters within Nonclass Aggregation



These are geographic clusters or individuals entering into litigation together who are represented by a single attorney. The aggregation may or may not end here.

Individuals are represented by the same or different attorneys and are clustered together voluntarily (through cooperating plaintiffs attorneys) or involuntarily through court-ordered transfer and consolidation. Geographic dispersion is likely. Holdouts are those within the group who refuse to settle. Outliers are those outside of the group who have claims pending against the same defendant.



(1)Where plaintiffs routinely interact face-to-face or stay in touch after meeting one another, either on a superordinate or subgroup level, less formal arrangements (such as agreements to agree and promises) may sufficiently glue the group together and deter strategic holdouts.

(2)Where plaintiffs interact less and principally rely on designated representatives to act on their behalf, social sanctioning has less punitive force. Thus, these plaintiffs may prefer the hassle of expounding and engineering a formal intra-claimant governance agreement that memorializes their rights and obligations to one another.