



Independent Insurance Agents



Brokers of America, Inc.



EXECUTIVE SUMMARY OF CLASS ACTION NOTICE REQUIREMENTS FOR SETTLED CASES

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This Executive Summary regarding class action notice requirements is not intended to provide specific advice about individual legal, business or other questions. It was prepared solely for use as a guide, and is not a recommendation that a particular course of action be followed. If specific legal or other expert advice is required or desired, the services of an appropriate, competent professional, such as an attorney, should be sought.

Background and Purpose of this Summary

A number of advertisements and news stories regarding class action settlements have garnered some attention and questions to the Office of the General Counsel from IIABA members on class action settlement notices. This Summary provides some basic information regarding the notice requirements when class action lawsuits settle or settlements are proposed.

Class Action Notice Requirements

When a lawsuit is approved to proceed as a class action (sometimes referred to as certifying the class), Federal Rules of Civil Procedure, as well as most state court rules of procedure, require that notice to the identified class be given as soon as practicable and in the best manner possible under the circumstances. Frequently, though not always, that notice is through a personal mailing and may also be by publication, such as in a newspaper or magazine. The notice advises each member of the identified class that the court will exclude that member from possible recovery under any settlement of the lawsuit if the member “opts-out” or declines to participate in the class action according to the directions outlined in the notice. An “opt-out” form often is included with the notice. If a class member opts-out, he/she will not be bound by any settlement of the lawsuit, regardless of whether class members feel it is favorable or unfavorable. The person opting out will no longer be treated as a part of the class for that lawsuit and may sue or not sue individually as he/she sees fit.

Once the parties reach a settlement of a class action lawsuit, notice to class members who have not opted-out is mandatory in federal class action lawsuits. It may also be required

in state class actions (but a review and summary of the notice requirements of the 50 states and District of Columbia is beyond the scope of this summary). The notice must fairly explain the options for class members, and apprise the members of the class of how to participate in the settlement. While notice is mandatory, the form and specific content of the notice changes from case to case. In federal class actions, the named plaintiffs for the class propose the form and content of the notice to the judge, with their plans for it to be disseminated. Most often, the named plaintiffs also pay for the notice to be copied and disseminated, however the judge can delegate that responsibility to defendants. The judge must approve the notice.

Frequently, the members of a class are so numerous or so difficult to identify that personal mailing of the notice is not practical. In these circumstances, the judge usually will approve notice by publication. This type of notice typically is placed in newspapers and/or magazines where it is likely to be seen by class members. In some cases, the notice can be published by airing it on radio or television. The class members can choose to opt-out of the class, stay in the class but object to the terms of the settlement, or follow the procedures described in the notice to file a claim for compensation.

Implications for Insurance Agents and Brokers

When an insurance agent or broker is a member of a class, he/she is entitled to the same notice and rights as any other class member. In other words, an agent or broker can opt-out of the class, stay in the class but object to the terms of the settlement, or follow the procedures described to file a claim for compensation.

A person or entity that is not either a defendant in a class action or a member of the class does not have automatic standing to object to the form, content or method of disseminating the notice to class members. While periodically, a court may consider objections from non-parties that have had no role in the lawsuit to the settlement notice due to perceived flaws, such as content that is incomplete or misleading or publication in media not targeted at the class members, such efforts rarely are influential with judges, who have wide discretion to approve the notice, and such action often draws undesirable attention to other possible targets of the litigation.
