

Outside Help – How to Administer Class Action Settlements

Contributed by: Wes Nutten, CPA, Desmond, Marcello & Amster

From Fen-Phen to Facebook, class action lawsuits have been part of the American litigation landscape for decades as groups of plaintiffs unite to seek compensation for alleged corporate misdeeds. Currently, Toyota is at the forefront of media attention as thousands of unhappy car owners could potentially pursue an unprecedented class action suit that could cost the Japanese auto giant an estimated \$3 billion. The largest class action lawsuit in American history, *Dukes v. Wal-Mart Stores, Inc.*, No. 01-cv-02252 (N.D. Cal.), has yet to be resolved after nearly 10 years of litigation over the details of sexual discrimination. While most attorneys active in this arena are expert at the legal complexities of class action litigation, the enormous burden of the notification and payment process often necessitates the hiring of a class action administrator to expedite the process and keep costs at a minimum.

Class action administrators are professional consultants who specialize in orchestrating the myriad of essential details involved in the settlement of these actions from initial notice to settlement payment. Class action administration firms can make a significant difference through their use of technology and staff trained in the nuances of claims administration. Firms are typically comprised of accountants, auditors, controllers, finance officers, information technology specialists, website designers and printing and mailing experts. By bringing their unique skill set to the table, they allow the attorneys to concentrate on the legal details rather than the minutia of claim form mailings or bank account management. Even the largest legal firms in the country rarely have the permanent staff and technology needed to support the enormous scope of administering a major class action settlement. Utilizing the resources of an outside class action administrator can reduce the time and cost of settlement planning, class notification, claims processing and settlement distribution.

Pre-Notice Phase

One of the most critical times in proper class action administration occurs at the very beginning of the process known as the Pre-Notice Phase. It is important to lay the foundation for seamless post-settlement procedures during this period. Conversely, the lack of thoughtful Pre-Notice planning can eventually lead to unexpected and unnecessary costs that can reduce the benefit available to the class or increase the litigation expense incurred by counsel. While the attorneys develop the legal strategies for the case, an administrator can devise the best method of organizing the settlement administration process.

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Basically, it is during the Pre-Notice Phase that a strategic plan is developed for the day-to-day logistics of the case from notifying class members to processing settlement payments. In nearly every instance, it is an extremely arduous task to identify, notify and process claims for thousands or perhaps millions of class members. For this reason, most counsel would rather rely on class action administrators who already have established systems for exactly this type of detailed work and have the technology to manage the vast amounts of data at issue in these cases. Consulting firms meet initially with attorneys and other parties to determine how to best communicate the settlement terms and administer claims procedures as well as how to distribute the settlement.

The key to a successful Pre-Notice Phase is careful planning and preparation at the outset to ensure an uninterrupted flow of information. Administrators work closely with counsel to determine the best method for implementing the terms of the settlement and necessary claims procedures. One of the most important areas to be addressed is developing a methodology for allocating the settlement fund to approved claimants. Further, a manageable timeline should also be established to effectively administer the settlement. The details in matters of this scope are numerous and must be managed carefully. Frequently, "privacy notice" mailings to putative class members are also conducted by administrators during this phase.

Class Notice

Clearly, one key advantage of hiring an outside consultant is to be able to effectively delegate the plethora of details associated with the administration of a class action settlement to an independent administrator with the requisite expertise. One area where this holds particularly true is class notification. Properly identifying and locating class members and disseminating the required notice information in a timely and comprehensible manner can be daunting. Administrators are often required to use a creative mix of print, broadcast and online media to effectuate class notice procedures.

In addition to assisting with the design and production of the class notice, administrators facilitate mass mailings, website maintenance and database management. In many cases, translation services are required in connection with multi-lingual notice programs. Major class action suits often receive extraordinary media coverage, and administrators are often adept at facilitating coverage of the settlement.

Another benefit of hiring a class action administrator is the firm's ability to review documents and electronic data that may have been archived for many decades to identify potential class members, to uncover fraudulent class members and to ultimately develop a comprehensive and accurate list of class members. Administrators can also oversee administration procedures managed directly by defendants. For example, administrators can examine the logic used by defendants to create the class member list or can oversee a distribution handled directly by defendants to ensure that all requirements of the settlement are implemented properly.

Claims Processing

Because of their complexity, the administration of class actions involves managing extensive amounts of data and scrupulous attention to detail, particularly when processing claims. Guidelines generally mandate that claims must be processed in a timely manner despite the typically large numbers of individuals involved in the suit. Prior to the payment of claims, every detail must be scrutinized for thoroughness and accuracy.

One tool that some administrators have developed to expedite claims is a proprietary software system to ensure the integrity of all claims data. These types of computer programs can also accelerate the notification and collection process and enable the firm to interact efficiently with claimants and assist them in resolving incomplete or defective claim applications. Employing optical character recognition (OCR) software and barcode technology is another means of streamlining the process.

While class action litigation is a fascinating area of law, the logistical details required to accurately and effectively implement the settlement can be intimidating. Consider some of the following claims processing activities that are fundamental to ensuring a successful outcome:

- mass mailing of notices and claim forms to millions of class members
- monitoring and reporting on requests for exclusion
- logging and proofing completed claim forms
- reviewing supporting documents submitted with claim forms
- correcting defective claim submissions
- processing and distributing approval and rejection notices

Settlement Distribution

The final stage of class action administration is distributing the settlement. Some of the most famous class action settlements have resulted in distribution of several billion dollars to thousands of class members. How is the settlement amount for each class member accurately computed? What are the criteria that apply to each particular case? How are the funds transmitted safely to thousands of claimants across the country or across the globe? What about tax withholding?

Just as in the actual administration of the settlement itself, database management can also ensure funds are disseminated in the most efficient manner possible. A distribution plan can be designed to accurately compute the correct amount for each individual class member based upon the criteria for that particular case.

Technology can also be a lifesaver when it comes to managing the tax consequences of a settlement distribution, particularly in light of the tax reporting requirements related to various amounts. For example, in employment cases withholding is typically required for federal and state income taxes and payroll taxes. Additionally, many cases require the distribution of W-2 and 1099 forms as well as filing federal and state tax returns. Claims administrators are experts at using technology when dealing with the tax withholding and reporting implications of a settlement.

Class action administrators are often charged with reviewing and managing unclaimed distribution funds at the close of the settlement administration period. In some cases, these unclaimed fund residuals are distributed to selected charities or revert to the defendant. In other cases, unclaimed distribution amounts can be escheated to governmental authorities for the benefit of specified class members.

As the number of class action lawsuits in the United States continues to soar so do the complexities involved with administering and managing the settlements of these enormous cases. It is no longer merely a matter of legal expertise that can ensure a successful outcome. More often, it is the "small stuff" that attorneys need to manage from scrubbing class member mailing addresses for accuracy to devising a bar code system for claims processing. Whether it is tobacco companies, pharmaceutical manufacturers, automobile makers or discount retailers, attorneys must be able to efficiently administer the details of a massive settlement without incurring unnecessary costs or lengthy delays. In these cases, a class action administrator can be the right answer.

Wes Nutten, CPA, leads the class action administration department at the valuation and litigation consulting firm Desmond, Marcello & Amster (DM&A). He has extensive experience administering large and complex class action settlements. He can be reached at 310-216-1400 or wnutten@dmavalue.com.