

Class Action Checklist

Hon. Morton Denlow (Ret.)



This checklist is designed to assist you in thinking through the issues necessary to settle your class action case.

I. Class Definition

- a. Define the Class Period
- b. Define the Members of the Class
- c. Estimated Class size
- d. Possible sub-classes

II. Form and Scope of Release

- a. Define claims to be released
- b. Claims raised in the complaint
- c. Other claims
- d. Identify parties to be released
- e. Exceptions to release, if any

III. Monetary Relief or Other Consideration

- a. Fund Case
 - 1. Payments to class
 - 2. Cost of notice
 - 3. Cost of administration
 - 4. Attorney's fees
 - 5. Incentive award
 - 6. Other
- b. Non-Fund Case

IV. Reverter or No Reverter to Defendants

- a. What happens to unclaimed funds
- b. Possible second round of distributions
- c. Setting a floor alternative

V. Cy Pres

- a. What portion of unclaimed funds, if any
- b. Type of organization to receive funds

VI. Non-Monetary Relief

- a. Stop existing practice
- b. New practices
- c. Agreement to make change
- d. Injunctive relief
- e. Other

VII. Administration

- a. Third Party Administrator
- b. Party Administrator
- c. Costs – Out of Fund or an extra

VIII. Form of Notice

- a. Are there lists or other means of class identification
- b. Mail
- c. Internet
- d. Publication
- e. Estimate of cost of notice
- f. Costs – Out of fund or an extra

IX. Claims Process

- a. Claims Made
 - 1. Estimated claims rate

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Class Action Checklist continued

2. Estimate of payment per claim

- b. No Claim Necessary
- c. Pro rata distribution
- d. Tax treatment

X. Opt-Outs

- a. Possible blow up provision in the event of ___% or ___ number of opt outs

XI. Possible Objectors - Anticipate issues

XII. Attorney's Fees

- a. When to discuss
- b. Amount – Percentage or Specific Number
- c. Past practice by Plaintiffs' counsel

XIII. Incentive Award to Named Plaintiffs

- a. When to discuss
- b. Amount
- c. Past practice by Plaintiffs' counsel

XIV. Confirmatory Discovery

- a. Is it necessary
- a. If so, what is the scope and methods of discovery

XV. Approval Process

- a. Federal
- b. State
- c. Know Your Judge

XVI. Steps Necessary to Obtain Preliminary Approval by the Court

- a. Settlement agreement
- b. Motion for preliminary approval
- c. Reference to the mediation

*To set a case with Judge Denlow, contact
Case Manager Deborah Stewart:
dstewart@jamsadr.com or 312.655.9192.*

JAMS Chicago Resolution Center • 71 S. Wacker Drive • Suite 2400
Chicago IL 60606 • 312.655.0555 • jamsadr.com/classaction

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