

Consultant Service Companies Assisting Counsel in Class Action Suits

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In response to the continual increase in the number of class action cases filed every year during the past 30 years, a niche profession has developed to provide administration services to attorneys with class action settlements. Previously, many firms opted to hire a fleet of support staff to administer cases, but over time they have come to rely on administration companies to provide efficient, high-quality and reliable services. Many of the administration companies in the profession offer a full spectrum of services to attorneys that focus on the core components of providing notice to class members, processing claims and distributing settlement funds. Here are the most common class action services that counsel request from administration companies.

Notice administration

The requirements for providing notice to class members are contained in the Federal Rules of Civil Procedure (FRCP) 23 or similar state rule counterparts for cases filed outside federal court. In addition, notice must be sufficient to protect due process rights of class members.

In most cases, judges look to counsel and/or legal noticing experts to provide a plan recommending the manner and method of providing notice to class members. Often, qualified noticing experts analyze the class members to determine the demographics and psychographics of the class and use industry-recognized resources

to recommend a notice plan to reach class members. Such plan may incorporate several methods of notice, such as first-class mail, media ads in publications, radio, television, email, internet and earned media – public relations and press releases. Many of the administration firms work directly with legal noticing experts on individual cases to facilitate and implement components of the notice plan.

Providing notice by first-class mail is on the most common methods. Notices often are customized with individual class member data, including a unique person identification number and bar code to streamline processing of returned mail.

If class member data is available, it is important for counsel or their designee to work with the administrator to facilitate data loading prior to mailing. To ensure data integrity, the administrator should analyze and track the data as it is loaded to identify and report on record counts, possible duplicate class member records and missing or invalid address information, among other considerations.

Locator services

To enhance the potential effectiveness of providing notice by first-class mail, an administrator can obtain address updates for class members by utilizing a locator service. In many cases, this will increase the number of notices reaching class members and significantly reduce undeliverable mail. According to the

U.S. Census Bureau's *Geographical Mobility Study 2002 to 2003*, 14 percent or 40 million people move/change their address every year. Since class periods typically span a number of years, sometimes stretching into the distant past, databases of potential class members often contain outdated address information. Mailing directly to potential class members based on outdated information can create an expensive and cumbersome number of undeliverable mail pieces.

There are a number of different databases and respective pricing models available for locator services. The National Change of Address (NCOA) database is one of the most commonly used sources. The database encompasses those individuals who actively filed a change of address request with the U.S. Postal Service. Unfortunately, it does not include anyone who has moved and failed to file such a request. More advanced database options, which typically render a much higher percentage of updated addresses as compared to the NCOA, also are available. Often, address searches based on a person's Social Security Number and name will dramatically improve the likelihood of identifying a new address for individual class members.

Class member communication

Class members will always have questions and want immediate answers. Most administration firms offer a range of communication options to provide class members with answers and access to case information. The most common methods of communication are written correspondence, toll-free telephone hotlines, email, case

website and fax. Incorporating a communications plan is a necessary and positive way to keep class members satisfied and the process moving forward.

Telephone hotline

There are several alternatives available to handle class member telephone calls. A traditional approach is to staff a dedicated call center with live operators to answer calls upon receipt. Counsel should confirm agents will be trained on the specific details of each case and respond to callers' questions by adhering to scripts that counsel approve. Another approach is to use technology, such as an Interactive Voice Response (IVR) system to allow callers to simply select menu options to obtain information about a case. Pre-recorded messages can answer frequently asked questions, allow callers to sue an automated process to request case documents such as notices and claim forms, and allow callers to be routed to a live operator. Regardless of which option counsel selects, statistical reporting of call volumes, call transcriptions, monitoring, recording, multilingual communications, and outgoing calls should be available from most administrators.

Case website

A case website can be an inexpensive way to provide class members instant access to answers to FAQs and case updates. Documents such as the notice, claim form and settlement agreement can be made available on the website for viewing and easy downloading. Some case websites allow class members to submit an online claim, eliminating the need to submit a paper one. With the correct analytical tools,

traffic on the website can be recorded by the administrator and case-website success tracked.

Email and fax

Technology allows for easy and instantaneous communication through the internet and email. The ease and convenience of email makes it an attractive way for class members to request information. Contact links within a case website also can provide a web form to capture claimant information and categorize inquiries.

Although less common, communication via facsimile also can be used. However, administrators should be aware of anti-spam laws that can impact potential fax and email communications without the prior permission of the recipient.

Claims management

Claims processing is another primary service. The process often begins with documents imaging/scanning of a document from a class member. Many administrators use imaging software and equipment for claim forms, exclusion requests and other correspondence, with the originals stored in archive. Since the documents are stored electronically, it is easy for the administrator to email images, save to CD-ROM, or load them to a client's network.

Beyond imaging, many administration firms capture information provided on the claim form and store the data in a claims management system. Claims are then reviewed to determine whether the settlement requirements have been met, i.e. claim validity. In the event a claim is deemed deficient, a cure process

can be instituted. This can be as easy as sending a postcard notice or returning the entire claim with instructions for resubmission. A few administrators have gone beyond standard claims processing by extending access to their proprietary claims management systems to counsel and other necessary professionals via the internet. This provides counsel with 24-hour secure access to class member data, claim images and detailed reports – a powerful tool.

Distribution services can be as easy as a one-time payment to class members or they can involve multiple payments, complex calculations, tax implications and elaborate fund management. Many administrators provide distribution-related services; however, the scope of such services varies. Services include distributions of cash, stock, warrants and retailer coupons, compliance with regulatory requirements such as OFAC due diligence, account reconciliation, stop payments and reissues, and administration of unclaimed property (escheat) in accordance with applicable state law. Depending on the individual needs of a particular case or client, counsel should look for an administrator and/or financial institution that can provide the specific services required.

Fund management

Beyond cutting checks, a few administrators/financial institutions provide fund management and investment options for settlement funds. Counsel should select a financial institution offering a variety of investment options to accommodate the liquidity and permissible investment requirements of a fund. Look for an institution that understands the primary

investment objectives are principal safety and protection, liquidity, and superior investment returns with specific experience managing such portfolios.

Tax requirements

In many cases, it is essential that counsel and/or the administrator consult tax professionals to ensure all applicable tax requirements are satisfied and proper tax reporting filed. For example, if the settlement fund is considered a Qualified Settlement Fund (QSF) as defined in 26 U.S.C. 468B, specific income tax reporting requirements will apply to the fund such as quarterly filings and annual tax returns. Frequently, tax withholdings also are required for individual class members as part of the distribution process. Tax reporting in the form of W2s and 1099s are also common components of many class action distributions. These are just a few of the tax considerations so it is important to enlist a good tax professional to ensure all issues are handled properly.

Final considerations for selecting an administrator

Class action administration professionals can be a great resource for counsel in administering a case. Before selecting and hiring one, counsel should review the services offered by the administrator. Look for one offering a full suite of services that can be customized to address the specific needs of the individual case.

Inquire about current and projected workload/capacity of the administrator. Determine whether they will have sufficient resources available to administer another case, particularly if the case has a substantial number of class members and complexity. With price a critical consideration, counsel should ensure both parties have a thorough understanding of the fee structure. Always request an estimate before engaging and request additional estimates if the scope of the engagement changes. Finally, ask for references of other professionals who have worked with the administrator. Most people are willing to make recommendations if the administrator provided excellent service and results.