

CLASS ACTION CHECKLIST

Hon. Morton Denlow (Ret.)



This checklist will assist you in thinking through the settlement structure and related issues necessary to settle your class action case. Plaintiff should complete the checklist with as much detail as possible. Defendants should respond immediately under each of Plaintiff's entries to indicate whether they agree, and if not, to provide their own response to the issue. In order to facilitate a settlement, the parties are encouraged to cooperate prior to the mediation to reach agreement on as many structural issues as possible.

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. Common Fund Settlement Structure
 - 1. Payments to class
 - 2. Cost of notice
 - 3. Cost of administration
 - 4. Attorney's fees
 - 5. Incentive award
 - 6. Other
- b. Claims Made or Other Non-Common Fund Structure
 - 1. Explain Proposed Structure

IV. Reverter or No Reverter to Defendants

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

V. Cy Pres

- a. What portion of unclaimed funds, if any, to go to cy pres
- b. Type of organization to receive cy pres 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 Common 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 Common Fund or an extra

IX. Claims Process

- a. Claims Made
 - 1. What must class member do to receive distribution

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Class Action Checklist continued

- 2. Estimate of claims rate
- 3. 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 yes, what is the scope and method of discovery

XV. Approval Process

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

XVI. Steps Necessary to Obtain Preliminary Approval by the Court

- a. Settlement agreement - Who will prepare initial draft
- b. Motion for preliminary approval - Who will prepare initial draft
- c. Reference to the mediation

Disclaimer: The content is intended for general informational purposes only and should not be construed as legal advice. If you require legal or professional advice, please contact an attorney.

**To set a case with Judge Denlow, contact Case Manager Deborah Stewart:
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