



PRACTICAL CONSIDERATIONS FOR CLASS ACTION SETTLEMENTS FROM NEGOTIATION TO FINAL COURT APPROVAL

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SPEAKING TODAY



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What makes settlement of a class action different from a non-class case?

Obligations to class members

Possible conflicts triggered by remedies pursued

Scope of release

Need for court approval

Potential for objectors

In class settlement, process can be as important as substance

CLASS ACTION SETTLEMENT COMPLICATIONS

Related Cases on Same Subject

Multiple class actions making the same claims – Who are you mediating with?

- Competing negotiations with different plaintiffs' attorneys?
- Combined settlements vs. cram-downs
- Geographic limits of classes/settlements

Different types of cases on same facts – ex. 10b-5 and derivative case, wage/hour and PAGA, etc.

CLASS ACTION SETTLEMENT COMPLICATIONS

Involvement of Insurance Carriers

- Towers/layers of coverage
- Incongruities between scope of class allegations and scope of coverage
 - Class membership, claims at issue, scope of remedies, etc.
- Reservations of rights
- Potential structural conflicts between insurer and insureds
- Insurance coverage disputes

TIMING

When should parties discuss settlement?

Settle on non-class vs. class basis

- Substantial percentage of “class action” complaints never reach certification
- Attorney “never sue again” agreements barred

Before or after class certification ruling?

- Class certification is critical risk factor
- Litigating class certification is costly
- But need sufficient record to support settlement approval

Ideal scenario

- Earliest point when record is sufficient to support court approval of settlement
- Mediation can facilitate record development process

How and When to Negotiate Plaintiffs' Attorneys' Fees

- Timing of fee negotiations
- Common fund vs. separate/additional fees
- Material terms first, then fees?
- Ethical issues – trade-off between class recovery and fees
- Defense interests vs. plaintiffs' interests
- Can mediator assist in simultaneous negotiation of fees and class recovery?
- Defer to court via fee application? Some other outlet for resolution?
- Issues to flag -- Reversion vs. no-reversion deal? Clear-sailing provision?
- Best practices

Benefits of Engaging a Mediator to Navigate Class Action Settlement

Credibility

Lends credibility to the arms-length nature of settlement negotiations for court approval purposes

Neutral Evaluation

Skilled neutral evaluation assists parties in valuing cases where heightened complexity can produce widely varying views of case

Sway

Mediator experienced with class process can have sway over parties/ representatives/ insurers not sophisticated in class procedures and nuances

When selecting a mediator, consider:

Mediator must understand the class action process – it is often more important to settlement than the substantive core of the case

Mediator's procedures likely to produce resolution

Mediator's prior experience/credibility with the other side can be invaluable

THANK YOU!



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