



Class Action Defense Strategy

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Multimillion Dollar Class Action Settlements Approved In Insurance Brokerage Litigations

On September 8, 2009, the Third Circuit Court of Appeals upheld the approval of two multimillion-dollar class action settlements in consolidated multi district cases arising from investigations and civil lawsuits alleging bid rigging and steering activities in the insurance industry. See *In re Insurance Brokerage Antitrust Litigation*, Nos. 07-1759 *et al.* (3d Cir. Sept. 8, 2009). Specifically, after rejecting objections to the settlements, the court approved two settlements valued at \$150 million, and also approved an award of \$29.9 million in legal fees and costs for the larger of the settlements.

The settlements arose from consolidated cases dating back to October 2004 when then New York State Attorney General, Eliot Spitzer, filed a civil complaint alleging antitrust and RICO claims against the insurance broker Marsh & McLennan in New York state court. The Attorney General alleged that Marsh & McLennan had violated antitrust and other laws by soliciting fixed bids from insurance companies and then receiving improper payments for directing customers to those companies. On the heels of that civil lawsuit, at least twelve attorneys general and several state insurance departments began investigations into alleged bid rigging and steering activities of brokers and insurers in the property and casualty insurance industry. In addition, private parties commenced numerous class action lawsuits in courts across the country.

In 2005, the civil actions from multiple jurisdictions were consolidated and transferred to the United States District Court for the District of New Jersey. In 2006, the district court approved the settlements of claims against Zurich Financial Services (“Zurich”) and Arthur J. Gallagher and Co. (“Gallagher”), for allegedly participating in illegal collusive activities from 1994 through 2005. Certain members of one or both of those settlement classes objected to various aspects of the settlement agreements, and appealed to the Third Circuit Court of Appeals.

Objecting class members argued that the settlements were improper because individual issues existed, making the case inappropriate for resolution by a class action which requires a predominance of common issues. The settlement objectors also argued that the court should have

established at least three class action subclasses or required separate representation for claimants who *inter alia* bought excess policies and those who bought non-excess policies. The objectors also objected to the award of \$29.9 million in legal fees and costs for the Zurich settlements.

In a 94-page opinion, the Third Circuit Court of Appeals rejected each objection to the settlements. The court determined that common questions of law and fact existed with respect to each of the elements of the antitrust claims, including whether Zurich conspired with any defending insurance brokers, the resulting anticompetitive effects of the alleged conspiracy, and whether class members were proximately injured by Zurich's conduct, even if the amount of damage that each plaintiff suffered could not be established by common proof. The court also determined that the objectors failed to articulate how the interests of the members diverge, even with the different allocations, and that the district court did not abuse its discretion in refusing to certify separate subclasses, despite the variety of policyholders. Among other things, the court held that the allocation plan ensured a fair distribution of the settlement fund and was allocated in such a way that policyholders who likely incurred the most damage would receive a larger proportion of the recovery.

Ultimately, the appeals court concluded that that the class certification requirements of the Federal Rules of Civil Procedure were satisfied with respect to both settlement classes and that both settlements were fair. As a result, the court approved the settlements in the amounts of of \$121,800,000 for the Zurich claims and \$28,000,000 for the Gallagher claims. The appeals court also affirmed the district court's approval of an award of \$29,500,000 for attorneys' fees and expenses in conjunction with the Zurich settlement, noting that the district court had properly concluded that class counsel's efforts produced at least \$100 million for the settlement class.

For further information, please contact [Daniel Brown](#) at (212) 634-3095.