THE JNL FIRM, LLC

FIRM RESUME

TRUSTED AND RELIABLE CLASS ACTION SETTLEMENT MANAGEMENT

Jeffrey N. Leibell
Principal

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P (516) 652-2040
E jeff@jnlfirm.com
W www.jnlfirm.com

EDUCATION

Columbia University School of Law, 1992, J.D., Harlan Fiske Stone Scholar 1990-91, 1991-92; Colombia Business Law Review, Senior Notes Editor 1991-92, Staff 1990-91.

Brooklyn College of the City University of New York, 1979, B.S., *cum laude*, Economics Major on Accounting.

BAR ADMISSIONS

New York and New Jersey (In-house Counsel)

Supreme Court of the United States

United States Courts of Appeals for the Second, Third, Fourth and Sixth Circuits and for the Armed Forces

United States District Courts for the Southern and Eastern Districts of New York; the Eastern District of Michigan and the District of Colorado

"I've devoted the last 25 years of my legal career representing clients in a highly specialized niche of class action law: addressing the issues that, under Rule 23(e), are presented by settlements and their allocation and distribution."

Executive Summary

The Firm's principal, Jeffrey Leibell, has devoted the last 25 years to representing clients in the highly specialized niche of addressing the issues that, under Rule 23(e), are presented by class action settlements and their allocation and distribution. Jeff's legal career began when he graduated from Columbia Law School in 1992, where he was a two-time Harlan Fiske Stone Scholar and was the Senior Notes Editor and a member of the Columbia Business Law Review. His professional career began 17 years earlier when he graduated *cum laude* from Brooklyn College with a B.S. in Economics, Major in Accounting. Although he was fascinated with the law, Jeff chose accounting because his only family member that had any degree of success, his maternal uncle, was an accountant. Upon graduation, Jeff joined Touche Ross & Co. (now Deloitte) where he spent the better part of the next 12 years auditing and providing litigation consulting for "Fortune" and other companies in a variety of industries. During a particularly grueling over 2-year litigation consulting engagement, his wife, who at that time was a medical resident after having spent ten years as a registered nurse and having completed the necessary course work to meet medical school eligibility requirements, convinced him to attend law school. Jeff did so, but only with her support and encouragement, and with the support of his colleagues at Deloitte, who retained him as a litigation consultant throughout most of his three years at Columbia.

As a partner at Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"), one of the nation's premier law firms representing institutional and other investors, Jeff created and was the partner in charge of its settlement management department where he selected and retained claims administrators and oversaw their administrations of dozens of securities class action settlements. As the Vice President of Class Action Services at The Garden City Group, Inc.("GCG"), one of the most well-regarded class action claims administration firms in the U.S., Jeff advised GCG's senior management and its class counsel clients on legal issues presented by some of the most complex securities class action settlement administrations of all time, and successfully advocated in courts throughout the country for the approval of thousands of GCG's claims determinations. And as the Chief Legal Officer at Financial Recovery Services, LLC ("FRS"), a premier class action settlement claim consultant, Jeff advocates to assure that FRS's clients are treated fairly and in accordance with court-approved class action plans of allocation and distribution. Jeff's diverse experience provides a unique perspective on the often-overlooked considerations necessary to assure fair, equitable and timely distributions of class action settlements under the 2018 amendments to Rule 23(e).

Professional Credentials

Bernstein Litowitz Berger & Grossman LLP

Jeff's interest in class action settlement law began during his 13 years at BLB&G. In addition to representing institutional investors in securities fraud class and derivative litigation, Jeff negotiated, documented, and oversaw the administration of, and developed the allocation plans for, all of BLB&G's class action settlements, which, during his tenure, totaled >$16.6 billion in recoveries, including, at the time that they were settled, 5 of the 10 largest securities class action settlements in U.S. history.

Notable Class Action Settlements

In re Cendant Corporation Litigation **(D.N.J.).** The >$3.3 billion in settlements, at the time they were reached, represented the largest amount by far recovered in a securities fraud class action; that amount still represents the third largest securities fraud settlement. Jeff developed the plan to allocate those proceeds among acquirers of:

i. The common stock of Cendant and its predecessor, CUC International, Inc., including stock acquired in exchange for HFS International common stock in the merger between HFS and CUC (which combined to form Cendant on December 17, 1997), the latter of which asserted claims under both the Securities Act and the Exchange Act;
ii. Cendant and CUC common stock options; and
iii. Three separate Cendant debt securities.

That plan, which addressed the accumulating artificial inflation that entered the market prices of each CUC and Cendant security with each successive materially misleading disclosure, the effects on the market for each security made by three partial corrective disclosures, and the superior strength of the Securities Act claims, was approved over objection and then upheld on appeal. Given the size of the recovery and the necessary complexity of the allocation plan, Jeff also implemented for the first time the following precautions designed to reduce the likelihood of claims administration errors going undetected until after distribution:

i. To gain assurance concerning claims processing accuracy, retaining a well-respected accounting firm to audit the results of the claims administration and to issue a report thereon that was filed with the court;
ii. To address any issues that may be identified after initial distribution checks were mailed, designing the distribution plan to include a reserve equal to 35% of the net settlement fund;
iii. To prevent challenges from occurring after the reserve was distributed, advising claimants that any disagreement with the check amount must be brought to the claims administrator's attention by a date specified in the cover letter;
iv. To allow claimants to evaluate the amount of their checks, including with each check the amount of recognized loss and the pro rata amounts; and
v. To determine whether any class members submitted proofs of claim that had not been processed, published on the case website and in prominent publications two weeks after the initial distribution was conducted a notice that advised that a distribution had occurred and that anyone that had submitted a proof of claim but did not receive either a check or a notification that the claim was rejected must advise the claims administrator by a date set forth in the notice.

Several of those precautions, particularly the audit of the claims administrator, have become customary in the administrations of large settlements.

In re WorldCom Inc. Securities Litigation **(S.D.N.Y.).** The $6.2 billion recovered still represents the second largest securities fraud class action settlement in U.S. history. Jeff developed the plan to allocate those proceeds, which involved four separate pools of settlement funds that resulted from the settlement of different claims (*e.g.*, Securities Act and Exchange Act) asserted against different defendants, among class members that, during different class periods, purchased over 40 securities, such as common, preferred and tracking stock; bonds; notes; and derivatives issued by WorldCom and its predecessors. Here, too, he vetted and retained an independent accounting firm to audit the claims administrator's results and conducted the distribution in stages.

In re Nortel Networks Corp. Securities Litigation **(S.D.N.Y.).** The >$1.074 million settlement, which included $370,157,418 of cash and 314,333,875 shares of Nortel common stock that, as of June 30, 2006, had an aggregate market value of $704,107,880, resolved claims asserted under the U.S. securities laws and in two class actions pending in Canada on behalf of purchasers of Nortel common stock and call options, and of writers (sellers) of put options (the "Nortel II Actions"). Because a condition to the settlements of the Nortel II Actions was obtaining judicial, securities, regulatory and stock exchange approval of them and of a separate class action pending in the Southern District of New York and related actions in Ontario, Quebec and British Columbia on behalf of investors during an earlier time period (the "Nortel I Actions"), Jeff coordinated with Canadian class counsel in Ontario and Quebec in the Nortel II Actions, as well as with U.S. and Canadian class counsel in the Nortel I Actions, on all settlement provisions and documents, including the manner in which, and procedures for, Nortel's issuance to class members of its common stock. The ~$1.143 million settlement of the *Nortel I* Actions included$438,667,428 of cash and 314,333,875 shares of Nortel common stock that, as of June 30, 2006, had an aggregate market value of $704,107,880. The total recovered was >$2.217 million, comprised of$808,824,846 of cash and 628,667,750 shares of Nortel common stock that, as of June 30, 2006, had an aggregate market value of $1,408,215,760.

Other Notable Settlements

Among the scores of settlements that Jeff managed are *In re HealthSouth Bondholder Litigation* (N.D. Ala.); *In re Lucent Technologies, Inc. Securities Litigation* (D.N.J.); *Ohio Public Employees Retirement System v. Freddie Mac* (S.D. Ohio); *In re Refco, Inc. Securities Litigation* (S.D.N.Y.); *In re Williams Securities Litigation* (N.D. Okla.); *In re Bristol-Myers Squibb Securities Litigation* (S.D.N.Y.); *In re El Paso Corporation Securities Litigation* (S.D. Tex.); and *In re The Mills Corporation Securities Litigation* (E.D. Va.).

The Garden City Group, Inc.

Jeff left BLB&G to join GCG, then one of the country's most prominent claims administrators, as its Vice President of Class Action Services. In his over six years there, he regularly advised its senior management and its class counsel clients on complex class action settlement, administration and distribution legal issues. For example:

i. In connection with GCG's settlement administrations, including of *WorldCom* and the *Nortel II* Actions, Jeff analyzed and successfully defended challenges to GCG's and class counsel's proof of claim determinations that thousands of claimants lodged with U.S. and Canadian courts;
ii. Jeff developed and presented to attorneys across the U.S. continuing legal education programs concerning class action settlement, administration and distribution legal issues; and
iii. Jeff supervised and developed protocols and procedures for a dedicated group of some 125 lawyers who addressed all legal representation and related issues in connection with over 350,000 claimants to the $20 billion Gulf Coast Claims Facility, and he provided related advice to GCG's executive management and to Kenneth Feinberg, the Claims Administrator, and his team.

Jeff also formulated or revised GCG's information and physical security, operational and privacy policies, which enabled GCG to become the first claims administrator to obtain the AICPA's Service Organization Control (SOC) 2 report (for all five AICPA Trust Services Principles) and to comply with all HIPAA security and privacy standards.

Financial Recovery Services, LLC

Jeff then joined FRS as its General Counsel; he later became its Chief Operating Officer and now is its Chief Legal & Financial Officer. In addition to managing all of FRS's legal and finance matters, Jeff regularly advocates with claims administrators, class counsel and, when necessary, courts, to assure that FRS's clients are treated fairly and in accordance with plans of allocation and distribution. Those efforts have included, among other things:

i. Obtaining approval for the data and documentation alternatives that FRS develops when its clients are unable to comply with proof of claim form requirements;
ii. Compelling searches of defendant data to be conducted for FRS's clients' purchases;
iii. Establishing that FRS's clients' purchases are eligible under class definitions;
iv. Refusing to allow FRS's clients to be subjected to inappropriate claim submission requirements that are more burdensome than those imposed on other class members;
v. Demanding the correction of claims administration errors;
vi. Insisting on reasonable requirements for responding to, and satisfying, proof of claim audit requests and deficiency notices; and
vii. Requiring that proofs of claim and audit and deficiency responses that, for good reason, were submitted after deadlines, be accepted as timely.

Relevant Scholarship

Under Amended Rule 23, Effective Settlement Management Is Not Just a Good Idea, It's *the Law*

The most recent amendments to Rule 23(e)(2)(C), which became effective on December 1, 2018 (the "2018 Amendments"), added new criteria that emphasize the importance that effective and proactive class action settlement management – the shepherding of a settlement from handshake to distribution – has on obtaining with as little delay as possible approval of class action settlements and of their distribution to class members, as well as on the payment to class counsel of their court-awarded attorneys' fees. Under the interpretation that courts of appeals already have given to one new factor added by the 2018 Amendments – that fairness determinations must consider actual results of the claims process – district courts may decide to wait to rule on settlement fairness until administrations are sufficiently complete to provide for their consideration actual claims results. Under that interpretation, therefore, effective and proactive settlement management is a prerequisite to efficiently obtaining final settlement approval. And because, under customary "quick pay" attorneys' fee provisions, those fees are not payable until final settlement approval is granted, competent settlement management also is a prerequisite for class counsel's timely receipt of its fees.

Another new factor added by the 2018 Amendments – that the consideration of the fairness of a proposed class action settlement must include the "timing of payment" of attorneys' fees – also may impact the timeliness of payment. Prior to the 2018 Amendments, some district courts and institutional lead plaintiffs already had required class counsel to wait to receive at least a material portion of their fees until all or a substantial part of the settlement proceeds were distributed to authorized claimants. Now, some courts have interpreted the new "timing of payment" factor both to conflict with customary "quick pay" attorneys' fee provisions and, to evaluate whether requested attorneys' fees are disproportionate to the relief provided to the class, to require the consideration of actual claims administrations results. While those interpretations are few and far between—and there are courts that have declined to follow them, if they do gain purchase, class counsel would not receive all or a substantial amount of their fees until at least some portion of settlement proceeds were distributed.

Given the substantial adverse consequences of those interpretations of the 2018 Amendments, class counsel should proactively make effective settlement management their primary post-settlement focus so that, as soon as possible after preliminary approval, they may obtain the entry of a final judgment, and, as soon thereafter as possible, the filing of an unchallenged distribution motion.

Late Claims and Placeholder Claims: The Banes of Class Action Settlement Management

Late claims and so-called "placeholder claims"—claims that, to avoid being deemed late, are filed prior to a claim filing deadline but without the required transactional information, are the banes of the administration of almost every class action settlement. While they do not always create havoc, they often do when, for example, they are many or when their effect on the distribution is material. And when that happens, and class counsel hasn't adequately planned for it, the dogs of war may indeed be slipped.

"Low Cost" Class Action Claims Administrators: What You Don't Know Will Hurt You

As a direct result of inferior claims administrations performed by claims administrators selected based primarily on their low bids, "legitimate claimants" – those class action claimants that are class members and that submit proofs of claim that comply with judicially approved requirements – have suffered substantial financial harm and will continue to do so. Among claims administrators, there are substantial differences in accuracy and efficiency; those claims administrators that, to get selected, offer low bids cannot afford to, and, therefore, have not and will not, perform the tasks necessary to administer class action settlements accurately or efficiently. One consequence is that those "low cost" administrators incorrectly classify "ineligible claimants" – those that are not class members, or, even though they are, submit proofs of claim that are partially deficient or completely defective – as legitimate claimants, and, therefore, distribute to the former recoveries that should have gone to the latter. Accordingly, although it may appear that selecting low bidding claims administrators will save classes the marginal cost differentials between those low cost claim administrators and more expensive but higher quality claims administrators, the opposite is true: Selecting the lowest bidding administrators without adequately considering their corresponding accuracy and efficiency metrics has caused, and will continue to cause, legitimate claimants millions of dollars – far more than the cost "saved" by selecting low bidders – that, because of inferior claims administrations, legitimate claimants "pay" to ineligible claimants.

Established economic theory – the same economic theory that explains the financial cost to class members caused by selecting class counsel by means of auctions that did not fairly consider the quality of legal services – explains the financial cost to legitimate claimants that has resulted, and will continue to result, from using auctions to select claims administrators from among qualitatively diverse bidders. To test whether that economic theory also applies to claims administrators, claims administration results from hundreds of class action settlements were obtained and analyzed. That objective data confirms the substantial diversity in claims administration accuracy and efficiency and enabled an estimation of the resulting cost to legitimate claimants. That data demonstrates that selecting claims administrators through price dominant auctions, like those once – but no longer –used to select lead class counsel, have caused, and will continue to cause, legitimate claimants to suffer substantial financial harm: They will recover hundreds of millions of dollars less than they should and they will wait longer than they should to do so.

67% of Something Is Better than 100% of Nothing: Competent and Ethical Class Action Claims Consultants Provide Value and Increase Participation in Class Action Settlements

Love 'em or hate 'em, class action claims consultants, or "CACCs," are here to stay. Most CACCs provide value to their clients because, without their services, which are provided at a fee often as much as 33%, those class members would not recover anything. Given that the 2018 amendments to Rule 23 now require courts, when they evaluate whether a class action settlement is fair, reasonable and adequate, to consider class member participation and recovery, the increased participation that CACCs generate should enhance the likelihood of judicial approval.