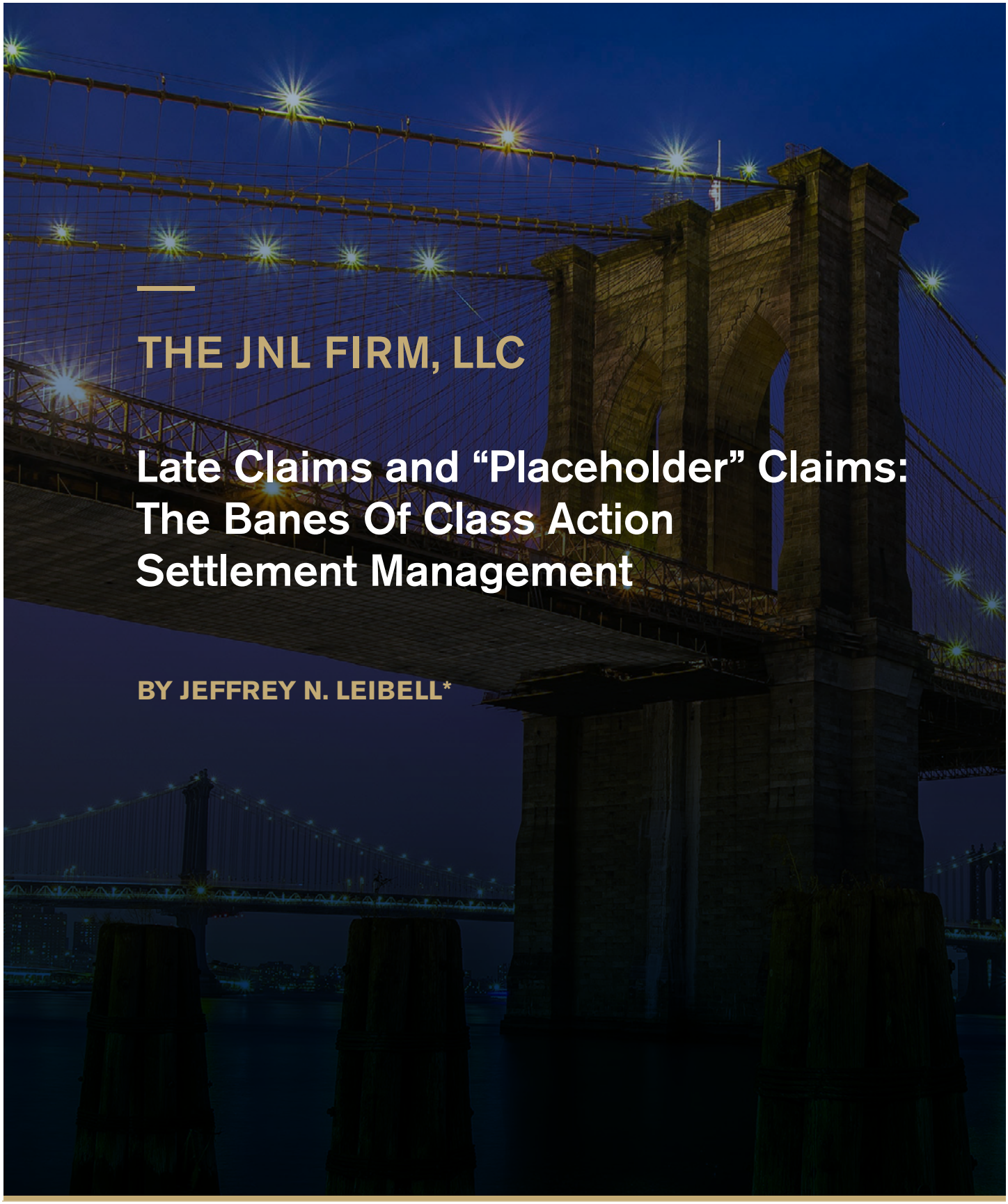

THE JNL FIRM, LLC

Late Claims and "Placeholder" Claims: The Banes Of Class Action Settlement Management

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Late claims and "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.

Historical Convention

The almost universal custom for addressing late claims is for class counsel to wait until the motion to distribute. Then, they and claims administrators almost always recommend that the court accept otherwise eligible late claims that were filed up until that motion was submitted ("pre-motion late claims").[1] A well-articulated example of this approach was made by class counsel in the >$1 billion *LCD Indirect* settlements:

> The distribution has not been delayed as a result of any [pre-motion] late-filed claims. Moreover, those claimants, like all other claimants, have been injured as a result of the same alleged wrongful conduct. ... Additionally, because all claimants are similarly situated, none of them has a better right to recover than any other claimant; in other words, because no distribution delay has been occasioned by the processing of [late] claims, the first-filed claim is no more entitled to recover or to recover more per unit than the last claim received and processed before the distribution motion is filed.[2]

> "The often-competing interests of class members that submit complete and timely claims ... and of those that submit late or placeholder claims ... require careful consideration and advanced planning by class counsel to avoid the disputes that otherwise inevitably will delay class member recovery and class counsel's receipt of a substantial portion of their court-awarded fees."

Pre-motion late claims are thus treated in the same manner as timely claims—they are subjected to the same quality review and audit processes, and, if deficiencies are identified or they require audit, they are allowed the same due process as timely claimants.[3] For the same reasons, placeholder claims, to the extent that they are perfected prior to submission of the distribution motion, also are accepted.

Those conventions, in addition to being the paths of least resistance—that is, timely claimants whose distributions are reduced by the acceptance of placeholder and pre-motion late claims have objected to that inclusion far less frequently than have late and placeholder claimants whose claims

were rejected on that basis alone, satisfy class counsel's obligation to include in distributions as many class members as possible:

> GCG and Co-Lead Counsel believe that the interest of compensating as many Class Members as possible ... would best be served by permitting the acceptance of all Late Claims received through August 31, 2016, a cut-off date selected so that finalization of this motion could occur, to the extent these Claims are otherwise eligible to receive payment under the Court-approved Plan of Allocation.[4]

The importance of increasing class member participation in settlements, which is enhanced by accepting otherwise eligible pre-motion late claims and placeholder claims, was incorporated into the 2018 amendments to Rule 23(e)(2)C) (the "2018 Amendments"). According to the Rule 23 Advisory Committee, a "central concern" for any court considering the adequacy of relief that a proposed settlement is expected to provide is "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims."[5] In that undertaking, it "may be important" to "direct[ ] that the parties report back to the court about actual claims experience," and it "may require evaluation of any proposed claims process":[6] "Often it will be important for the court to scrutinize the method of claims processing to ensure that it facilitates filing legitimate claims,"[7] and, while "[a] claims processing method should deter or defeat unjustified claims, ... the court should be alert to whether the claims process is unduly demanding."[8] As will be explained below, historical convention is only the beginning. Other valid interests should compel class counsel to balance the interests of all class members.

Class Counsel's Dilemma

In many settlements, late claims continue to be submitted, often *en masse*, for some time. And placeholder claims, even though the claimants that filed them already know why their proofs of claim are deficient, must be sent deficiency letters and be afforded time to provide the required information or documentation. These regularly recurring situations often delay distributions, and, as a result, the paths of least resistance described above may be antithetical to an equally important goal of settlement management: to get the recovery into the hands of class members as soon as possible.[9] The primacy of the obligation to expedite class action settlement distributions was pointedly described in *Citigroup*:

> "Late claims and "placeholder claims" ... are the banes of the administration of almost every class action settlement."

A. The non-objecting class members are due an expeditious recovery.

> When a court acts as fiduciary for a settling class, it pursues the "goal[ ] of expedient settlement distribution." *In re Orthopedic Bone Screw Prods. Liab. Litig.*, 246 F.3d 315, 321 (3d Cir. 2011). After all, "much of the value of a settlement lies in the ability to make funds available promptly." *In re Agent Orange Prod. Liab. Litig.*, 611 F. Supp. at 1406.
>
> Several hundred thousand claimants, whose claims the administrator has accepted, currently await compensation. Their interest indisputably lies in the speedy distribution of the settlement fund.[10]

The often-competing interests of class members that submit complete and timely claims that, on the one hand, want distributions to be conducted as expeditiously as possible, and of those that submit late or placeholder claims that, on the other, want to be included in distributions, require careful consideration and advanced planning by class counsel to avoid the disputes that otherwise inevitably will delay class member recovery and class counsel's receipt of a substantial portion of their court-awarded fees.[11]

> "Instead of choosing between timely claimants, on the one hand, and, on the other, placeholder and pre-motion late claimants, a balancing of their interests would appear to be the most prudent course."

In addressing these competing interests, class counsel should seek to avoid creating for themselves a Hobson's choice by which they must pick the interests of one subset of class members or those of the other. Indeed, approaching these competing interests as a binary "all or nothing" proposition is a trap: Class counsel, which owe fiduciary duties to the class as a whole,[12] would be pitting the interests of timely claimants against those of late and placeholder claimants, and thus create for themselves an *apparent* conflict. That unfortunate circumstance is epitomized by class counsel in the *CRT Indirect* settlements:

> Were IPP counsel to advocate for including such late claims, it is highly likely [timely] claimants in the Prior Settlements will object, and argue that IPP counsel are failing to represent their interests. ... [Objector] is requesting that IPP Counsel elevate the rights of claimants that failed to comply with the claim filing deadline and equate those claims with those that complied with the deadline ... .[13]

As described below, however, because including late claimants imposes on timely claimants no legally cognizable prejudice, there is no *actual* conflict. And class counsel that, in connection with

other class action settlements, have followed the normal custom of recommending the acceptance of pre-motion late claims, will, by taking the opposite position, as did class counsel in *CRT Indirect*, also may subject themselves to criticism: Class counsel in *CRT Indirect* were among the class counsel that, in *LCD Indirect* and *DRAM*, successfully advocated *for* the acceptance of pre-motion late claims.

Even more potentially harmful to class counsel that follow the *CRT Indirect* approach, is that they also may be forced to defend themselves against accusations that, because they are sacrificing the recoveries of pre-motion late claimants to increase the recoveries of timely claimants, which likely will include their own clients—the named plaintiffs, they have violated their fiduciary duties.[14] The Fifth Circuit addressed this issue in *Anderson*:

> "[C]ourts are unlikely to recognize as prejudice to timely claimants the reduction in recovery that, as a result of accepting late claims, they will absorb."

> The compelling obligation of class counsel ... [is to] the class. Counsel must be aware of and motivated by that which is in the maximum best interests of the class considered as a unit. ... The courts have recognized that the duty owed by class counsel is to the entire class and is not dependent on the special desires of the named plaintiffs.[15]

Instead of choosing between timely claimants, on the one hand, and, on the other, placeholder and pre-motion late claimants, a balancing of their interests would appear to be the most prudent course:

> Settlement administration in a complex class action often requires courts to use their equitable powers under Rule 23 to manage the disparate interests competing over a finite pool of assets with which to satisfy the class. ... A primary use of these equitable powers is balancing the goals of expedient settlement distribution and the consideration due to late-arriving class members.[16]

As the Third Circuit observed in *Orthopedic Bone Screw*, "[w]hile there is no question that in the distribution of a large class action settlement fund, a cutoff date is essential and at some point the matter must be terminated, application of this principle must not be so rigid as to preclude recovery by a deserving claimant."[17] The considerations involved in balancing these competing interests are addressed in the following sections.

The Considerations

The considerations relevant to balancing timely claimants' interests with those of pre-motion late claimants and placeholder claimants are similar, but not the same. It suffices to say that each involves its own brand of tightrope walking, which should consider the mandate that courts must treat as a "central concern" including in the distribution as many class members as possible.

Late Claims

Late claims may not be rejected unless they fail to satisfy the excusable neglect standard set forth in *Pioneer*, in which the Supreme Court, in considering the "excusable neglect" standard found in Bankruptcy Rule 9006(b)(1), "provide[d] the analysis for consideration of untimely claims for inclusion in a class action settlement."[18] In *Pioneer*, the Court found that, "[b]ecause Congress has provided no other guideposts for determining what sorts of neglect will be considered 'excusable,'" and having also found that excusable neglect "is a somewhat 'elastic concept,'" concluded that "the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission."[19] As the Third Circuit put it, courts and class counsel must "eschew[] any *per se* rule that excusable neglect is unavailable to a party whose untimely filing was due to circumstances within his or her control":

> "When a distribution is delayed through no fault of late claimants—for example, as a result of pending appeals, and those claims are completed before a distribution is presented to the court, there is little (if any) basis on which to reject them."

> "Excusable neglect[]" ... is not an entirely proper label for the scope of inquiry available under its rationale. As the Court observed in *Pioneer*, the "ordinary meaning of 'neglect' is 'to give little attention or respect' to a matter, or closer to the point for our purposes, 'to leave undone or unattended to *esp*[*ecially*] *through carelessness.*'" *Pioneer Inv. Svcs. v. Brunswick Assocs.*, 507 U.S. 380, 388 (1993)) (citing Webster's Ninth New Collegiate Dictionary 791 (1983)) (emphasis in original). Thus, even though "neglect" is normally perceived negatively to connote carelessness in pursuit of a claim, it also "encompasses ... simple, faultless omissions to act." *Id.* While "neglect" may not be an apt term to describe those situations in which the failure to file timely is entirely faultless, the principles extracted from the doctrine of "excusable neglect" apply nonetheless.[20]

The requirement that, before an otherwise eligible late claim may be rejected for lateness it must fail the *Pioneer* excusable neglect analysis, is unambiguous.[21]

That said, and even though late claims are ubiquitous, they have historically not been addressed in settlement notices or proof of claim forms. As a result, class counsel have been constrained to address late claims and their impact only after the claim filing deadline has passed, and, most often, not until distribution. At that point, however, with notices and claim forms already disseminated and claims already submitted, and with the corresponding substantial costs already incurred, class counsel, rather than being proactive, must be reactive, with their options dictated by the results and duration of the claims process. And if those circumstances cause counsel to consider breaking with the convention to recommend the acceptance of pre-motion late claims, a convention that they themselves likely already followed in prior settlements, the then-available alternatives – either to seek to impose an excusable neglect analysis or to attempt to cut off further late claim filing – may present landmines that, had the treatment of late claims been proactively considered, could have been avoided. Lastly, there are special considerations to be addressed when distributions are delayed by factors not related to late claims.

> "There is no rational basis on which to treat placeholder claims differently than any timely filed claim that, because it included some but not all data, was deficient."

Imposing an Excusable Neglect Analysis

Although the mandated excusable neglect analysis includes at least four prongs, only two – prejudice to the non-moving party and reason for the delay (which often subsumes or, at least, informs, the good faith prong) – have garnered significant judicial attention. And with respect to the prejudice prong, the consideration, when evaluating late claims in connection with allocating and distributing a non-reversionary common fund—that is, where the defendant's liability is capped and every dollar distributed to one class member is one dollar less available to be distributed to other class members, concerns timely claimants.[22] In that connection, courts are unlikely to recognize as prejudice to timely claimants the reduction in recovery that, as a result of accepting late claims, they will absorb. As the court in *Electrical Carbon* held:

> The Court cannot find prejudice merely because, contrary to the facts of this case and the law of this Circuit, the parties assumed qualified late claimants—who had begun to come forward and of which some of them were aware—would not have access to the settlement.

> [T]he Court has an obligation not to elevate the claims of any class member over the claims of other class members, no matter how large a class member's stake in the case might be. All legitimate class members should, if equitable, be permitted to share in the settlement.[23]

One court of appeals, among other courts, has held that excluding untimely claims would provide timely claimants with an unjustified "windfall":

> It cannot be maintained that timely registrants are more deserving of remedy, for purposes of equity, than tardy registrants with similar claims, presuming the failure to register on time was indeed blameless. By excluding [the late claimant] and other similarly situated late registrants from the class, the timely registrants would receive what is essentially a "windfall," comprised of some portion of the recovery that would be owed to the otherwise deserving late registrants. As noted in *Cendant PRIDES II*, the loss of a windfall is not prejudicial.[24]

And there is no prejudice to timely claimants even when the resulting diminution their recovery is material.[25] As the court in *Authentidate* held:

> Lead Plaintiff argues that the inclusion of the late claims would prejudice those who filed timely claims by reducing the pro-rata distribution of the Net Settlement Fund from 40% to 24% of each Authorized Claimant's Recognized Claim. That prejudice does not flow from Late Claimants' untimely filing of their claims; it flows from the conceded fact that the Late Claimants suffered substantial compensable losses. Such prejudice resulting from payout reductions attributable to a more equitable distribution among a larger group of injured parties is not a form of prejudice that warrants denial of recovery to the Late Claimants under the circumstances of this case.[26]

> "The requirement that, before an otherwise eligible late claim may be rejected for lateness it must fail the *Pioneer* excusable neglect analysis, is unambiguous."

Because accepting late claims does not prejudice timely claimants, including because the substantive claims of both groups are identical, and, therefore, the latter group has no better right to recover from the settlement than does the former, new Rule 23(e)(2)(D) reinforces that this prong of the *Pioneer* test will be satisfied in almost all circumstances. That rule codifies prior precedent that required courts, when they considered whether a class action settlement is fair, reasonable and adequate, to assure that it "treats class members equitably relative to each other."[27] As the court in *True* explained well-before the 2018 Amendments, making among class members arbitrary distinctions

– that is, distinctions not based on substantive differences in the nature of their claims or in sustaining them through trial – is fatal to settlement approval:

> [T]he settlement here draws an arbitrary distinction among class members with identical legal claims and injuries … . This is patently unfair, and counsels against approval of the proposed settlement.[28]

So, while "Rule 23's flexible standard allows for the unequal distribution of settlement funds," it does so only if "the distribution formula takes account of legitimate considerations and the settlement remains 'fair, reasonable, and adequate.'"[29] It would appear, therefore, that under Rule 23(e)(2)(D), pre-motion late claims may not, based on lateness alone, be treated less favorably than timely claims.

With the prejudice prong rendered largely irrelevant to the consideration of whether pre-motion late claims should be accepted, that determination most often depends on the reason a claim was filed late.[30] But evaluation under the reason for delay prong generally does not admit of a convenient or cost-effective approach. Rather, even though a substantial majority of pre-motion late claimants will proffer as a reason for delay some form of unawareness, each pre-motion late claimant is likely to present different factual circumstances, which will require the court to "carefully assess the reasons for delay advanced by each claimant."[31] And that exercise will require class counsel, the claims administrator and the court each to spend time – perhaps substantial time – to establish evaluation parameters, to conduct the evaluations and then to address any appeals for each of a few pre-motion late claims to thousands of them. Therefore, the effort to reject otherwise eligible pre-motion late claims may involve more time and expense, and cause distributions to be delayed longer, than would taking the conventional approach of recommending their acceptance.

> "[E]valuation under the reason for delay prong generally does not admit of a convenient or cost-effective approach."

Further informing the decision whether to impose a claim-by-claim excusable neglect analysis is that evidence that the claims administrator mailed notice to a pre-motion late claimant may be insufficient standing alone to rebut an assertion of unawareness. A cautionary tale is provided by the Third Circuit's opinion in *Cendant PRIDES*, in which it reversed as "not act[ing] in the sound exercise of its discretion" the district court's misapplication of the *Pioneer* factors to a claimed mailroom misadventure:

> The reason for the delay here was either unforeseeable sabotage by mailroom employees who purposefully misled Santander [the late claimant], or even more simply, a mailroom

> which did not operate as it should have in the ordinary course of business. Though the District Court dismissed this reason as "internal to your organization," we have reaffirmed that in *Pioneer*, the Supreme Court "explicitly rejected the argument that excusable neglect applies only to those situations where the failure to comply is a result of circumstances beyond the [claimant's] reasonable control."[32]

As a result, class counsel, to overcome a pre-motion late claimant's assertion of unawareness, may be required to show that, prior to the claim submission deadline, the claimant actually was aware of the proof of claim requirements and deadline.[33] This treatment is consistent with the "mailbox rule," which "provides that the proper and timely mailing of a document raises a rebuttable presumption that the document has been received by the addressee in the usual time."[34] To establish the mailbox rule's rebuttable presumption, however, an item placed in the mail must be "properly addressed," which requires that the item bear the name of the intended recipient, not merely a department name or an employee's title.[35]

> "[U]nder Rule 23(e)(2)(D), pre-motion late claims may not, based on lateness alone, be treated less favorably than timely claims."

These considerations suggest that, unless in connection with seeking preliminary approval class counsel is reasonably certain that the volume of pre-motion late claims will be manageable under the circumstances of a particular settlement, falling back on an excusable neglect analysis that would not begin until after a motion for distribution is filed may not provide the most efficient or cost-effective solution.

Attempt to Cut Off Further Late Claim Filing

Occasionally, class counsel become aware after the claim filing deadline but before claims processing is even close to completion that the volume of pre-motion late claims or their estimated impact on the allocation of the net settlement fund is more substantial than expected. With the distribution motion in the distant future, class counsel are on the horns of a dilemma: If they do nothing—that is, if they wait to address the issue until the distribution motion, additional pre-motion late claims are likely to be filed in the interim, and class counsel will need to contend with an excusable neglect analysis and all that it entails; but if they take action prior to the completion of claims processing, should they seek prior judicial intervention or do they attempt an extrajudicial remedy? These two options are discussed below.

A fundamental element of class action procedure is that, because the settlement proceeds are in custodia legis, the court must oversee the distribution of settlement proceeds and, as such, only the court has the authority to modify the distribution plans and schedules that, pursuant to its sole authority, it already approved.[36] Almost every judgment entered in connection with a class action settlement includes the explicit reservation by the court of jurisdiction over all matters concerning distributions to class members.[37] Accordingly, class counsel's ability properly to implement self-help is significantly limited: Class counsel may, without infringing on the court's authority, advise class members of the position that, at distribution, class counsel themselves intend to take concerning late claims.[38] But anything more – that is, advising class members of matters solely within the court's purview or implying the court's position – not only risks judicial criticism, but could warrant, at class counsel's expense, the imposition of remedial measures.[39]

Let's take the *CRT Indirect* website as an example of overreaching. Each judgment entered in connection with those settlements included the customary reservation of jurisdiction over distribution,[40] and the settlement website correctly advised class members that it "is supervised by counsel and the Court," which is why it is "the only authorized website for this litigation."[41] Nevertheless, *CRT Indirect* class counsel, without seeking judicial approval, published at the top of the website's homepage the following legend: "The deadline to submit claims has passed. We will no longer be processing late claims in connection with the CRT Indirect Purchaser Antitrust Litigation."[42] That disclosure, in addition to being unauthorized, directly conflicts with *Pioneer*, which, as interpreted by the Ninth Circuit, requires *courts*, not class counsel or claims administrators, to consider late claims and to ensure that all claimants have a full and fair opportunity to file claims.[43] Class members that, for one as yet unknown reason or another, had not yet filed claims, were thus advised by *CRT Indirect* class counsel, who appropriated the court's imprimatur to do so, that any claim filed would not be processed. By taking for themselves the authority that the court reserved for itself, *CRT Indirect* class counsel dissuaded claim filing—*i.e.*, any claim that will not be processed cannot receive a distribution; without the possibility of receiving a distribution, filing a claim is a futile act, which deprived class members of the due process that judicial consideration under *Pioneer* and *Pincay* would have provided. As a result of a motion filed to remedy that substantial due process problem,[44] *CRT Indirect* class counsel remediated their disclosure.

> "[C]lass counsel, to overcome a pre-motion late claimant's assertion of unawareness, may be required to show that, prior to the claim submission deadline, the claimant actually was aware of the proof of claim requirements and deadline."

Given class counsel's obligation to include in the settlement recovery as many class members as possible, class counsel must consider how they will support a request that, although timely claims are still being processed, and, therefore, a distribution motion is not imminent, the court should order notice to be disseminated, with the associated costs to be borne by the class, to advise class members of restrictions on late claim filing. And even if class counsel successfully navigates that obstacle, the inevitable result – keeping in mind that the issue arises because of the volume and value of pre-motion late claims – is the imposition of an excusable neglect analysis. Accordingly, attempting to address pre-motion late claims after the claim deadline but before a distribution motion likely will be more trouble than it is worth.

Distribution Delays Not Caused by Late Claims

When a distribution is delayed through no fault of late claimants—for example, as a result of pending appeals, and those claims are completed before a distribution is presented to the court, there is little (if any) basis on which to reject them: The settlement proceeds remained on deposit in escrow, and no distribution may have occurred until the appeals were resolved and not subject to further appeal.[45] Absent an irrefutable showing of bad faith, I can think of no rationale that, considering the mandate of amended Rule 23(e)(2)(C) and prior precedent, would support rejecting pre-motion late claims while the pendency of appeals prevents distribution: No delay has been occasioned by those claims, and, therefore, the acceptance of them cannot prejudice timely claimants. Nevertheless, that is exactly what *CRT Indirect* class counsel attempted to do even though, as a result of pending appeals, no distribution has been possible since 2015.[46] *CRT Indirect* class counsel's position, which runs afoul of amended Rule 23(e)(2)(C)(ii), of *Pioneer* and its progeny, and of a variety of other pre-existing precedent, stands in stark contrast to the different approaches that, in connection with the settlements obtained in other class actions, class counsel, including by *CRT Indirect* class counsel in connection with the settlements obtained in other class actions, have taken to include in settlement recoveries pre-motion late claims.[47] As these settlements demonstrate, class counsel should carefully consider their options before asking a court to exclude pre-motion late claims.

Placeholder Claims

Placeholder claims, which, by definition, are not late, and, therefore, would not appear to implicate the *Pioneer* excusable neglect analysis, also are a scourge to the efficient administration of class action settlements. A possible exception may be presented when class counsel proposes, and a court approves, a definition of a timely proof of claim as one that, on or before the claims filing deadline, is submitted with all required data.[48] While this approach may have merit—it puts putative class members

on notice, whether it will withstand challenge or achieve the desired result is not clear. First, and as described below, curing deficient claims – a claim without transactional data fairly may be characterized as "deficient" – is a standard and universally approved methodology; so, too, is allowing a post-deadline amendment to a claim that was filed before a deadline—it would seem difficult persuasively to argue that providing after a deadline the transactional data to support a claim that was filed before that deadline does not "amend" it. But even if the stricter definition of "timely" survives, it necessitates application of the *Pioneer* excusable neglect analysis. And as explained above, that analysis may, depending on volume and other potentially complicating factors, be time consuming and expensive and, therefore, rather than reduce or eliminate placeholder claims, result in their acceptance. Class counsel may wish to consider, and then plan to address, the placeholder claim issues presented by the following two categories: "deadline-imminent" placeholder claims, which are proofs of claim that are submitted shortly before the claims filing deadline; and "other" placeholder claims, which are all placeholder claims other than deadline imminent ones. Both are discussed below.

Deadline-Imminent Placeholder Claims

This category of placeholder claim – when the amount of time beginning when a class member first learns about a class action settlement and ending on the claim filing deadline is insufficient for the class member reasonably to identify, collect, analyze and submit the required transactional data – has the benefit of equity. Though the reported precedent is thin, it does appear to support the application of the "good faith" prong of the *Pioneer* excusable neglect analysis. In *Electrical Carbon Products*, for example, the court held that the filing of blank claim forms was not bad faith and that, under certain circumstances, such a filing is "understandable": "[T]he Court does not find that the earlier filing of blank forms shows a lack of good faith. It is certainly understandable and likely that a claimant would become aware of its class membership before it was able to calculate its claims."[49] Class counsel should consider accepting deadline-imminent placeholder claims when the date on which the claimant first learned of the claim filing requirements is reasonably established, the amount of time between that date and the deadline is deemed insufficient for inclusion of transactional data, and the required data was submitted in a reasonable amount of time after the claim was filed.

Other Placeholder Claims

Other placeholder claims do not possess the same equitable draw. Nevertheless, submitting transactional data after the deadline may be considered curing deficient timely claims or as supplementing them. Without proper planning, they may be difficult to reject *en masse*.

Curing Deficient Timely Filed Proofs of Claim

There is no rational basis on which to treat placeholder claims differently than any timely filed claim that, because it included some but not all data, was deficient. Whether a proof of claim was blank or partially incomplete, the claimant, as part of the claims administrator's regular and customary deficiency process, is notified that, to the extent that missing data is not submitted by a deadline set forth in that notice, the claim would be rejected.[50] Accordingly, it is commonplace to treat placeholder claims in the same manner as partially incomplete claims. The reasoning for the identical treatment is practical: neither may be approved to the extent that required data is missing—that is, there is no difference, from the claim administrator's perspective, between a timely filed partially incomplete proof of claim and a timely filed blank one. Given class counsel's duty to include in a distribution as many class members as possible, they may be hard pressed to explain preventing any class member from adding to their timely filed claims.

Supplementing Timely Filed Proofs of Claim

Support for treating the supplementation of timely-filed claims the post-deadline submissions of transactional data is found in precedent established under the Bankruptcy Code, the "birthplace" of the Supreme Court's *Pioneer* excusable neglect standard.[51] In *Enron*, for example, the Second Circuit held that "amendment to a claim is freely allowed where the purpose is to cure a defect in the claim as originally filed [or] to describe the claim with greater particularity."[52] If the amendment meets that standard, "courts will 'examine each fact within the case and determine whether it would be equitable to allow the amendment.'"[53] The Second Circuit then concluded in *Enron* that "this equitable analysis of belated amendments to claims closely resembles *Pioneer*'s 'excusable neglect' analysis of belated new claims."[54] Because submitting transactional information to support a placeholder claim may fairly be characterized both as curing a defect in the placeholder claim and as describing it with greater particularity, the "late amendment" may be freely allowed unless, under the particular circumstances of a settlement, it would be inequitable to do so. The takeaway, especially now under amended Rule 23(e)(2)(C)(ii), is that dealing with other placeholder claims, as with late claims, requires planning prior to seeking preliminary approval.

> "[T]he effort to reject otherwise eligible pre-motion late claims may involve more time and expense, and cause distributions to be delayed longer, than would taking the conventional approach of recommending their acceptance."

Conclusion

To avoid delaying distributions until the resolution of protracted satellite litigation over late or placeholder claims, class counsel should, preferably in connection with preliminary approval, undertake a settlement-specific proactive approach with a bias toward accepting them.[55] Class counsel may want to consider including in the settlement notice or in the proof of claim form a disclosure that explains the manner in which they intend to address late claims or late data submissions, as well as any recommended or required steps that should or must be taken or information that must be provided by putative class members that submit claims after the deadline or that cannot submit with their timely claim the information required by the claim form.

Notes

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1 *See, e.g.*, *In re Bear Stearns Cos., Inc. Sec., Deriv. & ERISA Litig.*, 297 F.R.D. 90, 95 (S.D.N.Y. 2013) ("Counsel argued that 'it would be unfair to deny payment of an otherwise eligible claim received while claims were still being processed because it was submitted after the Court-approved claims filing deadline.'").

2 *In re TFT-LCD* (*Flat Panel*) *Antitrust Litig.*, No. CV-07-5944, IPP's & Settling States' Jt. ... Mot. to ... Distrib., Doc. 9217 ("*LCD Indirect* Distrib. Mot."), at 7:17-24 (N.D. Cal. Sep. 12, 2014); *accord*, *e.g.*, *In re Dynamic Random Memory* (*DRAM*) *Antitrust Litig.*, MDL No. 1486 ("*DRAM*"), Jt. Mot. Distrib. Settle. Funds, Doc. 2273 ("*DRAM* Distrib. Mot."), at 11:4-17 (N.D. Cal. May 4, 2016) ("Although the initial claims deadline was August 1, 2014, the distribution has not been delayed by the additional claims filed between August 1, 2014 and July 1, 2015, and considerations of overall fairness to the Settlement Class outweigh any prejudice to those class members who filed in the 'first wave' of claims by August 1, 2014.").

3 *See, e.g.*, *Police Ret. Sys. of St. Louis v. Granite Construct. Inc.*, No. 3:19-cv-04744, 2022 WL 816473, at *4 (N.D. Cal. Mar. 17, 2022) ("Both Epiq and class counsel affirmed multiple times that Epiq would continue to accept and process claims received after the January deadline, until such time as doing so would impact disbursement ... .").

4 *In re Bank of Am. Corp. Sec., Deriv. & ERISA Litig.*, Master File No. 09 MD 2058, Mem. Supp. of Lead Pls' Mot. for ... Mod. of Distrib. Ord. ..., Doc. 1024 ("*Bank Am.* Mem."), at 5 n.7 (S.D.N.Y. Nov. 14, 2016); *accord, e.g.*, *Rubio Delgado v. Aerotek, Inc.*, No. 13-cv-03105, 2015 WL 3623627, at *7 (N.D. Cal. June 10, 2015) ("[T]he goal [of a class action settlement] should be to distribute settlement payments to as many class members as possible."); *Park v. The Thomson Corp.*, No. 05 Civ. 2931, 2008 WL 4684232, at *5 (S.D.N.Y. Oct. 22, 2008) ("Because the Amended Settlement enables as many Class Members as possible to receive a fair share of the settlement amount, the allocation plan is approved, and final approval is granted to the Amended Settlement."); *In re Currency Conv. Fee Antitrust Litig.*, 263 F.R.D. 110, 126 (S.D.N.Y. 2009) (same), *aff'd sub nom. Priceline.com, Inc. v. Silberman*, 405 F. App'x 532 (2d Cir. 2010).

5 Fed. R. Civ. P. 23 Adv. Comm. Notes 2018 Amend., Subd. (e)(2), ¶¶ (C) & (D).

6 *Id.*

7 *Id.*

8 *Id.*

9 *See, e.g.*, *In re LIBOR-Based Fin. Instr. Antitrust Litig.*, 327 F.R.D. 483, 496 (S.D.N.Y. 2018) ("The goal of any distribution method is to get as much of the available damages remedy to class members as possible and in as simple and expedient a manner as possible.") (quoting 4 William B. Rubenstein, Newberg on Class Actions ("Newberg") §12:15 (5th ed.) (Westlaw 2018); *accord Krakauer v. Dish Network, LLC*, Case No. 1:14-CV-333, 2017 WL 3206324, at *7 (M.D.N.C. July 27, 2017) (citing Newberg §12.15 (5th ed. 2017)).

10 *In re Citigroup Inc. Sec. Litig.*, Nos. 09 MD 2070 & 07 Civ. 9901, 2014 WL 2445714, at *2 (S.D.N.Y. May 30, 2014); *see id.* at *1 ("The Court concludes that ... the class members should receive their recovery as expeditiously as possible.").

11 Under customary "quick pay" attorney fee provisions, fees are not payable to class counsel until final approval is granted; accordingly, any delay in granting final approval postpones class counsel's receipt of their fees. Also, the 2018 Amendments now require courts, when they evaluate whether a proposed settlement is adequate, to consider "the terms of any proposed award of attorney's fees, including timing of payment." Fed. R. Civ. P. 23(e)(2)(C)(iii); *see* Fed. R. Civ. P. 23 Adv. Comm. Notes 2018 Amend., Subd. (e)(1) (In some cases, it will be important to relate the amount of an award of attorney's fees to the expected benefits to the class. One way to address this issue is to defer some or all of the award of attorney's fees until the court is advised of the actual claims rate and results."); *see, e.g., Hart v. BHH, LLC*, 334 F.R.D. 74, 77 (S.D.N.Y. 2020) (citing Rule 23(e)(2)(C)(iii) & *SEC v. Bear, Stearns & Co.*, 626 F. Supp.2d 402, 403 (S.D.N.Y. 2009) (Denying preliminary approval because "[r]ewarding counsel prior to compensating the class conflicts with Rule 23(e)'s mandate for fairness, reasonableness, and adequacy."); *accord Hernandez v. Between the Bread 55th Inc.*, 496 F. Supp.3d 791, 806-08 (S.D.N.Y. 2020). *But see In re PPDAI Group Inc. Sec. Litig.*, No. 18-CV-6716, 2022 WL 198491, at *14, n.14 (E.D.N.Y. Jan. 21, 2022) (declining to follow *BHH*) (quoting *Mikhlin v. Oasmia Pharm. AB*, No. 19-CV-4349, 2021 WL 1259559, at *7 (E.D.N.Y. Jan. 6, 2021). A further discussion concerning how the 2018 Amendments may affect "quick pay" provisions is set forth in *Settlement Management No Longer Just a Good Idea, Under Amended Rule 23, It's the Law*, available at www.JNLFirm.com.

12 *See, e.g., In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 801 (3d Cir. 1995) ("class attorneys, purporting to represent a class, also owe the entire class a fiduciary duty"); *accord In re Williams-Sonoma, Inc.*, 947 F.3d 535 (9th Cir. 2020) (class counsel owes fiduciary duties to unnamed class members) (citing 6 Newberg §19:2 (5th ed.).

13 *In re Cathode Ray Tube (CRT) Antitrust Litig.*, Master File No. 07-cv-05944 ("*CRT Indirect*"), IPPs' Reply Obj. Prop. Plan of Distrib. ..., Doc. 5255, at 14:1-8 (N.D. Cal. Mar. 7, 2018).

14 *CRT Indirect*, Resp. FRS IPPs' Mot. Amend Final App. Ord., ..., Doc. 5609, at 5:2-10-1 (Oct. 3, 2019).

15 *Parker v. Anderson*, 667 F.2d 1204, 1211 (5th Cir. 1982); *accord, e.g., Neilson v. Union Bank of Calif., N.A.*, No. CV 02-06942, 2003 WL 27374138, at *6 n.17 (C.D. Cal. Aug. 12, 2003) (It is an "unexceptional proposition that class counsel must act in the best interests of the class as a whole, and may not favor certain class members over others."), *quoted in Castellanos v. City of Reno*, No. 3:19-cv-00693, 2021 WL 3634662, at *7 (D. Nev. Aug. 16, 2021).

16 *In re Orthopedic Bone Screw Prod. Liab. Litig.*, 246 F.3d 315, 321 (3d Cir. 2001) (comparing *Georgine v. Amchem Prod., Inc.*, No. 93-0215, 1995 WL 251402, at *5 (E.D. Pa. Apr. 26, 1995) ("This Court has an interest in enforcing its deadlines and ensuring that this litigation finally comes to a conclusion.") *with* Manual Complex Litig. §30.47 ("Adequate time should be allowed for late claims before any refund or other disposition of settlement funds occurs.")), *cited in Craft v. Health Care Svce. Corp.*, No. 14 C 5853, 2018 WL 5315204, at *5 (N.D. Ill. Oct. 26, 2018); *accord Curtiss-Wright Corp. v. Helfand*, 687 F.2d 171, 174 (7th Cir. 1982) ("[T]he allocation of an inadequate fund among competing complainants is a traditional equitable function."), *quoted in In re Agent Orange Prod. Liab. Litig.*, 818 F.2d 179, 182 (2d Cir. 1987).

17 246 F.3d at 329 (quotation omitted); *cited in Craft*, 2018 WL 5315204, at *6.

18 *E.g.*, *Orthopedic Bone Screw*, 246 F.3d at 321-22 ("[T]he "excusable neglect" standard, as announced in the Supreme Court's ruling in *Pioneer Inv. Servs. v. Brunswick Assoc. Ltd. P'ship,* 507 U.S. 380 (1993), provides the analysis for consideration of untimely claims for inclusion in a class action settlement.").

19 507 U.S. at 391-95. The Court identified the following four non-exclusive considerations: "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Id.* at 395.

20 *Orthopedic Bone Screw*, 246 F.3d at 322 n.6., *quoted in Elec. Carbon Prods.*, 622 F. Supp.2d at 154 n.16. And as Judge Sweet held in *Bear Stearns*:

> Excusable neglect "is not limited strictly to omissions caused by circumstances beyond the control of the movant." *Pioneer Inv. Servs. Co.,* 507 U.S. at 392, "[F]or purposes of Rule 60(b), 'excusable neglect' is understood to encompass situations in which the failure to comply with a filing deadline is attributable to negligence." *Id.* at 394. "[E]xclud[ing] every instance of an inadvertent or negligent omission would ignore the most natural meaning of the word 'neglect.'" *Id.* at 394-95. "The word [neglect] therefore encompasses both simple, faultless omissions to act and, more commonly, omissions caused by carelessness." *Id.* at 388.

297 F.R.D. at 98.

21 *See, e.g.*, *Orthopedic Bone Screw*, 246 F.3d at 321-22.

22 *See, e.g.*, *Orthopedic Bone Screw*, 246 F.3d at 323-24 ("[H]ere the liability of AcroMed has been capped by the Settlement Agreement at over $100 million. Inclusion of Sambolin's claim, and those of others similarly situated, has no effect on the amount AcroMed will pay to those aggrieved by its products.").

23 *In re Elec. Carbon Prods. Antitrust Litig.*, 622 F. Supp.2d 144, 156 (D.N.J. 2007); *accord Bear Stearns*, 297 F.R.D. at 96 ("[C]lass members are not prejudiced since they are obligated to share a fixed recovery with other equally entitled claimants and timely-filed claimants have no justifiable expectation of any particular payout."); *Grottano v. City of New York*, 15-cv-9242, 2021 WL 6427554, at *1 (S.D.N.Y. Dec. 17, 2021) ("'[T]here is an implicit recognition that late claims should ordinarily be considered in the administration of a settlement.' ... With respect to the first of these four factors – the danger of prejudice to the non-movants – there is little to no risk of prejudice.") (quotation and citations omitted); *Blank v. Jacobs*, No. 03-cv-2111, 2013 WL 1310503, at *2 (E.D.N.Y. Mar. 27, 2013) (citing *In re Oxford Health Plans, Inc.*, 383 F. App' x 43, 45 (2d Cir. 2010) ("in the ordinary case there will be little prejudice or disruption caused by allowing a late-submitted claim"); *In re Gilat Satellite Networks, Ltd.*, No. 02-cv-1510, 2009 WL 803382, at *6 (E.D.N.Y. Mar. 25, 2009) ("[T]here is an implicit recognition that late claims should ordinarily be considered in the administration of a settlement. ... Because there is no showing of delay or prejudice, the late filed claims should be included in the class for settlement disbursement.")); *In re Cendant Corp. PRIDES Litig.*, 189 F.R.D. 321, 324-25 (D.N.J. 1999) (in claims made settlement, no prejudice to defendant caused by extending claims filing date), *aff'd*, 233 F.3d 188, 196-97 (3d Cir. 2000); *Dahingo v. Royal Carib. Cruises, Ltd.*, 312 F. Supp.2d 440, 446 (S.D.N.Y. 2004) (Allowing late-filed claims to participate in a settlement does not prejudice those who filed timely because "the plaintiffs who had filed timely claims had no justifiable expectation in any particular pay-out."); *In re Crazy Eddie Sec. Litig.*, 906 F. Supp. 840, 844-45 (E.D.N.Y. 1995) (in claims made settlement, no prejudice to defendants caused by allowing valid late claims); *In re Agent Orange Prod. Liab. Litig.*, 689 F. Supp. 1250, 1263

(E.D.N.Y. 1988) (Weinstein, J.) (Because "no payments have yet been made to any claimants, earlier estimates of possible payment amounts did not confer on the early claimants any right to those particular amounts.").

24 *Orthopedic Bone Screw*, 246 F.3d at 324 (citing *In re Cendant Corp. PRIDES Litig.*, 235 F.3d 176, 184 (3d Cir. 2000)), *quoted in, inter alia*, *Bear Stearns*, 297 F.R.D. at 96 ("[C]lass members are not prejudiced since they are obligated to share a fixed recovery with other equally entitled claimants and timely-filed claimants have no justifiable expectation of any particular payout."); *accord, e.g., CME Grp. Inc. v. Chicago Bd. Op. Exch., Inc.*, CIV.A. 2369, 2009 WL 1856693, at *3 (Del. Ch. June 25, 2009) ("Even though other Group A Members' distributions will be diminished somewhat ..., the additional proceeds from the settlement pool they would receive if late filers were excluded is simply a windfall. Accordingly, they suffer no prejudice.").

25 *Elec. Carbon Prods.*, 622 F. Supp.2d at 156 ("[D]espite the significant value of the late claims, there is no fatal prejudice as that term is defined in *Orthopedic Bone Screw* with regard to the mere diminution of the expected recovery of the earlier claimants.").

26 *In re Authentidate Hldg. Corp. Sec. Litig.*, Master File No. 05 Civ. 5323, 2013 WL 324153, at *1 (S.D.N.Y. Jan. 25, 2013), *cited in Blank*, 2013 WL 1310503, at *3.

27 *See* Fed. R. Civ. P. 23 Adv. Comm. Notes 2018 Amend., Subd. (e)(2) &¶¶ (C) & (D) ("Matters of concern could include whether the apportionment of relief among class members takes appropriate account of differences among their claims ... ."); *accord* Newberg §13:56 (5th ed.) (Westlaw Dec. 2021) ("A distribution of relief that favors some class members at the expense of others may be a red flag that class counsel have sold out some of the class members at the expense of others.").

28 *True v. Am. Honda Motor Co.*, 749 F. Supp.2d 1052, 1069 (C.D. Cal. 2010) (rejecting settlement as not fair, reasonable and adequate because "[p]laintiffs do not suggest that those in the 'Option C' sub-group have any different legal claims than the other class members, or that they suffered any greater damages.") (citing cases), *quoted in, e.g.*, *Elder*, 2020 WL 11762284 at *8; *Gaffney*, 2020 WL 12182761, at *6; *accord Petruzzi's, Inc. v. Darling-Delaware Co., Inc.*, 880 F. Supp. 292, 300-01 (M.D. Pa. 1995) ("[T]he same type of injury was purportedly sustained by all class members, and all class members have the same right of recovery against Moyer. Thus, while disparate treatment of class members may be justified by a demonstration that the favored class members have different claims or greater damages, no such demonstration has been made here.") (citation omitted); *cf. Agent Orange*, 611 F. Supp. 1396, 1411 (E.D.N.Y. 1985) ("[i]f one set of claims had a greater likelihood of ultimate success than another set of claims, it is appropriate to weigh 'distribution of the settlement ... in favor of plaintiffs whose claims comprise the set' that was more likely to succeed.") (quotations and citations omitted), *aff'd in part & rev'd in part on other grounds*, *In re Agent Orange Prod. Liab. Litig. MDL No. 381*, 818 F.2d 179 (2d Cir. 1987).

29 *Radcliffe v. Hernandez*, 794 Fed. Appx. 605, 607 (9th Cir. 2019); *accord Gaffney v. City of Santa Clara*, No. 18-cv-06500, 2020 WL 12182761, at *6 (N.D. Cal. Apr. 13, 2020) ("Courts generally are wary of settlement agreements where some class members are treated differently than others.") (quotations omitted); *Elder v. Hilton Worldwide Hldgs., Inc.*, No. 16-cv-00278, 2020 WL 11762284, at *8 (N.D. Cal. Apr. 29, 2020) (Preferential treatment raises concern when a settlement "may be trading the claims of the latter group away in order to enrich the former group.") (quotation and citations omitted).

30 *See, e.g.*, *Oxford Health Plans*, 383 F. App' x at 45 (because there is no prejudice caused by including untimely claims, "we focus our analysis on the asserted reason for the claimant's delay"), *cited in Blank*, 2013 WL 1310503, at *2.

31 *Elec. Carbon Prods.*, 622 F. Supp.2d at 160; *see, e.g.*, *id.* at 148 ("[T]he Court looks at each claimant's conduct and determines whether its delay in filing a claim is the result of 'excusable neglect' as that term has been defined in this Circuit.") (citing *Orthopedic Bone Screw*, 246 F.3d at 323); *id.* at 152-52 ("[T]he Court must make an equitable determination whether there was 'excusable neglect' for each claimant."); *Bank Am.* Mem., at 13:23-26 ("Should the Court not … allow for the acceptance of Late Claims, the individual requests of Claimants would have to be put before the Court and the merits of each such request would have to be parsed and ruled upon.").

32 *In re Cendant Corp. PRIDES Litig.*, 235 F.3d 176, 183-84 (3d Cir. 2000) (citing *In re O'Brien Envntl. Energy, Inc.*, 188 F.3d 116, 125 (3d Cir. 1999)).

33 *See, e.g.*, *In re Petrobras Sec. Litig.*, No. 14-cv-9662, Order, Doc. No. 947 (rejected late claimant allowed to submit information to support assertion that he did not receive the notice packet).

34 *E.g.*, *Schikore v. BankAmerica Supp'l Ret. Plan*, 269 F.3d 956, 961 (9th Cir. 2001).

35 *See, e.g.*, *Patterson v. Rubin*, 89 F.3d 838 (Table), 1996 WL 225710, at *2 (7th Cir. Apr. 30, 1996) (finding "the envelope was not properly addressed, lacking the name of the Assistant United States Attorney assigned to the case"); *In re Fayetteville-Floyd Gas Co., Inc.*, Case No 12-20265, 2014 WL 8663585, at *6 (Bankr. S.D. Tex. Nov. 17, 2014) (declining to find a notice to a family farm owned by a father and three sons to have been improperly addressed just because it was addressed to the farm but not to the father); *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1314 & n.6 (Fed. Cir. 2016) ("Here, it was long-prevalent practice for people receiving paper mail to look at an envelope and discard certain letters, without opening them, from sources from which they did not wish to receive mail based on characteristics of the mail.") (citing *Jones v. Flowers*, 547 U.S. 220, 248 (2006) (Thomas, J., dissenting) ("it is common for 'an occupant who receives generically addressed mail [to] discard it as junk mail'").

36 *See, e.g.*, *In re Citigroup Inc. Sec. Litig.*, Nos. 09-md-2070 & 07-CV-9901, 2014 WL 7399039, at *1 (S.D.N.Y. Dec. 29, 2014) ("Determinations of whether and how to distribute class settlement funds require district courts to '"exercise[ ] independent judgment to protect the interests of class absentees, regardless of their apparent indifference," … as well as to protect the interests of more vocal members of the class.'") (quoting *Agent Orange,* 818 F.2d at 18 (internal quotation marks omitted)). A court's "equitable powers are retained by the court until the settlement fund is actually distributed." *See Orthopedic Bone Screw*, 246 F.3d at 321 (citing *Zients v. LaMorte,* 459 F.2d 628, 630 (2d Cir. 1972); *accord Alaska Elec. Pen. Fund v. Bank of Am., Corp.*, No. 14-CV-7126, 2020 WL 916853, at *1 (S.D.N.Y. Feb. 26, 2020).

37 *See, e.g.*, *Petrobras*, Ord. & Final J., Doc. No. 838, at ¶14 (S.D.N.Y. July 2, 2018) ("The Court reserves jurisdiction [over] … (b) the allowance, disallowance or adjustment of any Settlement Class Member's claim on equitable grounds and any award or distribution of the Settlement Funds; (c) disposition of the Settlement Funds; … .").

38 *See, e.g.*, *LCD Indirect* Distrib. Mot. at 4:5-9 (Settlement website advised of class counsel's intent: "The deadline to file a claim … has now passed. Counsel intend to recommend that the Court accept late claims submitted after December 6, 2012 until June 6, 2014, but not allow late claims submitted after June 6, 2014."); *DRAM* Distrib. Mot. at 10:24-11:3 ("Co-Lead Counsel instructed Rust to alert claimants that after July 1, 2015, late claims would no longer be recommended for payment, and a posting on the settlement website stated that '[t]he deadline to submit claims has passed. … Counsel will recommend to the Court that claims submitted after July 1, 2015 not be accepted.'").

39 *See, e.g.*, *Wagner v. Prof. Engin'rs in Cal. Gov't*, 354 F.3d 1036, 1041-42 (9th Cir. 2004) (To effectively "unring the bell" caused by a defective notice, "the proper remedy is … to issue proper notice and give another opportunity" for the recipients to act accordingly.); *Cummings v. Connell*, 316 F.3d 886, 894 (9th Cir. 2003) (In the case of a defective notice, the issuer "must send a corrected notice.").

40 *See, e.g.*, *CRT Indirect*, Final J. of Dismiss. with Prej. as to … [Certain] Defs., Doc. 4717, at 3:7-10 ("[T]his Court hereby retains continuing and exclusive jurisdiction over: (a) … any distribution to Class Members pursuant to further orders of this Court; (b) disposition of the Settlement Fund; … .").

41 Screenshot of https://crtclaims.com/ (Mar. 22, 2018) (on filed with author); *accord* screenshot of https://crtclaims.com/ (Aug. 24, 2019) (on filed with author).

42 *Id.*

43 *See Pincay v. Andrews*, 389 F.3d 853, 860 (9th Cir. 2004) (en banc) ("*Pioneer* cautioned against 'erecting a rigid barrier against late filings attributable in any degree to the movant's negligence. There should similarly be no rigid legal rule against late filings attributable to any particular type of negligence.") (citing *Pioneer*, 507 U.S. 380, 395 n.14 (1993)).

44 *See CRT Indirect*, Mot. Req. Mod. Settle. Website …, Doc. 5710 (Apr. 10, 2020), *w'drawn*, Doc. 5725 (May 19, 2020).

45 *Compare, e.g.*, *CRT Indirect*, Settle. Agmt. (LG Electronics), Doc. No. 1933-1, at ¶11 (Sept. 16, 2013):

> This agreement will become final when … (i) the Court has entered a final order … approving this Agreement … and a final judgment dismissing the Action with prejudice …, and (ii) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment … has expired or, if appealed, approval of this Agreement and the final judgment … have been affirmed in their entirety by the Court of last resort … and such affirmance has become no longer subject to further appeal or review. … .

with, e.g., id. at ¶20:

> After this Agreement becomes final within the meaning of Paragraph 11, the Settlement Fund shall be distributed in accordance with a plan to be submitted at the appropriate time by Plaintiffs, subject to approval of the Court. … .

46 *See* notes 10, 29-31, *supra*, and accompanying text;

47 *See, e.g.*, *In re Lithium-Ion Batteries Antitrust Litig.*, No. 13-MD-02420, 2d Rpt. Claims Status & Req. Ext. Claims Deadline, Doc. 2120, at 2:4-10 (N.D. Cal. Jan. 5, 2018) (As a result of the pendency of multiple appeals, class counsel requested serial claims filing deadline extensions "to maximize the number of claims": "The distribution of the settlement corpus will be impossible while the appeals remain pending

... . Consequently, no purpose is served by ending the claims period while the appeals are pending."); *accord In re Optical Disk Drive Prods. Antitrust Litig.*, No. 3:10-md-02143, IPPs' Mot. Prelim. App. Settle. with Defs. Samsung Elec. Co., Ltd., ..., Doc. 2852, at 5:3-5 (N.D. Cal. Aug. 23, 2018) (class counsel requested court reopen claims filing period for the prior seven settlements). *See also* Note 2, *supra*, and accompanying text.

48 *See, e.g.*, *Illinois v. Hitachi Ltd.*, Long Form Settle. Notice, No. 12 CH 35266, at 5 (Ill. Ct. Ch.) (on file with the author); *see id.*, Proof of Claim, at 2 ("Incomplete or inaccurate claim forms submitted as placeholders to be completed later will not be valid."); *see also In re Signet Jewelers Ltd. Sec. Litig.*, No. 1:16-cv-06728, Long Form Settle. Notice, at ¶43 (p.10) (S.D.N.Y.) ("To be eligible for a payment from the Settlement, you must ... timely complete and return the Claim Form with adequate supporting documentation ... .").

49 *Elec. Carbon Prods.*, 622 F. Supp.2d at 165 (under an excusable neglect analysis, considering whether claimant acted in good faith when it filed placeholder claim); *accord Crazy Eddie*, 906 F. Supp. at 843 ("[T]he Notice of Claim did not advise claimants of the right to cure and the importance of simply filing a claim within the original deadline, even if the claim were incomplete.").

50 *See Lyngaas v. Curaden AG*, No. 17-10910, 2019 WL 6210690, at *19 (E.D. Mich. Nov. 21, 2019) (claims administrator "shall afford an individual claimant a second chance to fill out an incomplete form"); *Krakauer*, 2017 WL 3206324, at *11 (same); *Lessard v. City of Allen Park*, No. 00-74306, 2005 WL 3671354, at *3 (E.D. Mich. Nov. 28, 2005) (claimants who submitted incomplete claim forms were given "an opportunity to cure any defects in their submissions").

51 *See, e.g.*, *In re Enron Corp.*, 419 F.3d 115, 133-34 (2d Cir. 2005) ("[T]he bankruptcy rules permit courts to accept late-filed amendments to timely filed proofs of claim.").

52 419 F.3d at 133 (quoting *In re Integrated Res., Inc.*, 157 B.R. 66, 70 (S.D.N.Y. 1993)), *quoted in In re Mallinckrodt PLC*, No. 20-12522, 2021 WL 2460227, at *6 (D. Del. June 16, 2021) ("belated amendments will ordinarily be 'freely allowed' where other parties will not be prejudiced"), *and in In re Lehman Bros. Inc.*, No. 15-cv-6829, 2016 WL 316857, at *8 (S.D.N.Y. Jan. 26, 2016).

53 *Id.* (quoting *Integrated Res.*, 157 B.R. at 70).

54 *Id.* at 133-34 (citing *In re Enron Corp.*, 298 B.R. 513, 524-25 (Bankr. S.D.N.Y. 2003) & *In re Brown*, 159 B.R. 710, 715 n.4 (Bankr. D.N.J. 1993) ("[T]he equitable analysis applied in cases decided under Rule 7015 is essentially the same analysis that the Supreme Court used to determine what is 'excusable neglect' under Rule 9006(b)(1) for allowing the filing of an untimely claim.")).

55 *See Orthopedic Bone Screw*, 246 F.3d at 321 (A court's primary goal when using its "equitable powers is balancing the goals of expedient settlement distribution and the consideration due to late-arriving class members.") (comparing *Georgine v. Amchem Prod., Inc.*, No. 93–0215, 1995 WL 251402, at *5 (E.D. Pa. Apr. 26, 1995) ("This Court has an interest in enforcing its deadlines and ensuring that this litigation finally comes to a conclusion.") *with* Man. Complex Litig. §30.47 ("Adequate time should be allowed for late claims before any refund or other disposition of settlement funds occurs.")); *see also Granite*, 2022 WL 816473, at *4 ("Both Epiq and class counsel affirmed multiple times that Epiq would continue to accept and process claims received after the January deadline, until such time as doing so would impact disbursement ... ."). A detailed discussion of late claim issues is set forth in *Late & Placeholder Claims*.