Principles of the Law of Aggregate Litigation § 3.01 (2010)

Principles of the Law - Aggregate Litigation

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Chapter 3. Aggregate Settlements

Topic 1. Principles Common to Class and Non-Class Aggregate Settlements

§ 3.01 General Settlement Principles

Comment:

Reporters’ Notes

(a) Claimants and respondents may settle aggregate proceedings on terms that may not be available as remedies in contested lawsuits, provided that any such settlement affords equitable treatment among claimants.

(b) Class actions may also be settled on terms that may include remedies not available in contested lawsuits so long as the settlement is fair, reasonable, and adequate, and so long as class counsel adequately represent all claimants that will be subject to it. The fairness of the settlement must also be addressed by the court as part of the settlement approval process.

(c) Postjudgment challenges to aggregate settlements are disfavored unless no proper procedure for contemporaneous challenge was available and, accordingly, should be limited as set forth in this Chapter.

Comment:

a. Scope. While there are certain common features to all aggregate proceedings in terms of limitations on parties' control of the proceedings, the considerations relating to class actions differ significantly from those relating to non-class aggregate proceedings. Class actions are representative actions; unnamed class members normally do not select either the class representatives or class counsel and typically do not have a contractual relationship to class counsel. (Some variations of the class-action model exist by statute. Under the Private Securities Litigation Reform Act, for example, the “lead plaintiff” designates class counsel, subject to court approval.) No class settlement can be effectuated without a court certifying the class, and all class settlements are subject to court review and approval. Non-class aggregate settlements, by contrast, involve attorneys who have been hired by the individual claimants and whose relation to claimants is subject to contract. Non-class settlements do not normally require court approval, and the approval mechanism is governed by the retainer agreement, subject to rules of professional responsibility. Although judges sometimes review these settlements because of potential conflicts or the presence of minors, this remains the exception. Indeed, many non-class settlements take place without the filing of lawsuits on behalf of many of the affected parties.

As a result, apart from this Section, which sets forth principles applicable to both class and non-class aggregate settlements, class and non-class settlements are treated separately. Principles applicable to class settlements are discussed in §§ 3.02- 3.14. Principles applicable to non-class settlements are discussed in §§ 3.15- 3.18. As with Chapters 1 and 2, the present Chapter does not address the use of bankruptcy proceedings to resolve civil claims, nor does this Chapter address parens patriae settlements.

b. Settlement is a normal feature of litigation, including aggregate litigation. The goal of this Chapter is to ensure that settlements are not unduly impeded while, at the same time, requiring protections that facilitate the underlying fairness to the class of any
settlement reached. Litigation of claims that the parties wish to settle imposes needless costs on the judicial system and the parties.

c. Settlement on terms not permissible in contested litigation. In the context of a contested case, fundamental principles of due process, remedy, and other law impose substantial limitations on the relief that may be imposed. For instance, a jury must ordinarily liquidate the recovery due to a particular claimant, taking note of all factors bearing on the recovery. In the context of a settlement, however, these same limitations may not apply. As discussed in § 3.07, for instance, a cy pres award might well be a feasible way to settle aggregate litigation even if, in a contested case, the same claimants might not be compelled to accept a cy pres award in lieu of individualized damages. As another example, aggregate settlements sometimes ignore factors that might influence the size of jury verdicts, for example, by treating all persons in particular disease categories the same without detailed proof of individual circumstances.

d. Timing of challenges to settlements. For both class and non-class aggregate settlements, the approach of this Chapter is to require that, with limited exceptions, any challenges to a settlement be made at the time the settlement is reached (and, if applicable, approved by the court). This approach enables the trial court and the parties to address potential problems before the settlement becomes final, as opposed to waiting and raising issues on collateral attack. In the class-action settlement context, this process is facilitated by allowing for early appellate review of class-settlement issues. See § 3.12.

It should be noted that the goal of achieving finality of settlement and requiring challenges to the settlement at the time the settlement is reached does not foreclose postsettlement challenges by claimants against their counsel for grievances relating to the settlement. See § 3.14(b).

Reporters’ Notes


Comment b. The concept of cy pres settlements is discussed in § 3.07. For authorities supporting the position that settlement recoveries need not comport with the requirements for awards in contested cases, see, e.g., Manual for Complex Litigation (Fourth) § 21.662, at 333 n.1001 (2004).

Comment c. Restrictions on collateral challenges to class settlements are discussed in § 3.14.


Effect on current law. Implementation of these principles will change current law as explained in §§ 3.02-3.18.