

A Trap for the Unwary: Fraud Rising in Claims-Made Class Action Settlements

Article By:

Michael D. Leffel

McKenzie L. Ahmet

Andrew C. Gresik

When settling consumer product class actions, many parties agree to resolve their claims using what is known as a “claims-made” settlement model. When a claims-made settlement is reached, class members must submit a “claim” to receive a portion of the monetary settlement. A claims-made process is justified in many circumstances, including, for example: when the identity of the class members or contact information for them is not readily available; when the amount a consumer may have paid for a particular product is not known to the defendant; or where there are other issues unique to each individual class member that might impact their portion of the recovery. Depending on the nature of the agreement, a class member may make a claim by, for example, submitting a receipt showing purchase of the at-issue product, filling out an online form, or, in some cases, merely by clicking a few buttons.

In principle, and oftentimes in practice, claims-made settlements are an effective and efficient way to resolve class claims. However, over the past few years, evidence suggests that claims-made settlements — particularly those administered digitally — have become saturated with fraudulent claims. For example, in a case settled recently in Wisconsin, while counsel for plaintiffs and defendants were aware that the class could not have included more than roughly 18,000 individuals, more than 780,000 claims were submitted in the settlement. Fortunately, in that case, there were measures in the settlement agreement to ferret out obvious instances of abuse, but the situation demonstrates the vast number of fraudulent claims that may be submitted in a claims-made settlement.

This is not an isolated example. In March 2024, a claims-made settlement resolving a consumer product suit against the manufacturer of an eyelash serum generated 6,526,866 claims by the end of the claims period. Just under 200,000 of these claims were deemed to be valid by the settlement administrator, meaning that an astounding 97% of claims made were fraudulent or otherwise invalid. See *Nixon v. Grande Cosmetics, LLC*, No. 1:22-cv-06639 (D.N.J. March 7, 2024) (Dkt. 52).

While it is difficult to pinpoint the exact cause of the seemingly dramatic increase in fraudulent claims,

it is safe to assume that online publicity and internet virality play a nonnegligible role. Over the past few years, several claims-made settlements have gone viral on Twitter, TikTok, and other social media platforms, and countless websites have popped up that are dedicated to gathering and publicizing claims-made settlements. While this online publicity provides greater notice and easy access to potential valid claimants, it also increases the likelihood of catching the attention of fraudsters seeking to make a quick buck.

What's more, there is evidence that some are making use of Artificial Intelligence (AI) and online bots to file claim after claim when news of a new settlement hits the internet. For example, a claims-made settlement approved in California federal court saw nearly 5,500 claims originating from the same IP address, with nearly 1,000 claims submitted from the address of one single-family home. See *Opperman v. Kong Techs, Inc.*, No. 3:13-cv-00453-JST (N.D. Cal. Nov. 30, 2017) (Dkt. 911 at p. 4).

The rise of fraud in the claims-made settlement context has adverse effects on defendants and class members alike. When the parties agree to a limited settlement fund, fraudulent claimants dwindle the available pool, leaving fewer funds available for real claimants. Conversely, when the parties agree that the defendant will compensate all claimants that submit claims, defendants risk significant overpayment to fraudulent claimants.

Accordingly, both class counsel and defense counsel should remain vigilant when drafting and reviewing claims-made settlement agreements and should take extra care to ensure that such agreements proactively protect against fraudulent claims. Counsel might consider requiring class members to submit proof of purchase or, at the very least, to execute a declaration attesting to such purchase under penalty of perjury to increase the legitimacy of incoming claims. Courts, too, should remain alert to the potential for fraud when approving claims-made settlements and should consider more rigorous claims requirements to guard against further abuse.

© 2025 Foley & Lardner LLP

National Law Review, Volume XIV, Number 198

Source URL: <https://natlawreview.com/article/trap-unwary-fraud-rising-claims-made-class-action-settlements>