

Coupon Settlements: Discount or Discontent?

Article By:

Zachary Klinger

Congress passed the [Class Action Fairness Act of 2005 \(“CAFA”\)](#) with the hope of preventing abuse in class action lawsuits. CAFA assigns jurisdiction to federal courts over class actions where: (i) the aggregate amount in controversy exceeds five million dollars (\$5,000,000); (ii) the class comprises at least 100 plaintiffs; and (iii) there is at least “minimal diversity” between the parties (i.e., at least one plaintiff class member is diverse from at least one defendant). In addition, CAFA mandates that courts apply greater scrutiny to class action settlements and, in particular, those involving coupons (i.e., vouchers or other non-cash disbursements which can be redeemed for (typically discounted) products or services).^[1]

Over the last few years, few forms of settlement have received greater attention than coupon settlements. Although some criticize coupon settlements as a means to reward lawyers with significant fees while allegedly providing little value to class members, others defend these types of settlements as a way to secure considerable value for class members, especially in cases where they otherwise likely would have received little—or no—compensation.

These diverging viewpoints came into focus in a matter before Judge Robert N. Scola Jr. of the Southern District of Florida, when two class members objected to a settlement that had been preliminarily approved by the court. The objectors claimed it was a coupon settlement that did not meaningfully compensate the class members.^[2] [The settlement](#), estimated to be worth between \$37 million and \$99 million (depending on how many coupons were redeemed), resolved consumer claims against Nissan North America Inc. (“Nissan”) in connection with defective transmissions in certain vehicles. The settlement provided for extended transmission warranties for owners and lessees of certain models of affected Nissan (and Infiniti) vehicles, in addition to discounts on future purchases for some former vehicle owners. The objectors, however, argued the warranty extension was essentially valueless because it involved the same warranty the class members accused Nissan of breaching in the first place by not providing adequate repairs for the transmission defect. In addition, they maintained that the “discount” would force class members to engage in future business dealings with the company they were suing in the first instance for manufacturing a damaged product.

Although the objection was eventually overruled—and the settlement afforded final approval—the case highlights problems inherent in coupon settlements. On the one hand, this type of settlement can serve as an effective vehicle for securing meaningful compensation for a large or disjointed group of plaintiffs, particularly in instances, like *Batista*, where the class is unlikely to prevail on the merits or

where the damage to each individual class member is *de minimus*. On the other hand, redemption rates are typically quite low and usually require class members to purchase goods or services that they may not necessarily want. In the eyes of some, this translates to both minimal cost to the defendant and lessened value to the class members.

Thus, when negotiating or evaluating coupon settlements, lawyers and judges should assess the factors that impact the true value of the coupons (e.g., the manner in which the coupons must be redeemed and the duration of the redemption period), while also considering the likely outcome and expense if the case were to proceed to trial. Simply because the value of the coupon to each class member may appear minimal, does not necessarily mean the result is unfair or improper for the class as a whole. Indeed, if coupon settlements become disfavored, the likely consequence will be longer, more expensive litigation, in which little value for either party will result.

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