

the 90th day after Nov. 2, 2002, see section 11020(c) of Pub. L. 107-273, set out as a note under section 1369 of this title.

CHAPTER 114—CLASS ACTIONS

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§ 1711. Definitions

In this chapter:

(1) **CLASS.**—The term “class” means all of the class members in a class action.

(2) **CLASS ACTION.**—The term “class action” means any civil action filed in a district court of the United States under rule 23 of the Federal Rules of Civil Procedure or any civil action that is removed to a district court of the United States that was originally filed under a State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representatives as a class action.

(3) **CLASS COUNSEL.**—The term “class counsel” means the persons who serve as the attorneys for the class members in a proposed or certified class action.

(4) **CLASS MEMBERS.**—The term “class members” means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.

(5) **PLAINTIFF CLASS ACTION.**—The term “plaintiff class action” means a class action in which class members are plaintiffs.

(6) **PROPOSED SETTLEMENT.**—The term “proposed settlement” means an agreement regarding a class action that is subject to court approval and that, if approved, would be binding on some or all class members.

(Added Pub. L. 109-2, §3(a), Feb. 18, 2005, 119 Stat. 5.)

REFERENCES IN TEXT

Rule 23 of the Federal Rules of Civil Procedure, referred to in par. (2), is set out in the Appendix to this title.

EFFECTIVE DATE

Chapter applicable to any civil action commenced on or after Feb. 18, 2005, see section 9 of Pub. L. 109-2, set out as an Effective Date of 2005 Amendment note under section 1332 of this title.

FINDINGS AND PURPOSES

Pub. L. 109-2, §2, Feb. 18, 2005, 119 Stat. 4, provided that:

“(a) **FINDINGS.**—Congress finds the following:

“(1) Class action lawsuits are an important and valuable part of the legal system when they permit the fair and efficient resolution of legitimate claims of numerous parties by allowing the claims to be aggregated into a single action against a defendant that has allegedly caused harm.

“(2) Over the past decade, there have been abuses of the class action device that have—

“(A) harmed class members with legitimate claims and defendants that have acted responsibly;

“(B) adversely affected interstate commerce; and

“(C) undermined public respect for our judicial system.

“(3) Class members often receive little or no benefit from class actions, and are sometimes harmed, such as where—

“(A) counsel are awarded large fees, while leaving class members with coupons or other awards of little or no value;

“(B) unjustified awards are made to certain plaintiffs at the expense of other class members; and

“(C) confusing notices are published that prevent class members from being able to fully understand and effectively exercise their rights.

“(4) Abuses in class actions undermine the national judicial system, the free flow of interstate commerce, and the concept of diversity jurisdiction as intended by the framers of the United States Constitution, in that State and local courts are—

“(A) keeping cases of national importance out of Federal court;

“(B) sometimes acting in ways that demonstrate bias against out-of-State defendants; and

“(C) making judgments that impose their view of the law on other States and bind the rights of the residents of those States.

“(b) **PURPOSES.**—The purposes of this Act [see Short Title of 2005 Amendments note set out under section 1 of this title] are to—

“(1) assure fair and prompt recoveries for class members with legitimate claims;

“(2) restore the intent of the framers of the United States Constitution by providing for Federal court consideration of interstate cases of national importance under diversity jurisdiction; and

“(3) benefit society by encouraging innovation and lowering consumer prices.”

§ 1712. Coupon settlements

(a) **CONTINGENT FEES IN COUPON SETTLEMENTS.**—If a proposed settlement in a class action provides for a recovery of coupons to a class member, the portion of any attorney’s fee award to class counsel that is attributable to the award of the coupons shall be based on the value to class members of the coupons that are redeemed.

(b) **OTHER ATTORNEY’S FEE AWARDS IN COUPON SETTLEMENTS.**—

(1) **IN GENERAL.**—If a proposed settlement in a class action provides for a recovery of coupons to class members, and a portion of the recovery of the coupons is not used to determine the attorney’s fee to be paid to class counsel, any attorney’s fee award shall be based upon the amount of time class counsel reasonably expended working on the action.

(2) **COURT APPROVAL.**—Any attorney’s fee under this subsection shall be subject to approval by the court and shall include an appropriate attorney’s fee, if any, for obtaining equitable relief, including an injunction, if applicable. Nothing in this subsection shall be construed to prohibit application of a lodestar with a multiplier method of determining attorney’s fees.

(c) **ATTORNEY’S FEE AWARDS CALCULATED ON A MIXED BASIS IN COUPON SETTLEMENTS.**—If a proposed settlement in a class action provides for an award of coupons to class members and also provides for equitable relief, including injunctive relief—

(1) that portion of the attorney’s fee to be paid to class counsel that is based upon a portion of the recovery of the coupons shall be calculated in accordance with subsection (a); and

(2) that portion of the attorney's fee to be paid to class counsel that is not based upon a portion of the recovery of the coupons shall be calculated in accordance with subsection (b).

(d) **SETTLEMENT VALUATION EXPERTISE.**—In a class action involving the awarding of coupons, the court may, in its discretion upon the motion of a party, receive expert testimony from a witness qualified to provide information on the actual value to the class members of the coupons that are redeemed.

(e) **JUDICIAL SCRUTINY OF COUPON SETTLEMENTS.**—In a proposed settlement under which class members would be awarded coupons, the court may approve the proposed settlement only after a hearing to determine whether, and making a written finding that, the settlement is fair, reasonable, and adequate for class members. The court, in its discretion, may also require that a proposed settlement agreement provide for the distribution of a portion of the value of unclaimed coupons to 1 or more charitable or governmental organizations, as agreed to by the parties. The distribution and redemption of any proceeds under this subsection shall not be used to calculate attorneys' fees under this section.

(Added Pub. L. 109–2, §3(a), Feb. 18, 2005, 119 Stat. 6.)

§ 1713. Protection against loss by class members

The court may approve a proposed settlement under which any class member is obligated to pay sums to class counsel that would result in a net loss to the class member only if the court makes a written finding that nonmonetary benefits to the class member substantially outweigh the monetary loss.

(Added Pub. L. 109–2, §3(a), Feb. 18, 2005, 119 Stat. 7.)

§ 1714. Protection against discrimination based on geographic location

The court may not approve a proposed settlement that provides for the payment of greater sums to some class members than to others solely on the basis that the class members to whom the greater sums are to be paid are located in closer geographic proximity to the court.

(Added Pub. L. 109–2, §3(a), Feb. 18, 2005, 119 Stat. 7.)

§ 1715. Notifications to appropriate Federal and State officials

(a) **DEFINITIONS.**—

(1) **APPROPRIATE FEDERAL OFFICIAL.**—In this section, the term “appropriate Federal official” means—

(A) the Attorney General of the United States; or

(B) in any case in which the defendant is a Federal depository institution, a State depository institution, a depository institution holding company, a foreign bank, or a non-depository institution subsidiary of the foregoing (as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), the person who has the primary

Federal regulatory or supervisory responsibility with respect to the defendant, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person.

(2) **APPROPRIATE STATE OFFICIAL.**—In this section, the term “appropriate State official” means the person in the State who has the primary regulatory or supervisory responsibility with respect to the defendant, or who licenses or otherwise authorizes the defendant to conduct business in the State, if some or all of the matters alleged in the class action are subject to regulation by that person. If there is no primary regulator, supervisor, or licensing authority, or the matters alleged in the class action are not subject to regulation or supervision by that person, then the appropriate State official shall be the State attorney general.

(b) **IN GENERAL.**—Not later than 10 days after a proposed settlement of a class action is filed in court, each defendant that is participating in the proposed settlement shall serve upon the appropriate State official of each State in which a class member resides and the appropriate Federal official, a notice of the proposed settlement consisting of—

(1) a copy of the complaint and any materials filed with the complaint and any amended complaints (except such materials shall not be required to be served if such materials are made electronically available through the Internet and such service includes notice of how to electronically access such material);

(2) notice of any scheduled judicial hearing in the class action;

(3) any proposed or final notification to class members of—

(A)(i) the members' rights to request exclusion from the class action; or

(ii) if no right to request exclusion exists, a statement that no such right exists; and

(B) a proposed settlement of a class action;

(4) any proposed or final class action settlement;

(5) any settlement or other agreement contemporaneously made between class counsel and counsel for the defendants;

(6) any final judgment or notice of dismissal;

(7)(A) if feasible, the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement to that State's appropriate State official; or

(B) if the provision of information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement; and

(8) any written judicial opinion relating to the materials described under subparagraphs (3) through (6).

(c) **DEPOSITORY INSTITUTIONS NOTIFICATION.**—

(1) **FEDERAL AND OTHER DEPOSITORY INSTITUTIONS.**—In any case in which the defendant is a Federal depository institution, a depository institution holding company, a foreign bank,

or a non-depository institution subsidiary of the foregoing, the notice requirements of this section are satisfied by serving the notice required under subsection (b) upon the person who has the primary Federal regulatory or supervisory responsibility with respect to the defendant, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person.

(2) STATE DEPOSITORY INSTITUTIONS.—In any case in which the defendant is a State depository institution (as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), the notice requirements of this section are satisfied by serving the notice required under subsection (b) upon the State bank supervisor (as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) of the State in which the defendant is incorporated or chartered, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person, and upon the appropriate Federal official.

(d) FINAL APPROVAL.—An order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under subsection (b).

(e) NONCOMPLIANCE IF NOTICE NOT PROVIDED.—

(1) IN GENERAL.—A class member may refuse to comply with and may choose not to be bound by a settlement agreement or consent decree in a class action if the class member demonstrates that the notice required under subsection (b) has not been provided.

(2) LIMITATION.—A class member may not refuse to comply with or to be bound by a settlement agreement or consent decree under paragraph (1) if the notice required under subsection (b) was directed to the appropriate Federal official and to either the State attorney general or the person that has primary regulatory, supervisory, or licensing authority over the defendant.

(3) APPLICATION OF RIGHTS.—The rights created by this subsection shall apply only to class members or any person acting on a class member's behalf, and shall not be construed to limit any other rights affecting a class member's participation in the settlement.

(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to expand the authority of, or impose any obligations, duties, or responsibilities upon, Federal or State officials.

(Added Pub. L. 109–2, §3(a), Feb. 18, 2005, 119 Stat. 7.)

CHAPTER 115—EVIDENCE; DOCUMENTARY

Sec.	
1731.	Handwriting.
1732.	Record made in regular course of business; photographic copies.
1733.	Government records and papers; copies.
1734.	Court record lost or destroyed generally. ¹
1735.	Court record lost or destroyed where United States interested.

¹ So in original. Does not conform to section catchline.

1736.	Congressional Journals.
1737.	Copy of officer's bond.
1738.	State and Territorial statutes and judicial proceedings; full faith and credit.
1738A.	Full faith and credit given to child custody determinations.
1738B.	Full faith and credit for child support orders.
1738C.	Certain acts, records, and proceedings and the effect thereof.
1739.	State and Territorial nonjudicial records; full faith and credit.
1740.	Copies of consular papers.
1741.	Foreign official documents.
[1742.]	Repealed.]
1743.	Demand on postmaster.
1744.	Copies of United States Patent and Trademark Office documents generally. ¹
1745.	Copies of foreign patent documents.
1746.	Unsworn declarations under penalty of perjury.

AMENDMENTS

1999—Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(15)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A–584, which directed the amendment of item 1744 by substituting “United States Patent and Trademark Office” for “Patent Office”, was executed by making the substitution for “patent office” to reflect the probable intent of Congress.

1996—Pub. L. 104–199, §2(b), Sept. 21, 1996, 110 Stat. 2419, added item 1738C.

1994—Pub. L. 103–383, §3(b), Oct. 20, 1994, 108 Stat. 4066, added item 1738B.

1980—Pub. L. 96–611, §8(b), Dec. 28, 1980, 94 Stat. 3571, added item 1738A.

1976—Pub. L. 94–550, §1(b), Oct. 18, 1976, 90 Stat. 2534, added item 1746.

1964—Pub. L. 88–619, §§5(b), 6(b), 7(b), Oct. 3, 1964, 78 Stat. 996, substituted “official documents” for “documents generally; copies” in item 1741, inserted “[Repealed]” in item 1742, and substituted “documents” for “specifications and drawings” in item 1745.

1951—Act Aug. 28, 1951, ch. 351, §2, 65 Stat. 206, inserted “; photographic copies” in item 1732.

1949—Act May 24, 1949, ch. 139, §92(a), 63 Stat. 103, struck out item 1745 “Printed copies of patient specifications and drawings” and renumbered item 1746 as 1745.

§ 1731. Handwriting

The admitted or proved handwriting of any person shall be admissible, for purposes of comparison, to determine genuineness of other handwriting attributed to such person.

(June 25, 1948, ch. 646, 62 Stat. 945.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §638 (Feb. 26, 1913, ch. 79, 37 Stat. 683).

Words “as a basis for comparison by witnesses, or by the jury, court, or officer conducting such proceeding”, were omitted as superfluous.

Changes were made in phraseology.

§ 1732. Record made in regular course of business; photographic copies

If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence, or event, and in the regular course of business has caused any or all of the same to be recorded, copied, or reproduced by any photographic, photostatic, microfilm, micro-card,