**Title:** Could You Fall Into the Customer Class Action Trap?

**Subtitle:**

**Meta Description:** Don’t ignore those booklets you receive in the mail informing you that you are a member of a class action lawsuit.

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**Raw Content:** <strong>Don’t ignore those booklets you receive in the mail informing you that you are a member of a class action lawsuit.</strong>
While many corporations are complaining about <a href="http://www.scarincihollenbeck.com/practices/litigation/">class action lawsuits</a>, the corporate defendants, particularly brokerage firms and banks, among other corporate class action “victims,” have found a very useful procedure to deprive you of your legal rights.  Using notices of settlement of the class actions, corporations are taking away from unsuspecting customers literally <em>any and all rights</em> to assert claims they may have against their brokerage firm or bank, even the right to bring claims that are not based upon the original class action allegations.  And, this is being done with the blessings of the courts, which want to clear their calendars of these complex, time-consuming cases.
<em>The Trap</em>
A class action is filed against the corporation, and notices of the investigation of the action are sent to the public members of the class.  Many of us have received these very lengthy booklets.  After a quick glance at the boilerplate legalese, our eyes glaze over and we toss the booklets away.
For example, a class action is filed against a brokerage firm that participated in the improper behavior of brokers and investment bankers prior to the bursting of the mortgage finance bubble.  In the original 60 page notice you received, you were somehow able to divine that there was a notification to you that if you were included in the class but did not “opt out” of (elect to be excluded from) the member class by mailing back a completed form indicating your stated desire to do so, any claims that you had been defrauded would be forfeited by you, and you would not participate in the distribution of the settlement fund in the class action.
Many of us, either because it is too much trouble or because we did not feel that we wanted to get involved in a claim that we were defrauded, did not bother to send in the notice form required in order to opt out of the class.  If a customer purchased as little as one share of stock involved, that customer would be deemed within the class of persons to receive notification of the class action.
Subsequently, in negotiating settlement with the class action attorneys, brokerage firms have been able to negotiate for, and substantially broaden, the nature and scope of claims for which all customers in the class were releasing the brokerage firm.  A revised notice was then mailed to the customers in the class.  On receiving the revised notice and seeing that it was for the same class action in which they had already decided not to be involved, many customers simply ignore the second notice.
What they didn’t see contained within the opaque language and small print used for this supposed “notice,” was that the claims being released were now changed from just fraud claims to all claims, including breach of contract, negligence, and any other types of claims that they might have otherwise been able to make against the brokerage firms or their brokers.
<em>The Result</em>
So, the brokerage firms and banks become able to defend against and may defeat any claims by any of the customers who are included in the class action, whether or not they elected to be included in the class.  For example, a customer who subsequently discovers that the broker was negligent, had recommended unsuitable securities, or had grossly over-charged commissions or done some other improper act, may be faced with the defense that he has released those claims without having signed any document and without having received a single penny, if a form was not completed and timely filed by the customer opting out of being included in the class being “protected” by the class action.
By this patently unfair subterfuge, underwritten by the courts, the bank or brokerage firm can argue that they have obtained complete defenses to all claims of the customer.  The customer may believe that he had become barred only from asserting fraud claims against the firm, as stated in the original notice which only alleged a massive fraud that was specifically identified, such as the internet bubble or mortgage financing fiascos, but the revised language of the settlement notice changes all that.  And, the individual defrauding broker can also claim to be released by the broad wording in the booklet that supposedly gives the layperson notice of the legal effects of what is transpiring.
Given the tactics used by brokerage firms and banks looking to reduce liability, customers need to understand their rights in a class-action lawsuit. Please stay tuned to tomorrow’s post for information about how to better protect your legal rights.
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