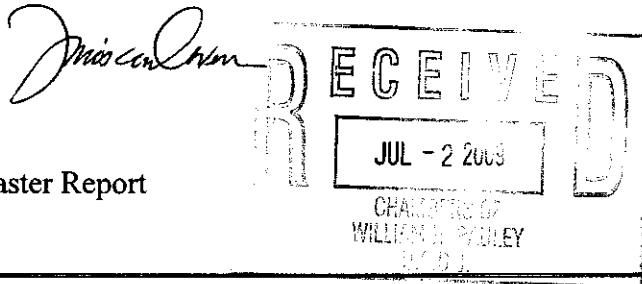


MEMORANDUM

TO: Judge William H. Pauley, III
FROM: Francis E. McGovern
DATE: July 1, 2009
SUBJECT: Supplemental Special Master Report
In re MDL No. 1409



The purpose of this supplemental report is to advise the Court as to the updated results of the audit program and its effect on the estimated refund amount for Option 1 Claimants. The overall notice program and claim forms have been extremely effective. The *In re MDL No. 1409* claim filing rate, for example, is more than twice the filing rate in the comparable credit card case of *Lipuma v. American Express Company*.¹ Based on the Claims Administrator's updated audit report attached as Exhibit 1 and my communications with the Claims Administrator, I have concluded that the estimated refund amount for Option 1 Claimants will not materially change as a result of the completion of the remaining audits, and I recommend that the Court issue its final ruling on the approval of the Stipulation and Agreement of Settlement in *In re Currency Conversion Fee Antitrust Litigation* (MDL No. 1409).

AUDIT RESULTS

In the nearly seven months since Plaintiffs filed and served their December 8, 2008 status report,² the Claims Administrator has continued to implement the audit program described in that report. A comparison of the December 2008 audit results and the current audit results indicates that the trends identified by the Claims Administrator in December 2008 have remained constant. For this reason, and because the audit is substantially complete, the Claims Administrator concludes that the remaining audits will not materially change either the estimated total face value of all claims, or the estimated refund amount for Option 1 Claimants.

¹ In *Lipuma v. American Express Company*, Case No. 04-CV-20314 (S.D. Fla.), claim forms were sent to 8,822,803 potential class members and approximately 1,000,647, or 11.34%, actually filed a claim form with the claims administrator. In *In re MDL No. 1409*, claim forms were sent to approximately 38,643,848 potential class members and approximately 10,078,866, or 26.08%, were filed with the claims administrator. The *MDL No. 1409* response rate is approximately 230% of the *Lipuma* rate.

² For the Court's convenience, a copy of that report and its exhibits are attached as Exhibit 2.

The Claims Administrator has sent final rejection letters to claimants who have not responded to the audit request letter, providing 45 days for the claimant to contest the pending rejection of the claim. Currently, the non-response rates are 54% for Option 2 claims, 24% for Option 3 claims, and 7% for Option 3 Agency/Company audits. The Claims Administrator recommends that the non-responding claims be rejected and I concur.

Of the received audit responses, the Claims Administrator has completed 100% of the Option 2 audits, 96% of the Option 3 audits, and 85% of the Option 3 Agency/Company audits. The audit results, expressed as the percentage of audited and allowed Option 2 claimed days or Option 3 transaction amounts are contained in the chart below. The decrease in the allowed percentage for Option 2 and Option 3 is due to the inclusion of claims with insufficient documentation where the claimant has not responded to a request for further information. It is expected that there will be no substantial change from the current allowed percentages. The allowed percentages, for each audit category, are as follows³:

| | Option 2 | Option 3 | Option 3 Agency/Company |
|---------------|-----------------|-----------------|------------------------------------|
| December 2008 | 79.83% | 69.73% | 96.64% |
| May 2009 | 59.38% | 60.8% | 89.96% |

Because the audit results are expected to remain roughly constant, because expanding the audit would not result in a material change to the Option 1 payment amount, and because the cost of the audit⁴ is borne by the settlement funds, I recommend that the Court authorize the Claims Administrator to complete the current audit process. After applying all three pro-ratio mechanisms, the estimated refund amount for Option 1 Claimants remains in the range of \$15.00-\$17.00, as estimated in December 2008.

OTHER ISSUES

As explained in the December 8, 2008 status report, there are three remaining issues for Counsel and the Court to decide before the Claims Administrator can complete the administration of claims:

³ The Option 3 percentages exclude four high-value claims that were rejected in their entirety.

⁴ The Claims Administrator estimates the cost of the current audit at \$850,000 to \$900,000. A substantial expansion to that audit would more than double the cost.

(1) **Late Claims.** The Claims Administrator has received more than 40,000 late-filed claims. *See* Exhibit 2 at 3. Given the claims rate of more than 10 million timely claims, I recommend that all claims postmarked after the May 30, 2008 deadline be denied.⁵

(2) **Travel Agency Claims.** Class Counsel recommended in their December 8, 2008 status report that the Claims Administrator disallow three Agency/Company claims, totaling \$473,761,462, submitted by travel agencies, on the grounds that the traveling consumers, not the agencies, actually paid the foreign transaction fees. *Id.* at 6. I concur.

(3) **Algorithm for Option 2 Claims.** In the December 8, 2008 status report and accompanying report of Thomas Florence, President of Analysis, Research and Planning Corporation (“ARPC”), ARPC recommended an algorithm for determining refund amounts for Option 2 claimants. While the final results for Option 2 refund amounts as determined using the algorithm must await the completion of the claims administration process, the formula itself is complete. Based on my review of the Florence report and communications with ARPC and with the Claims Administrator, I have concluded that the final results of the application of the algorithm will primarily affect Option 2 claimants, and will have no material effect on the estimated total face value of all claims or the refund amount for Option 1 claimants. I recommend that the Court approve the algorithm described in the Florence Report, attached as Exhibit C to the December 8, 2008 Status Report and contained in the attached Exhibit 2.

CONCLUSION

I recommend that the Court issue its final decision on approval of the proposed settlement, deny all late claims, deny the claims of the three travel booking agencies described above, and approve the algorithm recommended by ARPC. In accordance with these recommendations and the letter of the Claims Administrator dated May 6, 2009 and attached as Exhibit 1, it is anticipated that, assuming final approval by this Court and the exhaustion of any appeals, all claims will be processed and distribution could begin by December 31, 2009. I am available at the Court’s convenience to discuss any of these issues.

Attachments

⁵ Note that under the Revised Plan of Administration and Distribution, a Claimant whose claim has been rejected has the right to further review by the Claims Administrator. *See* Revised Plan of Administration and Distribution, ¶5(h)(i), at pp. 8-9.