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Anatomy of an Insurance Class Action

Consumer class actions are among the most controversial features of the U.S. civil justice system. Their proponents assert that they provide recourse to consumers who have been victims of corporate wrongdoing when the individual amounts of money sought are small. Critics deride them as little more than legalized blackmail, driving defendants to settle claims without merit to avoid the potentially damaging outcome of a trial. Others argue that class actions overlap with—and sometimes contradict—government regulation, while others see them as a vehicle for much-needed relief when such regulation is lacking. Such debates, however, have little solid data to draw upon. Courts do not generally track and report on class actions, and, often, only the attorneys involved know the outcomes of settlements. Almost all that is empirically known is based on the few cases in which a judge certifies the absent plaintiffs as a class.

A new RAND study provides the most comprehensive portrait to date of a subset of such litigation: class actions against insurance companies. Based on a survey of companies named as defendants in cases open between 1993 and 2002, the researchers report on detailed information from 57 large U.S. insurers about 748 class actions. What emerges are the key features of the litigation, including filing trends, the main allegations, case outcomes, class action settlement features, and the impact of regulatory issues.

Trends in Filings

The number of class actions against insurers increased sharply over the 10-year period of the study (see the figure). The data used in the figure represent 431 cases filed against those companies that could identify every class action in which they were defendants during each year of this period.

Forum and Scope

State courts were the primary choice for filing, with 89 percent of the cases originating in them.

Abstract

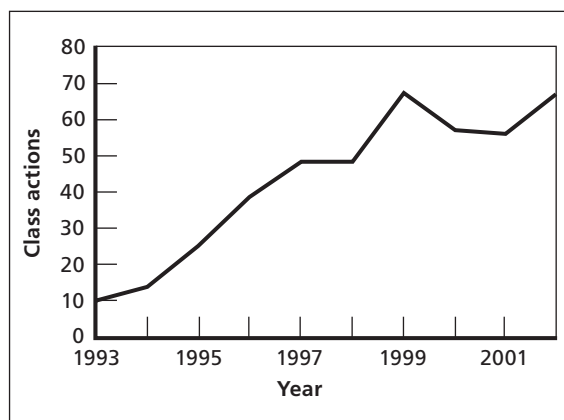
Although class actions can involve millions of people and millions of dollars, little is known about the dimensions of this type of litigation. This study focused on class actions against insurers. Based on a detailed survey of large U.S. insurers named in class actions, it describes the general characteristics of more than 700 cases—trends in claims, their allegations, and their outcomes—including the vast majority of cases that never became certified as a class.

About 17 percent of all state court class actions involved actual or proposed class members outside the state of filing, and, of the remainder, 87 percent involved insurers headquartered or incorporated elsewhere. This suggests that the Class Action Fairness Act of 2005 could shift most state insurance class actions into the federal courts.

Statutory Basis

Of the cases in which respondents identified what the key statutes and regulations were, 72 percent involved state omnibus consumer protection acts.

Number of Class Actions Filed Over 10 Years



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Corporate Headquarters
1776 Main Street
P.O. Box 2138
Santa Monica, California
90407-2138
TEL 310.393.0411
FAX 310.393.4818

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These responses suggest that state legislatures have significant power to shape both the frequency and the scope of class actions against insurers.

Case Outcomes

The table, which presents the outcomes of all closed cases in the data, shows that only 12 percent of these cases are settled as a class. In 37 percent of the cases, the judge made a pre-trial ruling for the defense, disposing of the case. Of the rest, most either settled on an individual basis or were dismissed by the plaintiffs voluntarily. As the table shows, however, outcomes differ for the certified cases. Of those, nine out of 10 cases resulted in a class settlement.

Settlements

Although 12 percent of the cases resulted in a class settlement, some survey respondents declined to provide detailed information about the terms of those settlements, the awards of attorneys' fees and costs, or the distribution of benefits to class members. Therefore, the findings on these topics must be understood as illustrative only.

Compensation and Distribution to Class Members

The common fund that the defendants offered to settle these disputes was provided in 32 cases and ranged from \$360,000 to \$150,000,000. The median benefit available to each class member was \$97 (based on 22 cases) and ranged from as little as \$3.50 to as much as \$61,000. The study did not include the value of any injunctive relief that might have been obtained for class members in addition to direct monetary benefits.

In most instances, only a fraction of the class received any monetary benefits. Reporting on 29 cases for which data were provided on both estimated class size and number of

claims actually paid, the average settlement paid benefits to 45 percent of the class members, and the median was 15 percent. Seven of the 23 cases with data on both the net settlement fund and total payments to the class distributed nearly 100 percent of that fund, but another quarter of the cases had a distribution rate of 13 percent or less.

Class Counsel Fees

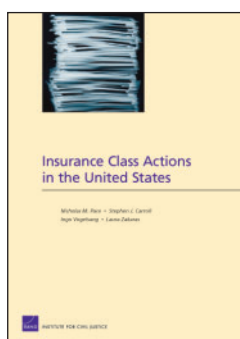
The data (for 48 cases) show that plaintiffs' attorneys were awarded a median of 30 percent of the common fund. However, the study results suggest that attorneys' fees and expenses might be viewed in another way: as a percentage of the actual monetary distribution to the class rather than the percentage of the amount theoretically available to successful claimants. Viewed in this way, "effective" attorneys' fees and expenses increase to a median of 47 percent (for 36 cases). In a quarter of the cases, the effective percentages were 75 percent or higher, and, in five cases, they were over 90 percent.

Overlap of Class Actions and Regulation

To examine the claim that class actions and regulation often address the same issues, researchers surveyed staff members of state departments of insurance and asked them to rate the allegations in the cases by the degree to which they related to their regulatory authority. The results identified a set of cases with the strongest relationship to administrative regulation, such as those involving claims of racial discrimination by charging excessive premiums. Despite that overlap, the key outcomes of such cases were similar to class actions with lower-rated issues. The researchers found that insurers raised regulatory-related defenses in only 15 percent of cases, and that state insurance departments took an active role in only 8 percent of cases. It is not clear why regulatory implications matter so little in case dynamics and outcomes. ■

Resolution of Closed Class Actions

Type of Class Actions	Class Settlement (%)	Individual Settlement (%)	Pretrial Ruling for the Defense (%)	Voluntary Dismissal (%)	Other Outcome (%)
All attempted class actions (564 cases)	12	20	37	27	4
All certified class actions (78 cases)	90	1	4	1	4



This research brief describes work done for the RAND Institute for Civil Justice documented in *Insurance Class Actions in the United States*, by Nicholas M. Pace, Stephen J. Carroll, Ingo Vogelsang, and Laura Zakaras, MG-587-ICJ, ISBN: 978-0-8330-4131-9 (available at <http://www.rand.org/pubs/monographs/MG587/>), 2007, 200 pp., \$32.00. The RAND Corporation is a nonprofit research organization providing objective analysis and effective solutions that address the challenges facing the public and private sectors around the world. RAND's publications do not necessarily reflect the opinions of its research clients and sponsors. RAND® is a registered trademark.

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