RISK SETTLEMENTS

Delivering Certainty in the Uncertain World of Class Action Settlements

Problem:

Unfortunately, class action settlements tend to be another step down the road of financial uncertainty and unpredictability. In the class action context, when resolving a case using a claims made settlement, the financial payout varies significantly, which can adversely impact liquidity, enterprise value, cash flow and assets. Additionally, when settlements go viral, companies face extreme losses which could exceed reserves and available cash on hand. Below are some examples of settlements that experienced statistically higher claim rates than quantitative risk models would have predicted:

- **Starkist Co. Settlement**. Allegations of slack fill (under-filling of cans). The $25 settlement benefit generated approximately 2.4 million claims from class members seeking $60 million in class benefit.
- **Red Bull Settlement**. Allegations of false and deceptive labeling and marketing of its drinks. This settlement provided for a $10 cash benefit or $15 voucher per household. Publication notice only. Claimants filed more than 2.7 million claims.
- **Naked Juice Settlement**. Allegations regarding false labeling of products, as discussed in more detailed herein. The settlement experienced a take rate which was 356% greater than its established $9 million settlement cap.
- **Zirmed, Inc**. Allegations that the company violated the Telephone Consumer Protection Act (TCPA). This settlement had a 50% take rate which was significantly higher than other similar TCPA cases and that most lawyers would have predicted in evaluating the risk for the company.

So why did these cases go viral and have take rates significantly higher than predicted? How can a company assess its risk when there are no simple or easy answers to evaluating financial risk? Risk Settlements has developed the science behind assessing and providing alternative risk mitigation strategies to hedge against varied and unpredictable outcomes.

Assessment:

To assess financial risk, we evaluate between 35 and 100 different variables, which may impact the ultimate financial risk arising out of settlement. Some of the factors to be considered include:

A. Case Type: Consumer, Employment or Statutory
- Aggregating Factors
- High/Low Public Interest
- Individual and Aggregate Exposure
- Notice: Direct, Publication or Both
- Stage of the Case
- Past or Anticipated Free Media Attention
- Likelihood of Claims Promotions Sites to Push Claims

B. Questions Affecting Risk
- What percentage of the class will see the notice?
- If people see the notice, how many will file claims?
- Of the claims filed, how many will be fraudulent?

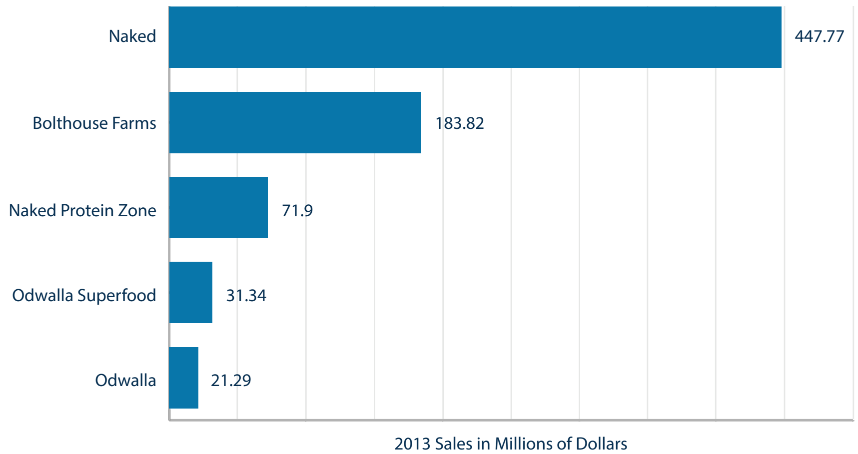
C. Key Drivers on Notice
- Notice Type (Direct, Publication, Both)
- Direct Notice Type (Postcard, Letter, Fax, Email)
- Publication Notice Type (Print, Search, Display, Combination)
- Publication Reach (70%+ Identified Class)
- Free Media, Blog Posts, Promoters
- ISP Preclearance of Bulk Email
- Budget
- Metrics Used, Impressions Measured, Click Rates Measured
- Process for Undeliverables, Bounce-Backs, Returned Mail
- Age of Class Address List
- Class Demographics

D. Key Drivers to Validate Claims
- Audit Against Class List
- Audit Against List of Known Fraudulent Filers
- Examine Inbound Links to Ascertain Fraudulent Patterns
- Ensure TPA Employs Ordinary and Customary Fraud Controls

E. Viral Analysis

As part of our robust risk analytics, we examine the likelihood of whether a proposed class action settlement will go viral, thus posing uncorrelated financial risk. For example, in the Naked Juice settlement, claimants filed claims totaling $32 million in class benefits before the cap was applied. (Risk Settlements did not consult or participate in this matter.) Is there any way to know why this happened and whether it could have been predicted? We think so for the following four reasons.

First, the Naked Juice brand had massive name recognition. By examining the 2013 sales figures of the leading refrigerated juice and juice drink smoothie brands in the United States, we can see Naked Juice was the top brand with the second highest brand more than $260 million *behind*. Moreover, Naked Juice's sales made up 55% of this particular sales category. Indeed, in the United States, more than 125 million people regularly purchase products in the juice/drink category, and nearly 1.7 million of those people drink Naked Juice daily. With nearly two daily glasses consumed on average, Naked Juice consumption was estimated to represent 2.5% of the juice/drink market as a whole.



Second, Naked Juice had a significant advertising, social media and marketing footprint. According to market research, Naked Juice's 2013 advertising budget was approximately $15 million, of which 40% was dedicated to television commercials and 40% was allocated to magazine advertisements. In addition, it had over 900,000 Facebook fans and its YouTube channel had over 4 million views.

Third, the class demographics for Naked Juice consumers presaged a large take rate. For this industry, the top marketing strategies target white females, ages 18-34. There is an emphasis on health-oriented consumers who are loyal to the brand and have a household income of more than $75,000. In this case, class demographics increased the risk profile as consumers were more likely to feel aggrieved due to the allegations of the use of GMO products in what was marketed as a healthy, nutritional drink. Class members were both tech savvy and existed within like-minded ecosystems to share stories about the settlement, sense of outrage and mechanisms like filing claims to redress the harm.

Fourth, the Company and third party administrator did not take any actions to deter fraudulent claims from being filed. Given the high level of claims filed, it is likely that a significant portion were filed by claimants that were not part of the class and were seeking "free money" as was advertised on claims promotion sites.

Taking all this information into account, the Naked Juice settlement was ripe to go viral, experience a high number of fraudulent claims from waste, fraud and abuse, and would likely exceed the settlement damage cap.

Solution:

Each case's unique facts and circumstances present different risks that require a bespoke approach. To that end, Risk Settlements performs quantitative and qualitative analyses based upon sophisticated and proprietary models to assess the underlying financial risks arising out of settlement. But that is only the start. With our unique risk transfer solutions, we can answer the critical question—***how much is this litigation or settlement actually going to cost the company?*** Risk transfer is backed by a leading, nationally recognized A++/AA+ carrier and provides certainty that may mitigate the financial impact of known liabilities (e.g., public market narrative, accounting recognition), remove impediments to M&A/financing transactions and reduce or eliminate escrow holdbacks. It is also designed to meet the company's business, financial, and legal objectives.

Using these proprietary risk models and settlement solutions, Risk Settlements has assisted companies in resolving and transferring over $2 billion in class action exposure in exchange for a fixed premium representing a fraction of the total settlement liability.

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