

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

**GERARDO ARANDA, GRANT )  
BIRCHMEIER, STEPHEN PARKES, )  
and REGINA STONE, on behalf of )  
themselves and a class of others )  
similarly situated, )**

*Plaintiffs*

vs.

**CARIBBEAN CRUIS LINE, INC., )  
ECONOMIC STRATEGY GROUP, )  
ECONOMIC STRATEGY GROUP, )  
INC., ECONOMIC STRATEGY, )  
LLC, THE BERKLEY GROUP, INC., )  
and VACATION OWNERSHIP )  
MARKETING TOURS, INC., )**

*Defendants.*

**CASE NO. 1:12-cv-04069**

**Hon. Matthew F. Kennelly**

**SPECIAL MASTER'S AWARD OF CALLS**

Section 5.5 of the Settlement Agreement approved by the Court in this case appointed the undersigned Special Master to resolve in his sole discretion the number of calls to be awarded to Settlement Class members for whom the number of calls awarded has been challenged and who submit supplementary documentation or testify in response to the challenge. This Award does that.

To share in the settlement fund, class members had to file claims which were screened by the Settlement Administrator, Kurtzman Carson Consultants ("KCC"). Of the 81,489 claims filed, KCC approved 57,925 claims awarding 184,509 calls.

Approved claimants will receive \$500 per awarded call unless the total of awarded calls

plus fees and expenses is less than \$56 million in which case calls are prorated upwards to use up the entire \$56 million or, if the awarded calls plus fees and expenses exceed \$76 million, they are prorated downward to exhaust only \$76 million. (Settlement Agreement, at ¶ 1.38). Claims fell into two categories, Option One and Option Two.

### **I. Option One Claims**

When filing an Option One claim, claimants attested to having received “three or fewer” calls. The settlement presumed that anyone who had received at least one identified call had actually received three calls. This presumption was agreed to because the defendants did not keep records of the vast majority of the tens of millions of calls made to the class members. 45,840 Option One claims, and therefore 137,520 calls (three times 45,840) were approved by KCC. The defendants challenged 43,158 of these approved claims; but, under the settlement terms, a successful challenge would reduce the awarded calls to one per claimant. Claimants who wish to establish either two or three calls need to provide some documentary evidence of the number of calls they received.

As a threshold matter, plaintiffs’ counsel argued that the defendants’ challenges to Option One claims are invalid. Defendants’ challenges were based on their contention that the presumed three calls per claim did not appear on the “Class List.” The Class List was a list of 1,067,471 phone numbers appearing in defendants’ records for various purposes and which were more likely to have been called as part of the calling campaign than random phone numbers. The Class List was especially significant in this case because many of the owners of the Class List phone numbers received direct notice of the settlement after counsel did a reverse look up search of addresses for the owners of Class List phone numbers. The vast majority of filed claims came from these owners.

Plaintiffs argue that these Class List challenges to Option One claims are invalid because the Class List is an incomplete list, as both parties have acknowledged. Nevertheless, the Settlement Agreement itself simply requires the defendants to cite some “factual basis” for their challenges. The parties obviously agree that the Class List is a meaningful list of numbers in this case, as evidenced by its use for notice purposes.

Moreover, the negotiated communication sent to claimants whose Option One claims had been challenged stated that the challenges were made “because Defendants’ records do not show that you received three calls.” I, therefore, conclude that the failure to show three calls on the Class List is a valid factual basis for challenging Option One claims and overcoming the three-call presumption.

Response to these Option One challenges came in two forms:

First, about 4000 claimants submitted sworn statements attesting to the receipt of either two or three calls. I reviewed those statements, believe them to be credible and will, therefore, instruct KCC to award the number of calls claimed in these sworn statements.

Second, plaintiffs’ counsel submitted three additional lists, asking KCC and the Special Master to match calls from what the parties have denominated the “List of 57,” the “List of 97,” and the “CCC List.” The List of 57 is comprised of two lists of phone numbers from which campaign calls were made. It was cited by the plaintiffs when seeking class certification and relied upon by the Court when granting class certification. KCC’s computerized files can match claimants’ numbers to the List of 57 in a jiffy. The list of 97 is also a list of numbers from which plaintiffs’ counsel maintain

that campaign calls were made, so they submitted this list to KCC and cite it to me in support of increasing the number of Option One calls over the default of one call. The attorneys briefed and argued the propriety of using the List of 97. I am persuaded by the plaintiffs to use this list as well. I will, therefore, instruct KCC to award one, two or three calls, but not to exceed a total of three calls for Option One challenged claims if KCC identifies those number of matches from any of three lists (the Class List, the List of 57 and the List of 97). I reject using the CCC List as a basis for awarding calls. Its relationship to this calling campaign is attenuated at best and extremely diluted even if slightly relevant.

Plaintiffs' counsel challenged the failure of KCC to award the presumptive three calls to 62 claimants who were not on the Class List and who filed Option One, "three calls or fewer," claims. Plaintiffs are correct; the 62 claimants should have been awarded three calls by KCC. The Settlement Agreement makes no distinction between Class List Option One claimants and non-Class List Option One claimants. However, defendants filed its own challenges to all except for one of these claimants, claim number 60000123401. I will instruct the Administrator to award the presumptive three calls to that claimant. With respect to others, I will instruct the Administrator, as I have done with respect to Class List Option One claimants, to award only the number of calls it was able to match from the Class List, the List of 57, the List of 97 and the documents submitted by the claimants, but not to exceed three calls.

To summarize my decisions regarding Option One Claims, I conclude:

- The challenges made by both plaintiffs and defendants are validly made;

- The responses attesting to either two or three calls filed by individual claimants are valid and credible, and so they should be awarded the number of calls asserted in those responses;
- In the absence of individual responses, I approve the use of the Class List, the List of 57 and the List of 97 to increase the award of challenged Option One calls from the default one call up to three calls for each claimant.

## **II. Option Two Claims**

When filing Option Two claims, claimants claimed more than three calls and were permitted to submit individual documentary evidence in support of their claims. In the absence of individual evidence, KCC ran matches of the claimants' numbers against the Class List, the List of 57 and the List of 97 and awarded calls where matches were found. When documentary evidence was submitted, such as the claimants' phone bills for the class period, KCC's magical computers ran matches against those documents as well as the three lists and awarded calls in the amount of matches it found. Defendants challenged 1,136 of the Option Two claims, citing categories of objections outlined in its expert report, such as "calls outside the class period" or "duplicate calls." Many of the claimants filed responses, including documents, to the challenges filed by the defendants. Counsel for the plaintiffs also briefed positions and argued in response to these challenges. KCC provided the Special Master with computerized records of these challenges, the original claims, responses and documents. The review of them, usually on a claim-by-claim basis, was laborious.

I conclude that the Option Two awards made by KCC were correct. KCC awarded calls for the matches it found for numbers from the Class List, the List of 57, the

List of 97 and any additional matches found by reviewing documents submitted with the original claims by claimants. KCC did not review documents filed by individual claimants in response to challenges, but I did. I found nothing in these challenges or the responses to them that inclines me to grant the challenges or change the KCC awards.

Special mention should be made regarding the Option Two claims filed by Kent Recovery Services on behalf of several corporations and the challenges filed to those claims. The corporations involved issued multiple phones to its employees and those phones were called, apparently as part of this calling campaign. Obviously, unlike individual claimants who presumably had first hand knowledge of the calls, the employee of Kent Services who filed the claim did not have that knowledge. With some claims, he laid a reasonable foundation reciting from affidavits by his clients' in-house personnel the fact that certain business records were kept; but in other claims he simply asserted the number of calls claimed and the phone numbers involved. Were this a formal trial the latter evidence would be inadmissible, but this is a claims process not a formal trial. A crosscheck by KCC of the phone numbers revealed that matches were found for each call claimed. Under these circumstances, I deny the challenges to the Kent Recovery claims. Other situations in other cases may lead courts, claims administrators or special masters to insist upon laying a proper foundations through testimony of competent business personnel. In this situation, however, the verification of the number of calls claimed causes me to deny the challenges.

Plaintiffs also filed an Option Two challenge, objecting to KCC's use of the Class List, the List of 57 and the List of 97 to reduce the number of calls awarded from the number claimed by the claimant to the number of matches it found on those three lists. I

deny those challenges. Individual claimants were invited to submit supplementary documentation and, when they did, that documentation will serve as a basis for reaching a final award. Because I find KCC's call matching more reliable than claimants' memories with respect to Option Two claims (more than three calls claimed), I deny those challenges.

### **CONCLUSION**

I, therefore, direct the Administrator as follows:

- With respect to Option One Challenges, I direct the Administrator to award the number of calls claimed in the responses filed by individual claimants who filed responses. With respect to those Option One challenges for which no individual response was filed, I direct the Administrator to award the number of calls for which matches were found on the three lists, but that no Option One claimant whose claim was challenged receive an award of less than one or more than three calls.
- The claimant who filed claim number 60000123401 should be granted the three-call presumption and awarded three calls.
- Claimants whose claims were challenged were offered the opportunity to have a telephonic hearing conducted by the Special Master. Fifty-one claimants requested hearings. Because I had already awarded the full claim requested to thirty-nine of them, I only needed to offer hearings to the remaining twelve who had been awarded fewer calls than they had claimed. Those twelve were contacted by mail, email and telephone and were advised that, if they did not respond, that they would be awarded the number of calls already awarded

them. Seven of the twelve responded, so I talked to each of them by telephone. As a result of those telephonic hearings, I hereby direct the Administrator to award the following:

Marco Bandoni, Claim # 10319242601 —7 calls

Larry Duty, Claim #10477070301—6 calls

Jason Hutchinson, Claim #10628539701—4 calls

Pamela Forsyth, Claim #10843639101—4 calls

Kristen Vitello, Claim #60006328801—4 calls

Shirley Gage, Claim #10525510501—12 calls

Sandra Singer, Claim #60013437401—7 calls

- With respect to the remaining Option Two challenges, I have concluded that the awards made by the Administrator are correct.

DATED: May 17, 2019



**Hon. Wayne R. Andersen (Ret.)**  
Special Master