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## Odds Of A Payoff In Consumer Class Action? Less Than A Straight Flush

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An interesting piece of data just dropped into the official record in [the Duracell Ultra settlement](#), where plaintiff lawyers are seeking a \$5.7 million fee for what they call a \$50 million settlement.

That settlement amount might be a little inflated, reports Ted Frank of the [Center for Class Action Fairness](#), who is challenging the deal. Like by a factor of almost 150. And according to a startling statement from the administrator of the settlement, such gross overstatements are normal.

The odds of anybody collecting a dime in these cases is less than 1 in 400, according to Deborah McComb, an executive with [Kurtzman Carson Consultants](#), which claims to have administered hundreds of consumer class-action settlements. In a filing with the federal court in Florida that is overseeing the Duracell case, McComb said class actions with little or no direct mail notice to consumers — most of them, in other words — have a median response rate of 0.023%.

For context, the probability of getting a straight flush in a 7-card poker hand is [slightly higher at 0.0279%](#).

Critics of consumer class actions have been saying for years that these cases have abysmal claims rates, but plaintiff lawyers — with the assistance of pliant judges — work hard to keep anybody from knowing the real results of their work. That's why this filing is so fascinating: For the first time, a consultant with access to the real numbers has let us in on the truth.

McComb's memo was in defense of the Duracell settlement, which by consumer class action standards was a rousing success. Out of a potential class of 7.3 million consumers, 55,346 filed claims for 115,000 packages at \$3 per pack, for a total of \$344,800. That's a claims rate of 0.76%, almost triple the median!

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Consumer class actions are a lucrative joke, enriching lawyers on both sides at the expense of the customers who get stuck with the bills. I know, they are supposed to have deterrent effect, but seriously: If a company can buy peace with the defenders of the public for \$5 million in fees and be confident that less than 1/10th of a percent of the class members will take the time to mail in their forms, what kind of deterrence is that?

There's a couple of common-sense reforms needed here. First, judges need to demand that the full payout in each class action is disclosed, and set plaintiff fees accordingly. Otherwise lawyers have no incentive to negotiate a settlement that actually pays anybody anything, since they can avail themselves of "clear sailing" clauses in the deal that guarantee the defendant will pay them their fee regardless.

Second, judges should require direct notice to consumers and electronic claims filing. If those can't be accomplished, why should consumers pay their lawyers millions of dollars for a settlement that brings them nothing but the passed-through expense of the litigation?

Finally, Congress should modify the class-action rules to make all these cases opt-in. If these lawyers have such a compelling deal for their clients, they should at least have to sign them up. In this case, a 30% contingency fee would have landed the fine litigators at the Lowe Law Firm, [Wiggins Childs Quin & Pantazis](#) and [Schubert Jonckheer & Kolbe](#) a fat \$100,000. Plenty of compensation for results like this.