

KATHLEEN WILSON, USA

.....

dot com Settlements



This article has been reproduced from NATLE News, the newsletter of the National Association of Trial Lawyer Executives. It discusses the new phenomenon of online claims settlement and the implications for plaintiffs and plaintiff lawyers.

By now, most of you have heard of these online settlement companies: CyberSettle, ClickN-Settle, MyClaim or SelfSettle. The names all end in dot com, by the way.

Let's begin with an ultra-simplification of how these companies work. The plaintiff or their lawyer actually enters the initial demand online. The online company will contact the defence and invite them to participate in the online negotiations; then, the defence will make an offer and the online negotiating begins.

The companies claim that negotiating this way avoids the "posturing" that occurs with live negotiating and there may be some truth to this. It is important to realise that this negotiating does not have to occur between lawyers. However, one must wonder whether the defence would even consider entering these negotiations without a lawyer. Because this negotiating does not require true legal representation, the obvious concern here is the potential for the legally untrained client to be exploited by the highly trained defence counsel.

Online settlements are certainly a wave of the future.

Whether these companies are acting with probity is what is in question. With that said, and acknowledging the fact that they are here to stay, do they have any redeeming value? That depends on the site; some of the more conscientious ones just might. Providing such seditious settlements may ultimately benefit the client and that would be good – as long as trained counsel first represented that client.

Unfortunately, not all of these companies desire to adhere to the high standards necessary to protect injured people. When an injured person sacrifices the advice and experience of a professional in this type of situation the consequences can be more harmful to them than the mere convenience of settling their case online. This is clearly an issue of concern for the safety and well-being of all citizens.

Self-settle.com and MyClaim.com are by far the most offensive of these sites discovered so far and post the greatest risk for injured people, in my opinion. They both claim to save the injured person money by eliminating the attorney. Of course, it appears that the only attorney that is being eliminat-



ed is the one representing the plaintiff.

In a conversation with some of their representatives, John Sadwith has suggested to CyberSettle that they consider limiting their services to attorneys only. As of this writing, there has been no response from them on the issue although they do claim that their business plan calls for marketing only to plaintiff attorneys and not the general public. It has also been mentioned and is worth mentioning here, that funding for CyberSettle is coming from a company called XL Capital Ltd. According to this company's web site they are "a leading provider of insurance and reinsurance coverages and financial services to industrial, commercial and professional service firms, insurance companies and other enterprises..."

All of these companies seem to be coming on with very strong marketing plans and have contacted many NATLE members for information on marketing to their trial lawyer members. Most of the members I have spoken to are permitting advertising and exhibiting by the more reputable of these companies – CyberSettle and ClickNSettle. To my knowledge, these are the only ones requesting participation with NATLE member organizations.

Ed Lazarus was contacted for any further information he had on the topic and here is his response:

"the obvious concern here is the potential for the legally untrained client to be exploited by the highly trained defence counsel."

S e t t l e m e n t s



"One thing I would point out is that most likely the insurance side is being handled by claims adjusters, not attorneys. The claims adjusters are the ones who (following company guidelines) determine the value of cases before defence attorneys get involved. The appeal to that insurance companies is that they can potentially dispose of more claims (possibly at lower costs than if attorneys were involved) without having to pay their own lawyers either.

At present, ATLA has no official position on these organizations. The executive committee is considering one...their final opinion will not likely come 'til Chicago."

As with my new internet venture, it may take time to truly judge their value. The best advice where these companies are concerned would be to proceed very cautiously when considering their involvement with your association.

Postscript

MyClaim.com was recently investigated by the state of Missouri to determine if they were engaging in the illegal practice of law. The Missouri Office of the Chief Disciplinary Counsel stated, "We did make the determination that MyClaim.com is not engaged in the unauthorized practice of law in Missouri, at least set forth under the parameter of *In Re Thompson*, SW2d. 365 (Mo.Banc 1978)."

I expect that this would be the case elsewhere since these companies all have disclaimers saying that they do not offer legal advice, represent individuals, evaluate claims or offer advice on the value of a claim, or present that claim to an insurance company. In addition, they do not prepare legally binding documents for customers. They say that they merely provide information and tools for customers to represent themselves. PL

Reproduced with permission from

NATLE News, June 2000, Volume 1, Issue 1, pages 1-2.

The National Association of Trial Lawyer Executives

PHONE +850 668 6905

FAX +850 668 8304

EMAIL NATLE@talstar.com

ENGINEERING AND ERGONOMICS EXPERT

MARK DOHRMANN AM FIEAust BE (Mech) CPEng CertErg MESA Engineer, Ergonomist



ALL PERSONAL INJURIES

- ♦ Accidents — all sorts (workplace/public)
- ♦ Strain/overuse injuries — backs, shoulders, arms
- ♦ Employer, occupier and product liability
- ♦ Slips and falls
- ♦ Job/task appropriateness
- ♦ Motor vehicle accidents

Over 3000 reports on liability and negligence completed since 1977.
Regular court attendance.
All states serviced.

Tel: (03) 9376 1844 (24hrs)
mark@ergonomics.com.au
PO Box 220 Essendon, VIC 3040

Search our cases by keyword at: **www.ergonomics.com.au**