

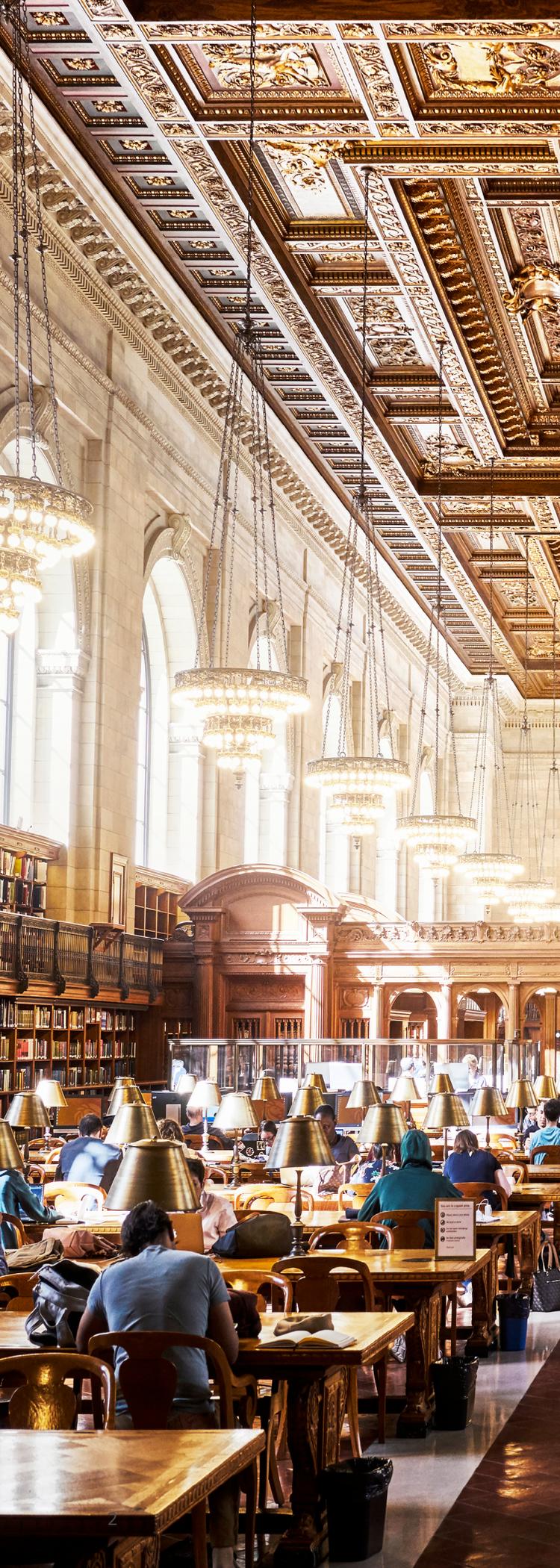


Settlement Administration Case Study

A Long, Complex Environmental Class Action Settlement

Cook, et al. v. Rockwell International Corp. and The Dow Chemical Co.





The situation

A \$375 million settlement was approved in a lawsuit against the former operators of the Rocky Flats Nuclear Weapons Plant. The lawsuit alleged that Dow and Rockwell, the two companies that operated Rocky Flats from 1952 through 1989, released radioactive hazardous substances into the surrounding area. Filed in 1990, the lawsuit further alleges that Defendants caused the properties owned by class members in the property class area to be contaminated with plutonium, a hazardous radioactive substance, which caused the properties' values to be less than they otherwise would have been, and which substantially interfered with class members' use and enjoyment of their property. Only people or entities who owned property in the property class area on June 7, 1989, or heirs or successors to people or entities who owned such property are class members.

The settlement agreement was entered after more than 26 years of litigation, including a trial that lasted more than four months in 2005-06, two separate appeals in the Tenth Circuit Court of Appeals, and two rounds of briefing in connection with two separate petitions for writs of certiorari seeking review by the United States Supreme Court. Settlement distribution did not begin until 2016.

Our role

As settlement administrator our duties included notification, skip tracing for unlocated class members, claims filing assistance through a toll-free number, mail and internet correspondence, and claims review and analysis. Our analysis included consultation with all counsel and the class' property experts. Our expert legal notice plan included a comprehensive national publication program via print, television, radio, and internet banner advertisements due to the age of the class and the potential relocations of class members.

The size of the class and the level of verification necessary to correctly validate claims meant a massive undertaking of data organization. Not only were property owners verified, but also their heirs and successors were verified.

Challenge

Collecting and validating older claim data

The \$375 million settlement resulted in individual payouts ranging from several thousand dollars, for claims dating back to the 1990s. While the class definition was clear – impacting anyone who owned property in the affected area as of June 7, 1989 – the length of the case meant dealing with a large volume of possibly outdated documents. In addition, the amount of information required to verify claims led our team to identify efficiencies in the validation process.

Solution

Over 11,000 claimants elected to participate in the settlement by filling out and submitting a claim form, either on paper via mail or electronically submitted through the settlement website. Heirs or successors to class members were required to submit documentation to substantiate their position.

Having successfully administered a settlement regarding Three Mile Island, another massive environmental and public health case, we understood the sensitivity required in locating and working with class members, as well as the level of assistance to class members and class counsel that would be required throughout the duration of the settlement administration.

Our team used skip tracing to find class members who may have moved or were heirs to property owners. We offered claims filing assistance through a toll-free number, a comprehensive settlement website, mail and internet correspondence, and more.

Challenge

Reaching class members from the 1980's

Working with data that originated in the 1980's can be difficult when identifying class location and behavior more than 20 years later. In this case, most class members would be in and around the Denver area,

but potential heirs and successors may not be. With this in mind, our team of professionals developed a notice plan that included a combination of direct notice and a highly targeted indirect notice program.

Solution

Our in-house media team put forth a comprehensive notice program that included 28,179 direct mail notices, an extensive publication notice plan across multiple media channels and a detailed and user-friendly settlement website.

- Publication in targeted area newspapers
- Television and radio commercials on network affiliate and cable networks in Denver
- Online display banner advertising with a nationwide reach
- Social media advertising through Facebook and Twitter with a nationwide reach
- Third-party outreach to a community action group
- Working with medical providers to share and distribute Summary Notice

The notice plan in this case reached an estimated 96% of Denver area residents and 84% of the target audience nationwide. In addition to the first notice plan, we mailed 25,272 notices with a reminder of the claim filing deadline.

Challenge

Informing the class of misleading third-party communications

In 2017, Plaintiff's Counsel filed a motion to bar a third-party claims processor's communication with class members, which counsel claimed was misleading. However, some of these communications reached class members before the motion was filed, and our team needed to act quickly in order to correct any misleading information that could harm the class or the settlement.

Solution

We swiftly added a warning about solicitation by other claims administrators or third parties to the settlement website. Our state-of-the-art settlement websites are built in an easy-to-manage content management system that allow for flexibility and fast adjustments.

This warning stated:

Some potential Class Members have received mailings by a company or companies claiming they can help you file a claim in the Rocky Flats class action settlement. The mailings are labeled "FINAL NOTICE" and they give an incorrect February 17, 2017 deadline for filing a claim. This is false: The Court-ordered deadline for filing a claim is June 1, 2017.

Conclusion

By October 2018, we distributed over \$107 Million to 8,460 claimants. We identified 40 claims which were verified but submitted without sufficient documentation and 224 claims which were submitted but had verified supplemental documentation, which actually increased their percentage share. We also executed a second distribution (including those identified supplemental claimants) in December 2018 of over \$97 Million. Class Counsel intended to seek leave of the Court to issue a small third distribution.

In his order granting final approval, the Honorable Judge John L. Kane said:

"The Court-approved Notice Plan, which was successfully implemented...(see Doc. 2432), constituted the best notice practicable under the circumstances. In making this determination, the Court finds that the Notice Plan that was implemented, as set forth in Declaration of Jeanne C. Finegan, APR Concerning Implementation and Adequacy of Class Member Notification (Doc. 2432), provided for individual notice to all members of the Class whose identities and addresses were identified through reasonable efforts, ...and a comprehensive national publication notice program that included, inter alia, print, television, radio and internet banner advertisements. ...Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, the Court finds that the Notice Plan provided the best notice practicable to the Class."



Settlement Administration Services

Kroll is the leader in cutting-edge technology and consulting services for class action, mass tort, regulatory remediation, and government redress administration.



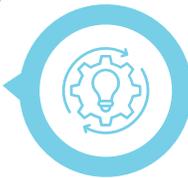
Unrivaled technology and security



Industry-leading team



World-class notice experts



Innovative administration processes



Global resources

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