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How Private Equity-Owned Companies Quietly Pocket Class Action Payouts

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Online prepaid cards have proliferated as a way to compensate consumers harmed by companies. Critics say fintechs and claims administrators have unfairly profited from the trend.

Last December, Callista Womick, a 34-year-old consultant living in Asheboro, North Carolina, got an email instructing her to click on a link to claim a digital prepaid card. A phishing scam? Nope, the card was legitimate and for $7.44–her share of what was left in the kitty from a class action lawsuit

brought against Equifax over a 2017 data breach of the credit bureau that exposed the personal information of 147 million Americans.

Legit, but problematic. Dartmouth grad Womick found using the tiny amount a "brain-teaser," since online merchants typically don't let you combine multiple payment methods to make a purchase. Eventually, she figured out she could use the card to buy Amazon gift card credits, which she could then put towards a larger purchase. "It would have been nice if they gave me a tip on how to do that," she says.

Donna Lowe, a 30-year-old 911 dispatcher from Atlanta, also opened the email, clicked on the link and activated the prepaid card. Then she gave up. "I had a hard time figuring out what I'd do with the $7.44," Lowe says. "I just eventually forgot about it." Forgotten, and soon gone–after six months, the card, issued by Blackhawk Network, starts charging a hefty $5.95 per month inactivity fee, essentially confiscating her payout.

Lowe isn't alone. *Forbes* estimates that over the past five years, $300 to $400 million of damages distributed to injured consumers through digital prepaid cards has been left unspent—money known in industry jargon as "breakage." Here's the disturbing thing about breakage: The unused money doesn't go back to the settlement fund or to not-for-profits working in areas related to the suit, as it usually does when paper settlement checks aren't cashed or when a recipient never activates the card.

Instead, the unused funds end up lining the pockets of the fintech companies that issue the card (mainly gift card giant Blackhawk Network and New York startup Tremendous), the banks they partner with and the very class action administration companies that award the contracts for the digital cards.

Compared with the tens of billions in class action settlements reached each year, the amount lost might seem modest—except that use of digital payouts in mass class actions is now exploding, meaning consumers could lose a lot more in the future if the problems with digital prepaid cards aren't addressed. Whereas payouts used to all be done via paper checks, Digital Disbursements, a Los Angeles-based fintech that offers a platform enabling consumers to choose among payment methods (including

electronic ones) in class action settlements, handled 426 class action suits in 2024, up 82% from 234 in 2023.

These days, participants in a mass class action are often given a choice of how they want their payouts. During the first round of distributions from the $425 million Equifax settlement, claimants could opt for a paper check, a payment to their PayPal account or the digital prepaid card. (In some other cases, claimants can have money sent to their bank account through direct deposit or the bank money-transfer app, Zelle.) But in the second Equifax disbursement round, the tiny distributions were all made via digital prepaid cards, sparking consumer confusion and complaints.

Other large class action cases, such as the $264 million settlement with Mylan for allegedly inflating the prices of its EpiPens, have also drawn many consumer complaints about the difficulty of using the digital prepaid cards, which were offered as an option alongside other payment methods such as Venmo and paper checks.

There's actually a strong case for using digital notices and various forms of digital payments in mass class actions. Postage is expensive, and paper checks are susceptible to fraud and often go uncashed. In 2021, after Plaid (which links financial apps and consumers' bank accounts) agreed to pay $58 million to settle a class action lawsuit over data privacy, the claims administrator estimated it would cost $20 million in postage alone to send claim-form postcards to 62 million people. The administrator ended up notifying most of those injured by email and letting consumers choose between direct deposit, PayPal, Venmo and paper checks. The total administrative costs came to just $3.9 million, according to a court filing.

The problem with digital prepaid cards, however, is that they're subject to few rules and little oversight. For example, the federal Card Act prohibits inactivity fees from kicking in before a normal gift card has gone unused for a full year, and some states

have longer waiting periods or ban inactivity or "card maintenance" fees altogether. But those laws don't apply to the prepaid cards issued in litigation settlements. So Blackhawk was free in the Equifax case to debit a $5.95 monthly fee after only six months.

Just as troubling, the judges approving settlements and the plaintiffs' lawyers representing consumers are largely unaware of how the digital cards work, or who is collecting the breakage they generate. Shockingly, of the 94 federal district courts in the U.S., only one, the Northern District of California, requests a "Post-Distribution Accounting" report detailing how much of a class action settlement actually ended up in the hands of individuals who were harmed, as opposed to the lawyers, class action administrators and not-for-profits. And according to a 2024 University of California law school study, that commendable guidance is ignored in more than half the class cases in the district anyway. When these reports are filed, they detail uncashed paper checks (since that money is going back to the class), but not the money lost to digital-card breakage.

Truth is, digital prepaid card abuses are just the latest issue in a class action system riddled with other older and better-known problems–for example, plaintiffs' lawyers get too much of the money (often 25% or more of the settlement), and fewer than 5% of consumers eligible for payouts typically end up getting anything due to low response rates.

Still, despite such failings, class action lawsuits can be an effective tool for holding companies accountable and forcing reforms in harmful practices, particularly when a large group of plaintiffs have suffered small damages–too small for individual suits to make sense.

So it's only fitting that a new class action suit was filed last month in the Eastern District of Pennsylvania against three big class action administration companies, all of which are owned by private equity firms, alleging they "reap huge profits from so-called 'revenue sharing' payments for using digital payment cards." The suit, which accuses them of fraud and various other breaches, asserts that, "In reality, these revenue sharing payments are nothing more than kickbacks." Moreover, the lawsuit says, the administrators have kept these agreements secret from attorneys, judges and class members, even setting up "special purpose entities ('SPEs') to conceal their receipt of kickbacks."

Have a story tip? *Contact Jeff Kauflin at jkauflin@forbes.com or on Signal at jeff.273.*

T**odd Hilsee,** a founder and former president of a class action administration firm and an expert on class action notification procedures, began investigating prepaid cards in 2022. A source had told him rebates and discounts were being paid to the class action administrators out of the fintechs' breakage spoils–without the payments being disclosed to the judges overseeing cases or the lawyers involved.

Electronic payouts began growing after federal class action guidelines were changed in 2018 to specifically permit electronic notice and distribution. In 2020, as Covid-19 sparked a surge in online transactions, that growth accelerated. Suddenly, there was real money at stake.

Todd Hilsee, a class action lawsuit distribution expert, has been investigating hidden profits in prepaid digital cards since 2022.
COURTESY TODD HILSEE

Hilsee's best evidence of what sounds like a kickback: a November 2020 email in which a Blackhawk executive pitches a settlement administrator on distributing the funds through a Virtual MasterCard Disbursement card. "We actually pay you to issue these cards," the executive wrote, adding that "you would net $100,000 to $175,000 additional revenue." (Hilsee published this email in an October 2024 paper, with the names of the individuals and companies redacted. *Forbes* confirmed through our own reporting that a Blackhawk employee sent the email.)

Based on that email, the "additional revenue" slipped to a settlement administrator could easily total millions of dollars in a large case, since the Blackhawk salesperson was offering a rebate of up to 3.5% of the total money that was supposed to be disbursed through digital prepaid cards. Blackhawk declined to comment on the email, but noted in a statement that it complies with all applicable laws.

“If they’re receiving some type of hidden kickback, first of all, it’s inappropriate that the court isn’t informed about it,” says Senior District Judge Edward Davila of the Northern District of California. “Of equal importance, it seems that money should be reduced from their [settlement administration] fees.”

“This should never be happening, and everyone in this industry knows this shouldn’t be happening,” declares J. Eli Wade-Scott, who leads the prominent class action practice at Chicago-based law firm Edelson. He adds that administrators should be disclosing what they do with every cent. “There's no option to surreptitiously redirect money to yourself as an administrator or as a vendor.” If an administrator or vendor is omitting the existence of rebates, he says, it would “give rise to a fraud claim.”

That’s part of what the new class action lawsuit against Angeion Group, Epiq Systems and JND Legal Administration alleges: fraud. The suit says the rebates from fintechs were material information that should have been disclosed before a settlement administrator was chosen for any case, since “this compensation would be paid out of the gross settlement proceeds and diminish the amount of money available to compensate the plaintiffs and the classes in such cases.”

We made repeated interview requests to the largest settlement administrators, including the three named in the suit, as well as A.B. Data and Kroll. Not one granted us an interview or answered the detailed questions we emailed. Angeion provided an emailed statement calling the new lawsuit “meritless” and “based on a fundamental misunderstanding of what happens with unspent card balances for class members who choose to receive prepaid gift cards as their method of payment.” It added that Angeion “scrupulously honors the terms of the settlements it administers.” A JND spokesperson called the lawsuit “baseless.”

A representative for smaller settlement administrator Simpluris says the company has never accepted a rebate from a fintech company. In a blog post responding to Hilsee's allegations of improper rebates, administrator Rust Consulting wrote that it "has never engaged in a scheme such as that."

One executive at another, smaller administration firm who talked to us on the grounds he not be identified said he hasn't seen such rebate offers recently and that the industry seems to have moved toward a model where digital payouts are bundled and priced more cheaply upfront to account for the breakage the card companies get to keep. Even if he's correct that rebates to administrators are now less common, breakage still means class members are being short-changed, since the money ends up in the pockets of the digital card providers, not back in the settlement funds, and isn't disclosed to the court.

Blackhawk declined to grant us an interview or answer our detailed questions but provided a statement in response. It read in part, "While it's accurate that unused balances on prepaid cards may incur inactivity fees or expire over a reasonable period of time—terms that vary by program—this practice is neither secretive nor unique. These details are in full compliance with applicable federal and state laws and regulations and are disclosed upfront to the client or recipient (as applicable) in comprehensive terms and conditions."

Jeff Richardson is cofounder and CEO of Digital Disbursements, a platform that has now been used for electronic payouts in more than 1,000 cases–it creates the user interface for consumers but doesn't issue prepaid cards itself. While declining an interview, he said in emails to *Forbes* that "not all prepaid cards are the same" and that settlement administrators should accept only those that are "class-member friendly."

What makes a card class-member friendly? Richardson said he has negotiated with Digital Disbursements' card-issuing partner Blackhawk to offer cards with lower inactivity fees of $0.95 per month instead of $5.95 and a longer waiting period of 12 months before inactivity fees kick in. He says Digital Disbursements pioneered a method that lets consumers transfer the balance from a card to a bank account, Venmo or PayPal, which some cards don't allow.

Banks are involved in–and profit from–this problem too since they create the accounts in which the digital-card funds are held (until they're spent by consumers or swallowed up by fees). Sioux Falls, South Dakota-based Pathward, Blackhawk's bank partner, declined to grant an interview or answer our emailed questions, saying in a statement that "Compliance with laws and regulations and the integrity of the judicial process are of utmost importance to Pathward."

Banks act as custodians for class action settlement money, regardless of whether it's distributed by check or electronic means. The number-one player in that business is Huntington, a 159-year-old Ohio bank, which said in an emailed statement that 95% of its disbursement business is still paper checks and that "fairness, transparency, and consumer choice are fundamental to Huntington Bank's payment solutions."

Another big player is Phoenix-based Western Alliance Bank, which acquired Digital Disbursements in 2022 and runs it as a separate subsidiary. Neither bank would comment specifically on the rebates fintechs have provided to claims administrators, but they're likely aware of the problem. Hilsee says that a large bank approached him with concerns about the rebates fintechs were giving to administrators, yet when he suggested bringing the issue to the government's attention, the bank demurred, saying it was worried about "unintended consequences."

The bank probably feared opening a can of worms. Three industry insiders, all speaking to *Forbes* on the condition they not be named, told us that claims administrators sometimes take a cut of the interest income earned by settlement funds in the months or years before they're distributed. As a matter of best practice, says class action lawyer J. Eli Wade-Scott, settlement money should be parked in an interest-bearing account, with the interest ultimately distributed to members of the class. But if a settlement agreement doesn't spell that out, and the plaintiff's lawyers aren't so conscientious, there's room for administrators to pocket some of the interest. The issue became more salient after the Federal Reserve began raising interest rates in 2022, since the potential interest in play grew much larger.

A spokesperson for Western Alliance Bank didn't deny the practice, telling us in a statement, "Our clients, including claims administrators, choose the type of accounts (interest bearing versus non-interest bearing) they establish and how interest earned is dispositioned. As a financial institution, our role is to follow the direction of our account holder. The disposition of interest earned is a matter between claims administrators and their clients."

One of our sources, a former employee of a claims administrator, says that he was surprised by the extra revenue flowing in from banks. "Suddenly, we were making a lot of money that had nothing to do with the administration of benefits to class members," he says. He asked a coworker whether the company needed to disclose the income as a separate revenue stream to the courts but was told no, since it was standard practice. It struck him as odd, given that judges need to approve claims administrators' fees. "When these administrators are pulling down 4% straight to them, with no benefit to the fund, there won't be a judge in the country that will think that's right," another former claims administrator employee tells us.

Both Blackhawk and Tremendous, the two biggest issuers of electronic prepaid cards for litigation settlements, have some experience themselves as targets of class action suits.

Tremendous CEO Nick Baum cofounded a service called GiftRocket.com in 2010 before launching Tremendous as its sister company in 2018. GiftRocket published lists of tens of thousands of restaurants and retailers on its website and prompted consumers to choose any of them to create a virtual gift card. The problem: You couldn't actually use the card directly to buy something at any of those places. Instead, GiftRocket was charging $2 per card, plus 5% of the card's value, for a money-transfer product. The named business was merely a suggestion of where the gifted money might be spent. When recipients of a GiftRocket card clicked on it, they were directed to either deposit the money into their bank account or buy a gift card at another retailer, like Amazon.

The product upset both consumers who thought they were buying (or getting) typical gift cards and some merchants featured on the site, who complained they were listed without their consent and had to deal with angry shoppers who expected them to accept the GiftRocket cards directly. In 2022, a Brooklyn bakery and a Pennsylvania coffee shop filed a class action suit against GiftRocket in the Eastern District of New York, charging it with deceptive business practices, false advertising and unfair competition. GiftRocket has denied the allegations in the suit, and a spokesperson says, "We stand behind those denials, will continue to vigorously defend the case, and expect to prevail." Baum declined to be interviewed by *Forbes*.

The website for GiftRocket says that it stopped accepting orders as of January 1, 2025, but Tremendous seems to be growing nicely. Its website says it has facilitated $350 million in digital payments for 150 cases. Tremendous describes itself as "highly profitable" on its LinkedIn page and now has 140 employees, according to

LinkedIn data, up from about 115 a year ago. A recent filing in the GiftRocket class action case included internal Slack messages from Tremendous executives, including one in which Tremendous' vice president of business operations said GiftRocket had "insane" breakage rates, which is why GiftRocket was profitable and why he considered it a lucrative client for Tremendous.

Early last year, a New Jersey resident filed a class action suit against Tremendous in the federal District of New Jersey court over its current class action payouts business, claiming its digital prepaid cards were misleading and not (as advertised) equivalent to cash, because the card couldn't be used at most brick-and-mortar stores. A Tremendous spokesperson says the company's prepaid cards are accepted at "the vast majority of physical retail stores" because you can add them to a virtual wallet on a smart phone and that the plaintiff withdrew the suit "due to lack of merit." (The plaintiff's attorney declined our request to comment.)

The larger and older Blackhawk Network was founded in 2001 as a subsidiary of Safeway, when the grocery store chain began selling gift cards in its stores. Blackhawk went public in April 2013 and was fully spun out from Safeway a year later. In 2018, Blackhawk was bought by private equity giant Silver Lake and hedge fund P2 Capital Partners at a $3.5 billion valuation. Shareholders filed multiple lawsuits accusing Blackhawk's CEO and board members of omitting important information about the merger negotiations and trying to sell the company at a lowball price. In 2022, insurers for Blackhawk settled for $30 million a stockholder class action suit accusing the company's CEO and chairman of breaching their fiduciary duties. Payments were sent to shareholders by check. Blackhawk denied the claims.

Meanwhile, a flurry of complaints emerged about Cardpool, a website for buying and selling pre-owned gift cards that Blackhawk had acquired in 2011. The site was

plagued by fraud, with criminals reportedly selling on the site stolen gift cards, gift cards bought with stolen credit cards and gift cards whose balances were drained before buyers could use them.

By December 2020, Cardpool had attracted 2,187 Better Business Bureau complaints over a three-year period, triggering the bureau to issue a national advisory about the risks of using it. Cardpool announced in early 2021 that it was shutting down.

Over the next few years, Blackhawk suffered two major data breaches, which led to multiple class action lawsuits. Some of these suits have since been dismissed, and one is on hold due to an appeal from a potential class member. Yet Blackhawk's overall business has continued to expand, reaching $2.9 billion in estimated revenue in 2023. Today it has more than 3,000 employees and processes $28 billion a year in transactions across all of its businesses. More recently, Blackhawk's owners have reportedly considered selling the company for more than $5 billion. (A Blackhawk spokesperson declined to comment on the possible sale.)

The problems with digital prepaid cards in class actions are finally starting to get more attention, thanks largely to Todd Hilsee. Some of the attorneys we spoke with for this article now have their antennas out. "This is absolutely something we'll be looking at in future settlements," says Ted Frank, a class action reform crusader who has been working for over a decade to try to rectify the injustices of class actions, appealing more than 100 settlements and often winning victories, such as smaller payouts for attorneys.

Some potential fixes to the problems seem obvious. For example, when settlement administrators ship out digital debit cards, they could provide clear, comprehensive tips on how to use them. They could demand that fintechs wait to start charging inactivity fees until at least 12 months have passed, as is required for gift cards. And they could email class members with reminders if they have unspent money on their cards, a feature that Digital Disbursements' Jeff Richardson says he'll be testing with Blackhawk later this year.

More disclosures in court filings, as well as more judicial oversight—both before and after payouts begin—is key. Fintech companies project breakage amounts in their own business plans, so why not disclose that info to judges, plaintiffs' lawyers and settlement administrators? After payouts are made, something like the Northern District of California's post-distribution accounting form could be required and updated to include information about how many prepaid cards issued were used, how many ended up as breakage and who benefitted from the breakage pot.

Timothy Corcoran, a consultant who used to lead Angeion's class action administration business, thinks that companies shouldn't be afraid of more disclosures if they're doing everything above board. "If there's more scrutiny, that's great–then those who do things the right way aren't going to be disadvantaged."

—Additional reporting by Stephen Pastis.

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