

7th January 2011

**THE PROPOSED CLASS ACTION AGAINST RCI
CONCERNING ITS TIMESHARE EXCHANGE CLUB**

ADVICE

Conclusions

1. Proof that skimming has occurred lies in the large number of members complaining that they are unable to obtain comparable exchanges and the quality of these complaints. Disclosure is expected to confirm what has been going on (ex employees have stated that skimming does occur within RCI). It is anyway unlikely that RCI will contest the skimming allegation, although it may well contest the extent of skimming, in view of the admissions made in the US action and the admissions of its lawyers in response to the pre-action letter on behalf of ITRA.
2. The contractual clause apparently allowing RCI to use deposited holiday ownership rights without restriction is likely to be given a narrow interpretation. Even if it is given a wider interpretation, it is likely to be held not to be binding under consumer protection legislation.
3. "Points" members will have claims on the same or similar grounds as weeks' members.
4. Many members will testify as to pre-contractual misrepresentations made to potential members regarding the way the exchange scheme operated, and their testimony is backed up by documentary evidence. Remedies, including claims for damages, will arise under the Misrepresentation Act.
5. RCI acts as an agent on behalf of members for the purpose of making holiday ownership rights available to other members and as such owes fiduciary duties and duties of good faith towards the members which it breached by transferring the rights to third parties for profit. This could be viewed as a secret profit made at the expense of the member. It would also be a breach of an implied

contractual term that RCI would not profit from disposing of holiday ownership rights as its role was to facilitate the exchange of such rights between members.

6. Members have a proprietary remedy for breach of fiduciary duty and for breach of constructive trust. Members would be entitled to an account of the profits derived from the wrongful use of their holiday ownership rights.
7. Members also have claims for damages. RCI's activities have not only caused a loss of amenity in the form of the anticipated annual holidays but also impaired the value of timeshares owned by members and the value of membership to RCI's exchange scheme itself.
8. RCI Europe is very likely to be able to satisfy any judgment obtained.
9. Members therefore have good grounds for bringing claims against RCI Europe. The exact form the claims take will be dealt with in due course, possibly by way of direction from the court. Once the claims are underway, it is expected that many more members will join in adding to the weight of numbers making the complaint and providing further proof of skimming.
10. Until the claims are underway it is impossible to be precise about the prospects of a successful claim. However, the proposed claims have a strong legal basis and provided that the anticipated proof becomes available, they have a good (in excess of say 60%) chance of success.

If anything needs to be discussed in relation to this advice please do not hesitate to contact us.

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