

**IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO**

ESTATE OF ALDEN B. CRAIG Sr.	:	CASE NO. CV2009-01-0196
David Craig, Administrator	:	
Plaintiff,	:	<u>Judge Hedric</u>
vs.	:	<u>CLASS ACTION</u>
ADVANCED HEARING TECHNOLOGIES, INC.	:	NOTICE OF
Defendant	:	PROPOSED SETTLEMENT

TO ALL CLASS MEMBERS:

This notice informs you of a proposed settlement of class action claims against Advanced Hearing Technologies, Inc. This notice also informs you of your rights as a settlement class member. If approved by the court, an entry shall be issued providing the following:

1. Consent entry: This section discusses the findings which will be entered by the court about Advanced Hearing Technologies, Inc's actions and orders regarding how Advanced Hearing Technologies, Inc. will have to change its contract and its collection methods in the future.

- a. A consent entry declaring Advanced Hearing Technologies, Inc. violated the Ohio Consumer Sales Practices Act when it:
 - i. sued Ohio residents in Ft. Wayne Indiana,
 - ii. took default judgments against Ohio residents,
 - iii. added court costs to the Ohio resident's account, and
 - iv. added attorney fees to the Ohio resident's account.
- b. Further, its standard contract violated the Ohio Consumer Sales Practices Act, O.R.C. § 1345.30, and O.R.C § 4747.09 by:
 - i. Stating in the contract that 3 visits for adjustments were required before accepting a return of the hearing aid within 30 days of purchase;
 - ii. Failing to list the audiologist's license number on the agreement;
 - iii. Failing to state:

**RIGHT TO RETURN THE HEARING AID WITHIN 30 DAYS
AND RECEIVE A REFUND**

Under Ohio law (O.R.C. § 1345.30), a consumer has the right to return a hearing aid for any reason within 30 days after it is originally delivered to the consumer or a person acting on the consumer's behalf and to receive a refund of the consideration paid for the hearing aid less an amount specified by the hearing aid dealer, hearing aid fitter, physician, or audiologist to cover expenses incurred in connection with the hearing aid not later than 15 days after presenting proof of payment for the hearing aid and returning it in the condition in which it was received, except for normal wear and tear. In this case the amount deducted from the

refund will be \$.....

iv. Failing to state in type no smaller than the body of the contract:

"the purchaser is advised that any examination, fitting, recommendation, or representation made by a licensed hearing aid dealer or fitter in connection with the sale of this hearing aid is not an examination, diagnosis, or prescription made by a person licensed to practice medicine in this state and therefore must not be regarded as medical opinion or advice."

v. Failing to list the local office address on the contract.

c. A permanent injunction shall issue which provides:

- i. Advanced Hearing Technologies, Inc. shall not sue a customer except in the state where the customer resides or the contract was executed by the customer.
- ii. Advanced Hearing Technologies, Inc. shall use a contract in Ohio which conforms to O.R.C. 1345.30 and O.R.C 4747.09

d. Payment of damages as set out in paragraph 2.

2. Class Damages: This section states what Advanced Hearing Technologies will provide each class member.

- a. Advanced Hearing Technologies, Inc. shall issue to each Ohio customer who made purchases between January 1, 2006 and January 20, 2009 inclusive **a credit of \$250** to be applied to any outstanding balance to the customer's account, with the balance of any credit remaining to be used for the future purchase or service of a product sold by Advanced Hearing Technologies, Inc.
- b. However, if said class member **returned the product within 60 days of purchase**, upon presentation of an Affidavit by said customer to that effect, Advanced Hearing Technologies, Inc. shall credit back all charges to make said account \$0 and shall pay said class member \$250.00.
- c. **If said class member is deceased**, upon presentation of a death certificate, Advanced Hearing Technologies, Inc. shall credit the payment to any outstanding balance owed and pay the class member's estate any resulting credit balance.
- d. Advanced Hearing Technologies shall make only one \$250.00 cash payment to any class member under this section.
- e. All claims under 2b and c shall be presented within 90 days from the mailing of the notice of the court's approval of this settlement.
- f. The cash payments to this section of the class shall not exceed \$10,000.00. If claims are made under section 2b and c in excess of this amount, the cash payments in this section shall be divided pro rata among all claimants under sections 2b and c.
- g. Distant Forum Sub-Class: **If you were sued by Advanced Hearing Technologies, Inc. this section also applies to you.**
 - i. Advanced Hearing Technologies, Inc. shall vacate every judgment and dismiss all pending collection cases filed in Indiana against an Ohio resident.
 - ii. *In addition to any payments made under 2b and c*, Advanced Hearing Technologies, Inc. will **credit to each** Ohio Resident customer's **account** sued in Fort Wayne, Indiana **\$350.00** as non-economic damages.

- iii. Advanced Hearing Technologies, Inc. shall **credit back any charges for attorney fees, collection fees, or court costs** which were added to the customer's account or to the judgment.
- iv. For each proceeding in aid of execution filed after the judgment was entered, Advanced Hearing Technologies, Inc. will credit to each Ohio Resident customer's account an additional \$350 in non-economic damages.
- v. In addition, Advanced Hearing Technologies, Inc. will credit to each Ohio Resident customer's account **any class member's economic damages (such as mileage, lost wages, attorney fees paid by a class member) if said class member submits documentation in the form of an affidavit.** If reasonableness of the charges is disputed, these charges may be submitted to the court for determination at a hearing. All claims shall be presented within 90 days from the mailing of the notice of the court's approval of this settlement.
- vi. **If said class member returned the product within 60 days of purchase,** upon presentation of an Affidavit by said customer within 90 days from the mailing of the notice of the court's approval of this settlement, Advanced Hearing Technologies, Inc. shall credit back all charges to make said account \$0 and shall pay said class member damages as set out above.
- vii. The amount of damages paid by Advanced Hearing Technologies, Inc. in the form of cash payments to class members in this section shall be capped at \$25,000.00. If the claims for cash payments in this subclass are more than \$25,000.00, then the fund will be divided pro rata among the claimants in this section.
- h. If any of the damages described above result in a credit balance to the account, Advanced Hearing Technologies, Inc. shall refund said balance to the customer.
 - i. If there is a cash payment to a class member whose address is unknown, Advanced Hearing Technologies, Inc. shall pay said refund to Ohio's Unclaimed Funds providing the customer's name, last known address and date the contract was made.

3. Attorney Fees and Costs

Advanced Hearing Technologies, Inc. shall pay Pro Seniors' reasonable attorney fees incurred in this action, including management of the class in the amount of \$25,000, payable in 12 equal monthly installments of \$2000 per month with the remaining balance of \$1000 being paid in month 13 beginning January 3, 2011.

Advanced Hearing Technologies, Inc. shall pay costs of administration of the class, including cost of printing all notices to class members required by the court (e.g. 26c and 26e notices), costs of mailing, publication, and court costs.

4. General Terms

- a. This agreement does not affect Advanced Hearing Technologies, Inc.'s legal obligation to provide warranty work or customer service as required under its contract with individual class members.
- b. This agreement has no effect on any class member's claims against Advanced Hearing Technologies, Inc. for breach of contract, breach of warranty or any other claims or causes of action not specifically enumerated and included in this class action.

WHAT YOU MUST DO TO PARTICIPATE; IF YOU DISAGREE WITH THE PROPOSED SETTLEMENT; AND WHAT HAPPENS IF THE SETTLEMENT IS APPROVED:

1. ***If you agree with the proposed settlement, you need not do anything at this time.***
2. The court shall review the proposed settlement at a hearing at the Butler County Common Pleas Court, Government Services Center, 315 High Street, 3rd Floor, Hamilton, Ohio before Judge Hedric **on December 21, 2010 at 8:30 am.** Judge Hedric at that hearing will determine whether the proposed settlement is fair, adequate, and proper, and whether the court should enter judgment approving the settlement, approving the payments to class members, awarding attorneys' fees, expenses, and court costs, and entering the consent entry.
3. Each class member shall have **until December 15, 2010 to file any objections to the proposed settlement. Said objections must be sent to Clerk of Courts, Butler County Common Pleas Court, 315 High Street, 3rd Floor, Hamilton, Ohio 45011.** Said objections must include the above case number and the reasons for your objections. A copy of the objections must also be sent to counsel for Plaintiff at the following address:

Advanced Hearing Technologies Class Action Litigation

Notice Administrator

c/o Pro Seniors, Inc.

7162 Reading Road, Suite 1150

Cincinnati, Oh 45237

Counsel for Plaintiff shall then deliver a copy of all objections to Counsel for Defendant.

Any class member may appear at the hearing to show cause why the settlement should not be approved provided that *no class member shall be heard unless, on or before **December 15, 2010** said class member has filed written objections as required above.*

4. If the settlement is approved, you shall be sent another notice by regular mail notifying you that you have **90 days** to submit any documentation of individual economic damages. Notice shall also be published once in the Hamilton Journal.
5. Upon expiration of the above 90 day period, Advanced Hearing Technologies, Inc. shall have 90 days to:
 - i. Comply with its agreements set forth in section 2 above.
 - ii. Submit its dispute with any class member's claim for economic damages in writing to Counsel for Plaintiff.
 - a) The parties shall attempt to resolve any dispute within 30 days of submission.
 - b) If a dispute cannot be resolved, the parties shall contact the court to set the matter for hearing.
6. Within 14 days after the end of this 90 day period, Advanced Hearing Technologies, Inc. shall submit to Counsel for Plaintiff documentation that it has met its obligations hereunder.

Whom Can I call with Questions?

Please visit the Pro Seniors Website at www.proseniors.org/AHTClassAction or call 513-458-5502.