

Press Release

Washington Legal Foundation
effective advocate of free enterprise®
2009 Massachusetts Ave., NW
Washington, D.C. 20036

For Immediate Release

March 25, 2003

WLF URGES SUPREME COURT TO CAP CLASS ACTION ATTORNEY'S FEES (*Simon v. Schwartz*)

The Washington Legal Foundation (WLF) filed a brief with the U.S. Supreme Court urging it to review an important class action case that involves the proper standard that should be used by trial courts in awarding attorney's fees in class action settlements. WLF argued that the fees awarded in this case, which were about five times the normal hourly rate of the attorneys, were excessive; rather, the fee should have been capped at the normal hourly rate according to Supreme Court precedent.

In *Simon v. Schwartz*, a class action was filed against Citibank on behalf of credit card holders claiming that the company violated the federal Truth-in-Lending Act by not timely crediting payments made by the card holders. Approximately a year after the suit was filed, the parties proposed a settlement whereby the class members would share in a fund of \$18 million, injunctive relief would be granted, and the defendant would pay up to \$9 million to the attorneys. Several class members objected to the fee, and the trial court eventually trimmed the fee award to \$7.2 million, which was 40 percent of the cash fund, and approximately 20 percent of the combined value of the settlement. The "reduced" award nevertheless translated into attorney's fees that were approximately five times the normal hourly rate. The U.S. Court of Appeals for the Ninth Circuit upheld the fee award.

In its brief, filed as part of WLF's INVESTOR PROTECTION PROGRAM, WLF initially argued that the arrangement whereby the attorneys agreed to receive their fees directly from the defendants, rather than as part of the class common fund, raises serious conflicts of interest. By being assured of their fees, the attorneys have little incentive to maximize the award for the class members. WLF also argued that based on the 1992 Supreme Court decision in *City of Burlington v. Dague*, fee awards under federal statutes providing for the award of "reasonable fees" are normally limited to the so-called "lodestar" rate, *i.e.*, the number of reasonable hours expended on the case times the reasonable hourly rate. The Ninth Circuit simply ignored the *Dague* precedent. The Supreme Court will decide whether to take the case or not by May.

* * *

For further information, contact Paul D. Kamenar, WLF's Senior Executive counsel, at 202-

588-0302.