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SUPREME COURT DECLINES REVIEW OF ATTORNEY'S FEES IN CLASS ACTION CASE *(Simon v. Schwartz)*

The U.S. Supreme Court declined to review an important issue regarding the award of attorney's fees in certain class action cases. The Washington Legal Foundation (WLF) had filed a brief with the Court urging it to review the case because of the recurring issue of the award of excessive attorney's fees in many class action cases. In particular, WLF had 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 those cases where Congress provided for the award of fees by statute.

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. WLF will continue to participate in other class action cases where warranted to oppose excessive attorney's fees.

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