
Why 'Class Action Attorney Fees' Are Such Dirty Words

By **Daniel Karon** July 13, 2017, 9:18 AM EDT

“Look at this. It’s one of those class action settlement notices.”

“I can never understand those things. What’s it say?”

“I don’t know. But whatever it says, I’m sure those plaintiffs lawyers are making out.”

How many times have we heard this discussion? Hell, how many times have we had this discussion? For eons, the notion that plaintiffs class action lawyers deserve payment — sometimes handsome — for their services has drawn ridicule and scorn.



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But why? Why do so many people insist that payment to plaintiffs class action lawyers deserves unrivaled scrutiny — scrutiny reserved for no other profession, even when these lawyers have achieved good results?

Does the answer lie in the gauche television spots that advertise for mass tort clients? No, those are just irksome. Is the answer found in the manufactured law firm studies that purport to show that plaintiffs class action lawyers make gobs of money at their clients’ expense? No, those are just lies.

Then what’s driving the public’s disdain? Disdain that has spilled into our courts and routinely affects attorneys’ fee requests at final approval. What has gotten people so riled up that the first thing they look for in class action settlement notices is the attorneys’ fee provision, never mind that these notices provide their readers a benefit that they didn’t have moments earlier?

When you boil it down, the issue really isn't plaintiffs class action lawyers getting paid. Everybody deserves to get paid for their work. Defense lawyers deserve to get paid for their work. Judges deserve to get paid for their work. Other professionals, like doctors, engineers and accountants, deserve to get paid for their work.

Turning to corporate America, certainly no one would question that Bill Gates, Jeff Bezos and Mark Zuckerberg deserve to get paid for the work that they do. Because when you do a job and when you add value, you deserve to get paid. Just not plaintiffs class action lawyers.

Presently, I have a class action lawsuit pending against a health club chain for stealing wages from its group fitness instructors by refusing to pay them for all the time that they worked. I also have a class action case against a health insurer for slipping secret charges into its administrative contracts with cities, counties and school districts, leaving these groups with less money to pay for vital community programs and services.

What I do not have is a class action case against Subway for failing to provide customers twelve inches of sandwich, despite the store's advertisement that it would. Nor do I have a case against **Starbucks** because its ten-ounce iced coffee drinks are slightly less than ten ounces, since, after all, Starbucks needs to leave room for the ice that makes its drinks iced in the first place.

My cases are sensible. They involve real clients. And they strive to solve my real clients' real problems. Easily, Subway and Starbucks don't fit that bill. Those were "lawyers' cases." They were intended to do but one thing — make plaintiffs counsel money. No sensible person can fairly say that if I win my cases — if I spend thousands of hours, risk hundreds of thousands of my own dollars and forego other fee-paying opportunities — I don't deserve to make a respectable fee.

So back to my question: What's driving the public's disdain for plaintiffs class action lawyers getting paid? Actually, I answered this question when I remarked that "when you add value, you deserve to get paid." Because it's not about moving papers and exchanging capital. It's about making a difference. It's about adding value.

I suspect that no one questioned class counsel's impressive payday in the breast implant litigation. There, attorneys recovered \$3.4 billion for women who suffered autoimmune disease from defective silicone breast implants. I also doubt anyone honestly believed that plaintiffs counsel didn't earn their fee in the Enron securities case. That case settled for \$7.2 billion and compensated shareholders whose stock became worthless when the company collapsed.

But when 1 million owners of defective Ford trucks received the opportunity to claim coupons worth \$300 or \$500 toward the purchase of a new vehicle while plaintiffs lawyers took home \$25 million in fees, that was a problem. (Sounds an awful lot like Subway and Starbucks, doesn't it?)

No one can deny the age-old maxim that risk deserves reward. Without risk-taking plaintiffs lawyers — lawyers who put everything on the line for what they believe in — there would be no defense lawyers and corporate cheaters would run amuck, ravaging consumers and victimizing well-behaving corporations.

But no one should expect plaintiffs lawyers to risk their families' comfort and security for the same wages as these lawyers could make performing hourly work. Anyone who thinks different is either delusional or professionally jealous, though that jealousy tends to dissipate at the specter of no direct deposit every two weeks or at losing class certification after having spent four years and half a million dollars of your own money pursuing something you believed in.

Considering all this, it's little wonder that in *Amchem Products v. Windsor*, the **U.S. Supreme Court, when centering on small recoveries**, expressed that "[t]he policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights," and that "[a] class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor."

It's not the class action system that's defective. That system is thoughtful, sensible and well intentioned. It's the system's all too frequent manipulation by reckless plaintiffs lawyers and their defense colleagues' complicity in supporting senseless settlements that's the problem.

And when considering defense counsel's insistence that their clients have instructed them to settle lawyers' cases, the easiest response is for them simply to resist plaintiffs counsel's demands for outlandish fees and to let the judge decide. After all, it's unethical to negotiate attorneys' fees until the parties have settled anyway.

Stupid class action lawsuits filed by feckless lawyers are a disgrace. They are a tax on society. They torture Rule 23's purpose, which is to help people on a mass basis, not hurt them. But as destructive as bad class actions are, good class actions are that essential.

So the next time you wince at a class action settlement notice's description of attorneys' fees, ask yourself whether you're troubled by the lawyers' right to get paid or by the remedy that these lawyers obtained as their basis for doing so. I think you'll be surprised at how your perception has changed.

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