



Class Counsel Fee Award Slashed Based on Results Obtained

The U.S. Court of Appeals for the Fifth Circuit recently issued an opinion vacating an over \$4.3 million fee award to class counsel. *Fessler v. Porcelana Corona De Mexico, S.A. DE C.V.*, 23 F.4th 408 (5th Cir. 2022). The opinion provides defendants with additional support to limit fee awards in class cases where plaintiffs obtain substantially less relief than initially sought.

In *Fessler*, a proposed consumer class who purchased toilet tanks brought claims for injunctive relief and monetary damages against the manufacturer. The class sought relief for alleged defects of seven models produced over nine years and sought compensatory, punitive, and treble damages. Ultimately, the class settled for damages for only a single year involving two toilet tank models and injunctive relief for four additional years, with class members receiving only a maximum of \$4,000 in damages. Despite this gap in recovery sought and recovery awarded, the district court awarded \$4,333,949.50 in attorneys' fees and \$371,354.98 in expenses.

On appeal, the Fifth Circuit emphasized that time spent on unsuccessful claims is not recoverable unless a plaintiff can prove the claims share a "common core of facts" or "related legal theories." The Fifth Circuit noted that the district court's "findings" on this issue amounted to two conclusory statements without factual findings in support, which the Fifth Circuit deemed an abuse of discretion.

The Fifth Circuit further held that, even if the district court had adequately supported its conclusion, the district court still failed to properly analyze the award in relation to the results obtained. Specifically, the Fifth Circuit held that the district court failed to consider the relief sought by class counsel. The Fifth Circuit compared the relief sought (compensatory, punitive, and treble damages for seven tank models

manufactured across nine years) to the relief obtained (class members only received a maximum of \$4,000 in damages for two tank models manufactured in one year) and found “members of the two settlement classes got somewhat more than the company had already offered consumers before this suit was filed.” The Fifth Circuit noted this alone was enough to vacate the fee award and remand. It concluded its analysis by suggesting on remand that the “[district] court’s scrutiny should guard against the public perception that attorneys exploit the class action device to obtain large fees at the expense of the class.”

The upshot: The *Fessler* opinion strengthens an argument that defense counsel have argued in various ways for years—a plaintiff does not “prevail” simply because it received some type of recovery. Often, a limited recovery for a plaintiff is effectively a “win” for the defendant and defense counsel, and fee awards should reflect that. This case should be cited by any defense counsel defending a bloated fee award in a class case.

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