

EXHIBIT 1

EXHIBIT 1

REPLY DECLARATION OF GARY E. MASON

Summary:

Counsel for the plaintiff, the class, should be reimbursed for his efforts at a more reasonable pay grade than is requested. The requested attorneys' fee, while arguably at the high-end of "normal", is outside the realm of reasonable for the people and purpose served. A more appropriate percentage would be 20%, with cost of expenses taken out of that amount.

Details:

Apology for non-standard format of objection:

My apologies that this objection does not conform to standard legal submissions, nor is even as well detailed as would be possible if more time was dedicated to it. This submission is done with no hopes of compensation, and hence, without legal counsel to format this objection in the more typical format, and without in depth research. However, the hope is that the comments below will be easily understandable, and provide evidence for the summary position.

Information demonstrating that the Class Member Howard Abbey is entitled to be included as a member of the Class:

I, Howard Abbey, testify that I am entitled to be a member of the class.

signed Howard Abbey Jan 1, 2011.

Howard Abbey has resided in Kokomo, IN, United States of America since 2003. Howard Abbey has been a long time Google mail (Gmail) user, with user ID hrabbey@gmail.com, and continued to be so through the Notice Date. Attached exhibit A contains the notice sent to Howard Abbey. Howard was introduced to Google Buzz through the Gmail interface. Two examples of Howard Abbey's usage of Google Buzz are also attached in exhibit A. Howard Abbey is not excluded from the Class. Howard Abbey is not an employee or otherwise affiliated with Google, except as a user of services. Howard Abbey is also not part of the family of any judge assigned to this case. Howard Abbey is not listed among those who submitted a request for exclusion, as per Exhibit A of Affidavit of Jennifer Keough in support of final approval.

Statement of the Class Member's objection, including specific reasons:

The attorney's fee should be reduced to 20% for the following reasons:

- To make up for the lack of economic force of competition in regulating prices.
- To reflect non-financial compensation given counsel.
- To reflect the low worth of the settlement result to the members of the class.
- To reflect the overall economic stagnation that existed during the period of the case work.
- To reflect the typical wages of technical legal public advocates.

The attorney's expenses should be paid for out of the attorney's fee to avoid a need for detailed court intrusion into expense choices that should be freely made by counsel.

Detailed statement of the Class Member's objection, including specific reasons:

The attorneys' fee should be reduced to simulate the effect that competition or freedom of choice of legal representation would have provided. The choice of legal representation is made more difficult when notification of the choice made (by another) is notified in the final stages of the process. No evidence has yet been provided that the legal team sought to increase public awareness, and thereby awareness among the class, that a class action was being considered. The nature of class actions initiated by a small portion of a class means that the class as a whole has little ability to price compare between legal teams. The unusualness of class action lawyers being selected by hiring clients is testified to in the motion for attorneys' fees Exhibit E Rubenstien Decl

v 2-GEM, page 3 line 16-17. Even if a member of the class chooses legal representation, the combining of similar suits results in that choice being taken away in part. There was no possibility for the class to choose William Trent Palmer at \$215 per hour for the majority of work instead of William B. Rubenstein at \$800 per hour. There was no ability to estimate, evaluate nor negotiate in advance the attorneys' fee. Lawyers in other fields of specialization have this check on their pay rates. This is one reason typically class action lawsuit specialists are higher paid than other lawyers. Lack of economic competition results in inflated prices.

The attorneys' fee should be reduced to reflect other compensation not typical in class action suits. The monetary attorneys' fee is only part of the compensation that counsel will receive upon settlement of this case. In addition to the financial gain, counsel obtains with this settlement two other payments of financial worth, publicity and continued access to the privacy control services of Google Buzz. Publicity is of great worth, as it is part of the means of ensuring future work. The publicity results of the Google Buzz settlement is higher value than most class action suits due to the name recognition of Google, the large size of the class, and the continued publicity that will be produced by the privacy organizations that will receive the benefit of the settlement. The value of privacy controls of Google Buzz was high enough to initiate this case despite the risk of no monetary compensation.

The attorneys' fee should be reduced to reflect the value of the work done to the class. While the work done is not objectionable, it is clearly not of great interest nor perceived benefit to the class. Less than two percent of Gmail users had significant interest in the results of the settlement (1.4 million hits on the settlement website, as documented in Keough Aff., at paragraph 3, of 37 million US users per <http://techcrunch.com/2009/08/14/gmail-nudges-past-aol-email-in-the-us-to-take-no-3-spot/>, at approximately 2 hits per interested user). Of the 618 class members who took the extra work to attempt to be excluded from the class, as per page 3 of Affidavit of Jennifer Keough in support of final approval, the reasons include a low value of the settlement result, and a low opinion of the attorneys' fees. This is documented in the motion for Attorneys' Fees Exhibit B Articles, approximately page 10, in the comments given on the Washington post article by wpost16 on Nov. 2, 8:46PM, and mark16 at 9:32 PM. The dissatisfaction with the requested attorneys' fee is also documented by public comments captured in the attached exhibit B, as marked. Class action lawsuit fees in general are widely considered by the public they serve to be unreasonable. John H. Beisner in the Stanford Law Review volume 57, 2007 stated "class actions are now widely perceived as little more than a money generator for attorneys. This perception should not be surprising ..." (4). John H. Beisner further continues to state "Contingency fees should be eliminated or drastically curtailed" (Ibid). This, and other similar public comments from Professor Dru S. and Mr. Eric E., are documented in the attached exhibit C. Hence, average and normal can not be equated to reasonable.

The attorneys' fee should be reduced due to the overall tightening of the economy. If the fees are approximately average for previous cases, it shows that it is inappropriately high during these difficult financial times. Most people have to watch money spent, even if it is not money coming directly out of their pockets. Watching money spent is a key draw to a majority of users of the no money out of pocket, advertising supported service Gmail.

The attorneys' fee should be reduced to reflect a wage more comparable to other technical legal advocates. Other technical watchdog groups, such as those Electronic Frontier Foundation and Electronic Privacy Information Center, have legal assistance that is paid at a much lower wage than the typical class action lawyer, and plaintiff's counsel's requested wages in particular.

More detailed expense break-down should be provided and justified, or expenses should be taken out of the attorneys' fee. The expenses submitted by counsel (refer motion for attorneys' fees Exhibit D Mason LLP Expenses) are only at a high level. They lack the detail behind them. While an excellent summary for ease of understanding is provided, the supporting data is absent. Without this supporting data, evaluation of the

competitiveness of these expenses are not possible. Only guesswork is possible. Guessing that a portion of the expenses were paid in Cambridge, MA, and Washington, D.C. brings to light the choice of a legal team in an expensive area to work in. The location of counsel's offices in high expense areas increases the expenses beyond what would be normal in most areas of the country. Traditionally, as in this case, a large part of the expense is travel costs. In other fields, travel costs have been reduced, due to economic pressure. An effective way of reducing cost is travelling at less convenient times, at lower class flights. Rather than spending time and effort to review and evaluate the cost competitiveness of each past expense, it would be better to financially encourage legal counsel to find the most cost efficient means. Because the payment of expenses are typically included in the award, the motivation to reduce expenses that has driven improvements in most other areas of society is lacking in the area of class action specialists. Counsel has not presented results of any 3rd party financial audits. Regular audits are expected in most industries, especially public service industries, to insure financial accuracy and accountability. Consolidating the expenses with the attorneys' fee would make the amount of the expenses of no concern to all but those in control of it, the legal team itself. In order to provide motivation to keep expenses competitive, counsel should be required to pay all, or at least fifty-one percent, of the expenses out of the earnings, the attorneys' fee.

In the motion for attorney's fees, Fee Brief 12-20, page 8, line 1, the claim is made that the proposed fee, at twenty-five percent of the award amount, is significantly below average. This statement does not agree with other published sources. As documented in "An Empirical Study of Class Action Settlements and Their Fee Awards", by Brian T. Fitzpatrick (1), the mean for class action settlements is 25%. 25.6% is also documented as the mean in table 7a of page 35 of "Attorneys Fees In Class Action Settlements: An Empirical Study" by Theodore Eisenberg and Geoffrey P. Miller (2). The most recent study, "An Empirical Study of Class Action Settlements and their Fee Awards" by Brian T. Fitzpatrick (3), states that for \$7-10 million fund settlements in 2006-2007, the mean percentage award is 26.4%. Given that 25% is the past average, and given the reasons above that compensation for this case should be below average, the attorney's fees for this case should be less than 25%.

In the motion for attorney's fees, Fee Brief 12-20, page 10, lines 16-20, the claim is made that there was great risk of no relief in this case. This does not reflect the relief most beneficial to the class, nor the reduction of risk due to Google's high value of their corporate image. The risk of Google not correcting their offensive, possibly illegal, actions was low, because of general public outcry more than legal action threat. The relief of Google's correcting their action occurred within days of the initial public outcry, before the legal process could even be started. The risk of Google not suffering retribution for their actions was also low, because public opinion and appearance is of great value to a company based on user goodwill such as Google. The public outcry on various technical and general news outlets provided retribution that insures Google and other companies will hesitate to act so rashly in the future. The risk of no financial available legal recompense, only possible by setting up a fund for public benefit, was higher. However, I would submit that due to the knowledge of the public relations significance of an extended lawsuit, some satisfactory settlement was highly probable. As evidenced by the proposed settlement, part of what was needed to be satisfactory to the counsel was a financial penalty. I suspect that the size of the penalty has little to do with the amount needed to counteract the wrongdoing, little to do with what would deter future wrongdoing. The amount of the proposed settlement has received little significant media attention, as opposed to the more visible media highlighting of the original public outcry. Instead the financial penalty reflects what is required to cloak the desired amount of compensation for counsel. It was a low risk that Google would be willing to pay at least this amount.

In the motion for attorney's fees, Fee Brief 12-20, page 13, lines 24-26, and page 23, lines 23-24, the claim is made that the actual Lodestar multiplier will be less, due to further work to be done. The submitted Lodestar multiplier is the correct one to be considered because it allows correct comparison to other cases, and because the

remaining work is in large part related more to fee justification than items material to the case. Work done after the final submission of documents is usually not part of the public records. While a more accurate Lodestar multiplier would take this in to account, it would have to be taken into account in all reference cases for fair comparison. The Lodestar multiplier given is at the same stage of the process as is the standard usage of Lodestar multipliers. Hence to allow even comparison between this and reference cases, no consideration of the further work to be done is appropriate. Also, a not insignificant part of the remaining work consists of justification of attorneys' fees against objections such as this one. This work has no value to the class, nor any relation to the case. This preparation has only benefit for counsel, for this and also many other cases, past and future, as counsel specializes in class action cases. The work of cost justification would be avoided if fees were less and suitable justification had been made previously publicly available. So no upward pressure exists on the Lodestar multiplier due to the remaining work to be done.

Conclusion:

As counsel has performed useful service with expectation of payment, the final Lodestar multiplier should not be less than one. Taking into account the various noted reasons, the attorneys' fee should be reduced. A reasonable amount would be \$1,600,000, or a Lodestar multiplier of approximately 1.34. This amount would cover all expenses, cover the wages of all involved, give buffer for 30% more work, while giving the extra incentives already mentioned. More than that would be unreasonable in this lean economy without justification far beyond that given.

Respectfully submitted,



Class Member's name, address and telephone number:

Howard Abbey
722 Springwater Rd.
Kokomo, IN 46902
1(765)457-2768
hrabbey@gmail.com

Dated: January 1, 2011, A.D.

1/1/2011

Footnotes:

(1) Fitzpatrick, Brian T., An Empirical Study of Class Action Settlements and Their Fee Awards (July 7, 2010). Journal of Empirical Legal Studies, Vol. 7, 2010; CELS 2009 4th Annual Conference on Empirical Legal Studies Paper; Vanderbilt Public Law Research Paper No. 10-10; Vanderbilt Law and Economics Research Paper No. 10-06. Available at SSRN: <http://ssrn.com/abstract=1442108>

(2) Eisenberg, Theodore and Geoffrey P. Miller, Attorneys Fees In Class Action Settlements: An Empirical Study, 1 Journal of Empirical Legal Studies 27 (2004). Available at: <http://w4.stern.nyu.edu/emplibary/03-017.pdf>


(3) Fitzpatrick, Brian T., An Empirical Study of Class Action Settlements and their Fee Awards, 7 Journal of Empirical Legal Studies (2010). Available at: http://ssrn.com/abstract_id=1442108

(4) Beisner, John H., Matthew Shors, and Jessica Davidson Miller, Class Action "Cops": Public Servants or Private Entrepreneurs?, Stanford Law Review, Vol. 57, 2005. Available at: http://www.questia.com/googleScholar.qst;jsessionid=B8D3516F9812A6B2A7E37B1DBF6CF511.inst3_2b?docId=5009535806

Exhibit A to the
Objection of Howard Abbey to Class
Counsel's Application for Attorneys'
Fees and Reimbursement of Expenses

Cached messages

Message 1 of 1 in conversation

[Reply](#) | [Reply to all](#) | [Forward](#) | [Compose](#) | [View in Gmail](#) **Important Information about Google Buzz Class Action Settlement**

From: Google Buzz <noreply-buzz-classaction@google.com>
To: hrabbey@gmail.com
Date: Nov 02 2010 - 3:30pm

Google rarely contacts Gmail users via email, but we are making an exception to let you know that we've reached a settlement in a lawsuit regarding Google Buzz (<http://buzz.google.com>), a service we launched within Gmail in February of this year.

Shortly after its launch, we heard from a number of people who were concerned about privacy. In addition, we were sued by a group of Buzz users and recently reached a settlement in this case.

The settlement acknowledges that we quickly changed the service to address users' concerns. In addition, Google has committed \$8.5 million to an independent fund, most of which will support organizations promoting privacy education and policy on the web. We will also do more to educate people about privacy controls specific to Buzz. The more people know about privacy online, the better their online experience will be.

Just to be clear, this is not a settlement in which people who use Gmail can file to receive compensation. Everyone in the U.S. who uses Gmail is included in the settlement, unless you personally decide to opt out before December 6, 2010. The Court will consider final approval of the agreement on January 31, 2011. This email is a summary of the settlement, and more detailed information and instructions approved by the court, including instructions about how to opt out, object, or comment, are available at <http://www.BuzzClassAction.com>.

This mandatory announcement was sent to all Gmail users in the United States as part of a legal settlement and was authorized by the United States District Court for the Northern District of California.

Google Inc. | 1600 Amphitheatre Parkway | Mountain View, CA 94043

[Reply](#) | [Reply to all](#) | [Forward](#) | [Compose](#) | [View in Gmail](#)



google buzz to:hrabbey@gmail.com

Search

[Desktop Preferences](#)
[Advanced Search](#)

Cached messages

Message 1 of 1 in conversation

[Reply](#) | [Reply to all](#) | [Forward](#) | [Compose](#) | [View in Gmail](#)

Buzz from Howard Abbey

From: Howard Abbey <hrabbey@gmail.com>
To: Howard Abbey <hrabbey@gmail.com>
Date: Feb 11 2010 - 12:16pm

Howard Abbey - Flickr Feb 11, 2010
See <http://picasaweb.google.com/hrabbey>

Link to this post: <http://www.google.com/buzz/112657595967460853198/JFsanFL45Md/See-http-picasaweb-google-com-hrabbey>

[Reply](#) | [Reply to all](#) | [Forward](#) | [Compose](#) | [View in Gmail](#)

google buzz to:hrabbey@gmail.com

Search

Cached messages

Message 9 of 9 in conversation

[« Older](#) | [Newer »](#) | [View Entire Thread \(9\)](#) | [Reply](#) | [Reply to all](#) | [Forward](#) | [Compose](#) | [View in Gmail](#)

 **Buzz from Howard Abbey**

From: Howard Abbey <buzz
z131i1sq0uiwszqnv22wsz5alxy4ffhv04@gmail.com>
To: Howard Abbey <hrabbey@gmail.com>
Date: Jul 12 2010 - 7:57am

Howard Abbey - Picasa Jul 12, 2010
http://picasaweb.google.com/hrabbey/20100707TNSeviervilleDeer_Farm_and_Exotic_Petting_Zoo

Location: Sevierville, TN

Reply to this email to add a comment to this post.

Link to this post: <http://www.google.com/buzz/112657595967460853198/Mh5uyguPVnH/http-picasaweb-google-com-hrabbey>

[« Older](#) | [Newer »](#) | [View Entire Thread \(9\)](#) | [Reply](#) | [Reply to all](#) | [Forward](#) | [Compose](#) | [View in Gmail](#)

Exhibit B to the
Objection of Howard Abbey to Class
Counsel's Application for Attorneys'
Fees and Reimbursement of Expenses

Related comments are highlighted on the last
page of David Herron's blog, and on the
WinAmp forum.

WTF? Google BUZZ/Gmail class action lawsuit notification - ends up in SPAM folder of gmail account.

Thu, 2010-11-04 09:24 — David Herron

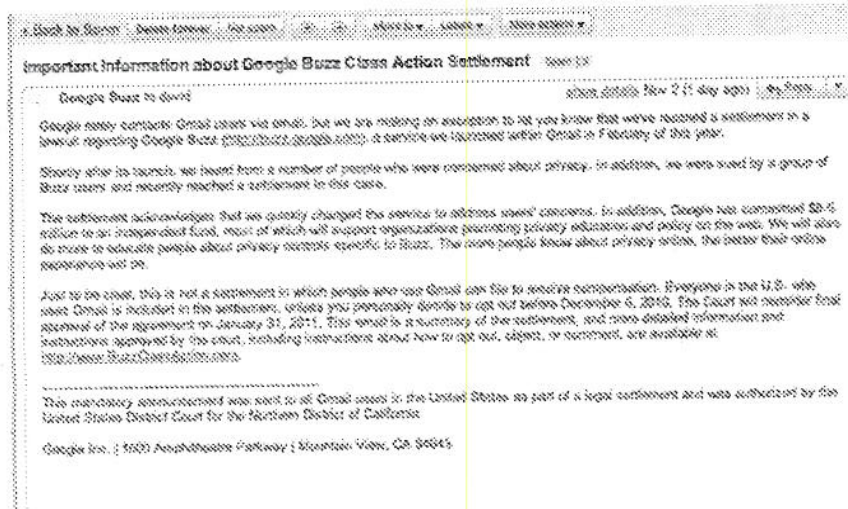
Class Action Lawsuit GMAIL Google Buzz wtf

Wind ones memory back to the stone ages of last February. Some of us were pretty excited about this new thing Google launched, Buzz. (see Initial look at Google Buzz - the newest social networking service) But it quickly became a "meh" thing that hasn't taken hold in my life anyway. At the same time a bunch of people were in an uproar because Buzz insinuated itself into our gmail accounts, and was enabled for us without reasonable amount of gaining agreement (aka "opt-in"). Google then went through some changes to Buzz to address concerns. But it seems that a class action lawsuit was launched, anyway.

I don't recall being asked whether I wanted a lawsuit to be launched, but there I am included in the Class. (any gmail user in the U.S.A. who was offered an opportunity to use Buzz before Nov 2, 2010)

A curious WTF sorta thing is - the notification email for the settlement, was sent to my gmail account inbox, but ended up in the SPAM folder. I'm curious just how many of these "Important information about Google Buzz Class Action Settlement" emails ended up in SPAM folders? One wonders, did Google rig Gmail to send these notifications to SPAM folders? Or do they routinely send class action settlement notices to SPAM folders?

Here's a copy of my notice, as it appears in the SPAM folder of my Gmail account. Notice the "Back to spam", "Delete forever" and "Not spam" buttons that are Gmail's way of indicating SPAM messages.



One has to wonder, was this a legitimate email? The e-mail includes a link to <http://www.BuzzClassAction.com> which seems to be legitimately discussing a class action settlement. There's no phishing on the site. And I'm not alone in questioning whether it's bogus or not.

Interestingly I'm not the only one where the notification went straight to the SPAM folder. WTF? Does Google want to hide this class action settlement from their users?

The last bit of WTF about this is the actual settlement itself. The amount awarded was \$8 million

but we the injured don't get to see a penny. Instead the lawyers will be paid, and a trust fund set up to fund some privacy initiative or other. Specifically:

1. First, Google agreed to make, and did make, changes to Buzz that clarify its operation and users' options regarding Google Buzz, including, in particular, changes regarding user information and control over Buzz's privacy settings. The Settlement Agreement recognizes that since the inception of this Action Google has made these changes to Google Buzz.
2. Second, Google will do more to educate users about the privacy aspects of Google Buzz. Google will consider the recommendations of Plaintiffs about the content of that public education. Google will select and design the final content of the public education efforts in its discretion, and will provide a report to Plaintiffs' lead lawyer of the education undertaken.
3. Third, Google will pay a total of \$8,500,000 into an interest-bearing account. This \$8,500,000, plus interest, will constitute the "Common Fund." Because few, if any, Class Members suffered compensable actual damages and because a pro rata distribution of the fund to the Class would not be feasible due to the size of the Class, the Common Fund amounts in excess of fees, costs, expenses, and incentive awards will be distributed to organizations that advance the privacy interests of internet users such as the Class Members. The Settlement Agreement, available at www.BuzzClassAction.com, describes all of the details about the proposed Settlement Agreement.

To unpack that settlement a bit - the first recipients of money will be the lawyers.

13. How will the lawyers be paid? *Class Counsel will ask the Court for attorneys' fees of 25% of the Common Fund, plus reimbursement of costs and expenses. Class Counsel will also request that the seven Class Representatives who helped the lawyers on behalf of the whole Class each receive a \$2500 incentive award. The Court may award less than these amounts. The payment of attorneys' fees, incentive awards and reimbursement of costs and expenses will be deducted from the Common Fund prior to the distribution of the Common Fund to the selected Internet privacy organizations.*

The second recipients will be "organizations that advance the privacy interests of internet users". We, the supposedly damaged, receive nothing.

Personally I don't care much because I don't feel damaged by anything Google did with this. My outrage is in these class action lawyers who won this settlement. They sniffed money, saw deep pockets, and wangled a settlement that benefited them. Google lost, and we lost. Bleah.

For those who object to the settlement: - go to the BuzzClassAction website and download the document giving the settlement details. That document contains complete details of the settlement, how to object, where to send your objections, etc, as if that will do any good. Bleah.

Class Action Lawsuit, GMAIL, Google Buzz, wtf

David Herron's blog

DISQUS #1



Search for Add-ons, Help and More

SEARCH >



"Important information about Google Buzz Class Action Settlement"

User Name	<input type="text"/>	Remember Me?
Password	<input type="password"/>	<input type="checkbox"/>



Search for Add-ons, Help and More

SEARCH >



thinkink
Major Dude



Join Date: May 2009
Location: Non-Existentialism
Posts: 616

"Important information about Google Buzz Class Action Settlement"

Quote:

Originally Posted by Google Mail inbox

Index
X

Reply

Google Buzz
to me

show details 12:30 PM (4 hours ago)

Google rarely contacts Gmail users via email, but we are making an exception to let you know that we've reached a settlement in a lawsuit regarding Google Buzz (<http://buzz.google.com>), a service we launched within Gmail in February of this year.

Shortly after its launch, we heard from a number of people who were concerned about privacy. In addition, we were sued by a group of Buzz users and recently reached a settlement in this case.

The settlement acknowledges that we quickly changed the service to address users' concerns. In addition, Google has committed \$8.5 million to an independent fund, most of which will support organizations promoting privacy education and policy on the web. We will also do more to educate people about privacy controls specific to Buzz. The more people know about privacy online, the better their online experience will be.

Just to be clear, this is not a settlement in which people who use Gmail can file to receive compensation. Everyone in the U.S. who uses Gmail is included in the settlement, unless you personally decide to opt out before December 6, 2010. The Court will consider final approval of the agreement on January 31, 2011. This email is a summary of the settlement, and more detailed information and instructions approved by the court, including instructions about how to opt out, object, or comment, are available at <http://www.BuzzClassAction.com>.

This mandatory announcement was sent to all Gmail users in the United States as part of a legal settlement and was authorized by the United States District Court for the Northern District of California.

Google Inc. | 1600 Amphitheatre Parkway | Mountain View, CA 94043

I actually don't have an opinion on this one as it didn't affect me, just thought I'd share it and get y'all's opinions.

Did anybody get their information exposed? If you did, do you have proof of that somewhere, whether colloquial/circumstantial or not? Either way please do tell.

223

rockouthippie
Forum King



Join Date: Jun 2004
Location: Oregon
Posts: 8,366

\$8.5 million to fund. Some lawsuits made \$ million. I am expecting my class action recompense in a check for less than a dollar. Yay!!

Retrospective: First Classic Movies and TV

204

Princess_peach
Junior Member



Join Date: Oct 2010
Posts: 9

Quote:

Just to be clear, this is not a settlement in which people who use Gmail can file to receive compensation.

Yeah, you ain't getting that dollar either lol!

205



Exhibit C to the
Objection of Howard Abbey to Class
Counsel's Application for Attorneys'
Fees and Reimbursement of Expenses



- HOME
- SEARCH
- BROWSE
- READ
- WORK

- FREE TRIAL
- Login

Questia :: Journal Article

Class Action "Cops": Public Servants or Private Entrepreneurs?

Journal article by John H. Beisner, Matthew Shors, Jessica Davidson Miller; Stanford Law Review, Vol. 57, 2005

Journal Article Excerpt See below...

Read more than 5,000 classic books FREE!



Free Newsletter

Get helpful how-to's, writing tips, search strategies, quizzes & more!

[SIGN UP!](#)

Search the Library

[Customize](#)

[Search](#)

Class Action "Cops": Public Servants or Private Entrepreneurs?

by John H. Beisner , Matthew Shors , Jessica Davidson Miller

INTRODUCTION

- I. THERE IS GROWING PUBLIC DISTRUST OF THE CLASS ACTION DEVICE
 II. IN RESPONSE TO GROWING CRITICISM, SOME PLAINTIFFS' ATTORNEYS MISLEADINGLY SEEK TO PORTRAY THEMSELVES AS "PRIVATE ATTORNEYS GENERAL"
 A. The Profit-Seeking Class Action Lawyer and the Concomitant Effects on Lawsuit Initiation, Selection, and Settlement
 1. Lawsuit initiation and selection
 2. Settlement
 B. State Attorneys General Are Subject to Constraints Unknown to Private Class Action Attorneys
 C. The Enforcement Analogy's Inconsistency with Private Attorney General Statutes
 D. Blurring Public/Private and Civil/Criminal Distinctions
 E. Delegation of Attorney General Functions to Private Lawyers
 III. IF CLASS ACTION LAWYERS SEEK TO PORTRAY THEMSELVES AS PUBLIC SERVANTS, THEY SHOULD BE SUBJECT TO THE SAME ETHICAL STANDARDS AS PUBLIC SERVANTS
 A. Some Jurisdictions Have Enacted Legislation Addressing Ethical Issues That Arise When States Retain Private Lawyers to Represent Their Citizens
 1. Some states bar payment of contingency fees in public representations by private attorneys
 2. States are also addressing ethical concerns raised by attorney general retention of campaign contributors
 B. States Should Consider Applying the Same Types of Ethical Standards to Class Action Lawyers
 1. Contingency fees should be eliminated or drastically curtailed
 2. Class action attorneys should be prohibited from litigating class actions before judges to whom they have contributed

CONCLUSION

INTRODUCTION Recent surveys indicate growing public distrust of the class action device. Initially intended as a means of resolving numerous commonly grounded controversies through a single lawsuit, class actions are now widely perceived as little more than a money generator for attorneys. This perception should not be surprising, given the emerging pattern of class action settlements (particularly in state courts) in which virtually all of the recovered money flows to the class attorneys, rather than the allegedly injured class members.

During the congressional debate over the recently enacted Class Action Fairness Act, (1) opponents of the legislation sought to recharacterize class actions as private law enforcement efforts and to paint the class attorneys who bring such actions as "private attorneys general"--extensions of federal and state regulators. This has become a common theme among plaintiffs' lawyers. As one commentator has put it, "Because the government has limited resources, private parties need to pick up the slack. Our entire system of government is based on private initiatives, and class actions are no different." (2) Or as another commentator sees it, "The government can only do so much in policing corporate wrongdoing--society needs private attorneys general to assist in protecting victims' rights." (3)

There are two fundamental problems with this revisionist rationale for class actions. In the first place, the concept raises fundamental questions about the validity of the class action device under the Rules Enabling Act. (4) After all, if the true purpose of the class concept were to facilitate private law enforcement, it would be a substantive right. The Rules Enabling Act, however, authorizes the federal judicial branch to create nothing more than purely procedural mechanisms.

That insight is more than a mere technicality. Class actions were designed to allow more efficient recovery of damages for allegedly injured parties. On the other hand, the purpose of law enforcement is to stop or deter wrongful behavior; the restoration of private losses is not a core element of that concept. Thus, recharacterizing class actions as law enforcement tools will serve to reinforce the current negative public perception that although class actions are purportedly brought to recover losses for purportedly injured parties, the real purpose is to take money away from alleged wrongdoers and put it in the hands of uninjured third parties (mostly the attorneys who bring the actions).

The other problem with this analogy is that the incentives for private attorneys bear no resemblance to what motivates classic governmental law enforcement personnel. A government enforcer is charged with promoting the public good and typically is paid the same modest salary regardless of (1) which alleged wrongdoers he or she chooses to pursue, and (2) the size of any settlement or verdict he or she obtains. Private class action attorneys, in contrast, have a very direct interest in the outcome of class action litigation, since they normally keep a hefty portion of the proceeds.

In this regard, the private law enforcement characterization promoted by some class action attorneys is no different from permitting self-appointed "police officers" to roam the streets, set up speed traps, pull over drivers (whether or not they were speeding), and ...

[Read this entire Journal Article and more with a FREE trial.](#)

BOOKMARK

LINK TO THIS PAGE

[Newletter](#) | [Privacy Policy](#) | [User Agreements](#) | [Questia School](#) | [About Us](#) | [Advertise with Us](#) | [Contact](#) | [Tools for Webmasters](#) | [Requirements](#) | [FREE BOOKS](#) | [Questia Library for iPhone/iPod Touch](#)

Questia, a part of Gale, Cengage Learning
 © Copyright 2010. All rights reserved. All service marks and trademarks are property of Cengage Learning and its affiliates. Any advertising or navigational links included on this site are not necessarily endorsed by the publishers or content providers whose materials appear on this site.

Katherine D.
Contract Administration with expertise in Contract Compliance and Contract Negotiation
see all my questions

Has Class Action lawsuits seen their day or have run their course? Should we better define their use?

Have Class Action Lawsuits or some form of them become outdated?
"Sometimes businesses inflict injuries too small to sue over. How many people will sue when someone cheats them out of \$100? How many lawyers will take a case worth \$1,000?"

Generally, all class actions are between parties who are in a contract relationship with one another: shareholders and corporations, consumers and merchants, employees and employers. Because they are in these relationships, they are able to enter arbitration agreements with class action waivers.

A good and interesting article: <http://on.wsj.com/a8UIFd>

Article Summary:

AT&T Mobility Services v. Concepcion, Vincent and Liza Concepcion sued AT&T for deceptive practices because the company allegedly advertised discounted cell phones but charged sales tax on the full retail price. So the Concepcions sued on behalf of a class of consumers who'd also allegedly overpaid.

Both a California federal district court and the Ninth Circuit struck down the contract, ruling that it was imposed upon consumers and therefore violated public policy. AT&T appealed, that the Federal Arbitration Act pre-empts state contract law and allows class-action exemptions when they're combined with arbitration

posted 1 month ago in Contracts, Quality Management and Standards | Closed

Share This

Good Answers (4)

This was selected as Best Answer

Dru S.
Professor at South Texas College of Law
see all my answers

Best Answers in: Criminal Law (1) ... see more

I think they're doomed for history's dustbin. Most states have statutes covering the type of small claims you mentioned - consumer protection laws, for example - the provide for statutory attorneys' fees for cases with small damage amounts for the plaintiffs.

The problem with class actions is not that they're abused by plaintiffs - they're abused by corporate defendants! Many of the cases appear to be sweetheart deals between the attorneys at the two firms, who settle the case for several million dollars. The plaintiffs' attorneys keep a third of that (a windfall for them), the members of the class get a few dollars each, or sometimes a bunch of coupons for the defendant's products. And the defendant firm gets a shield from individual members of the class unless they were paying attention and opted out of the class action suit - a huge potential savings for the defendant. It's supposed to be a "last recourse" for uncompensated victims, but it has become a scam where the lawyers make a fortune, the wrongdoers gets immunity against future lawsuits, and the victims get practically nothing.

posted 1 month ago

Michael J.
Student at University of Illinois College of Law
see all my answers

Best Answers in: Property Law (3) ... see more

The answers so far don't distinguish between the type of massive, all-encompassing suit over a trivial issue that gets publicized heavily by the media as a "class action", and the more typical class-action lawsuit, which is simply a way of consolidating multiple cases that derive from a single event.

The McCullom Lake cancer-cluster trial is a "class action" too, and currently has thirty-three plaintiffs -- many of whom are dead or dying of brain cancer. So are many of the airline crash cases, such as Alaska Airlines Flight 261. It makes sense to hear such cases in a single trial, because the major issues (who dumped carcinogenic toxic waste into the water supply; was the airline negligent in failing to replace the elevator jackscrew; who are the victims) can all be settled at once, rather than dragging the same case through multiple courts. Then of course there's bankruptcy, which is another means to achieve a similar effect in some cases (Dalkon Shield, Dow-Corning silicone breast implants).

Considering that it isn't really worth it to an individual to sue, for example, the CD/DVD industry for fifteen cents per CD that the individual purchased prior to 2005, nothing would happen if it weren't for the type of class action that Ms. Daigle is discussing. The "coupon settlements" have received enough attention that courts seem to be reining those in, which is a good thing, but the other side of the argument is that if it weren't for the possibility of a cash jackpot for someone, AT&T would still be stealing pennies from people by taxing the full retail price rather than the actual price.

In any event, no, class action lawsuits aren't going to go away.

posted 1 month ago

Lawrence R. G.

Class actions are not going away. One of the foundational concepts of a class action is precisely the ability to group many identical claims too small for any one person person

Tripp F.
In House Legal
see all my answers

Best Answers in:
Property Law (1) ... see more

I think class actions will actually become more common as technology permits more and more people to be noticed at a progressively lower cost. It will allow more lawyers to enter into the market, and with the legal industry hit particularly hard in this recession new revenue streams are always being explored.

posted 1 month ago

More Answers (3)

Eric E.
IT Web Development Server
Administration - Bringing Businesses
On-Line
see all my answers

Best Answers in:
Using LinkedIn (6) ... see more

I have to agree with Dru. I have personally been part of two class action suits that ended with attorneys making tons of monies, companies becoming immune and both paid out less than \$3.00 to the victims if and only if you signed off giving the company complete immunity from any further action....I never responded to either and think they should be done away with.

posted 1 month ago

Stephanie O.
Senior Technical Program Manager
see all my answers

Best Answers in:
Employment and Labor Law (14) ... see more

All consumers, and anyone not CEO of a Fortune 500 corporation, had better hope that the class action has not become irrelevant. Today's robber barons have perfected the crime committed against 1 million+ victims, for a small sum each, and class action lawsuits are virtually the ONLY recourse.

I share other responders' disgust at the "settlements" that earn \$xxx M in good hard US greenbacks for lawyers, and worthless scrip for the actual plaintiffs. I've been a "beneficiary" of a few of those myself. However, class actions can be, and sometimes are, much more and better than that.

posted 1 month ago

Wallace J.
Multimedia Producer & 3D
Programmer for Acrobat3D PDF,
Android Mobile Apps, Virtual Worlds,
iTV Design, JavaFX & JavaTV
see all my answers

Best Answers in:
Using LinkedIn (46) ... see more

Sounds like a business opportunity. Maybe you'll be the next Mark Zuckerberg!

posted 1 month ago

Browse Categories

[View All 17](#)

Corporate Law

Antitrust Law
Contracts
Corporate Law
Finance and Securities Law
Intellectual Property