



For Immediate Release

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PAPER PROVIDES CASE STUDY ON IMPLEMENTATION OF CLASS ACTION FAIRNESS ACT

Conventional wisdom holds that the 2005 Class Action Fairness Act (CAFA) substantially benefits litigation defendants. But as a new Washington Legal Foundation (WLF) CONTEMPORARY LEGAL NOTE discusses, the law in some ways has had a mixed impact for businesses. Two leading class action defense attorneys utilize a federal court judge's recent rejection of a settlement as a case study of how CAFA can deter defendants' ability to "buy peace" through settlements.

This CONTEMPORARY LEGAL NOTE, *CAFA Case Study: Settlement Rejection Reveals Mixed Impact of Class Action Law*, was authored *pro bono* for WLF by **Brian Anderson**, Partner in the Washington, D.C. office of O'Melveny & Meyers LLP, and **Mel Schwing**, Counsel to the firm.

The authors lead their off the case study by briefly discussing Congress's impetus for enacting CAFA and the provisions aimed at reducing abusive class actions. Of particular note, they write, are those provisions which target "coupon" settlements and other resolutions that offer little value to the allegedly injured plaintiffs. CAFA empowers federal courts to take a probing look at settlements and invites state attorneys general to weigh in with correspondence to the court expressing their consumer protection concerns.

As the authors state, the judge overseeing the settlement of *Figueroa v. Sharper Image Corp.* exercised the "no-cheap-settlements' prong" of CAFA "with great force." Plaintiffs' and defendants' lawyers repeatedly tried to craft a settlement of a nationwide class action to satisfy the presiding judge. Due to a number of factors which Anderson and Schwing detail in the NOTE, the judge rejected the settlement as providing insufficient value to claimants under CAFA.

The judge's ruling raises three significant issues for future plaintiffs and defendants who seek to settle class actions under CAFA. Anderson and Schwing address and answer the following questions:

1. ***How does a class action defendant obtain approval of a low-value settlement in a case where class members deserve little monetary benefit because they have not been injured?***
2. ***How does a class action defendant obtain "global peace" at a reasonable price when it is subject to multiple overlapping lawsuits?***
3. ***What role will state attorneys general play in class action settlements?***

The message of the *Figueroa* ruling, the authors conclude, is that class action defendants in federal court seeking to avoid litigation by proposing low-value coupon benefits in exchange for release of claims could find difficulty in persuading some federal courts to approve such settlements.

Copies of this educational paper, WLF CONTEMPORARY LEGAL NOTE Number 58 (February 2008), can be obtained by forwarding a request to: Publications Department, Washington Legal Foundation, 2009 Massachusetts Avenue, NW, Washington, D.C. 20036, or calling (202) 588-0302.

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