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COURT LIMITS ATTORNEYS FEE AWARD IN COUPON CLASS ACTION SETTLEMENT *(Chance v. United States Tobacco Co.)*

The District Court of Seward County, Kansas awarded class action counsel \$17 million in fees, which was approximately \$5 million less than the amount requested by plaintiffs' attorneys, but \$2 million more than the defendant agreed to pay, for settling a consumer class action lawsuit on behalf of users of smokeless tobacco products. Class members will receive only coupons toward the purchase of future smokeless tobacco products. WLF argued that the coupon settlement was highly inflated, and that the court should base any fee on the hourly rate or lodestar which was estimated to be approximately \$4 million.

In *Chance v. United States Tobacco Co.*, a class action lawsuit was filed claiming that U.S. Tobacco (UST) and their affiliates engaged in unfair competition with their competitors with respect to the marketing of their products at retail stores. UST denied liability, but agreed to settle the case by dispensing coupons whose face value is \$60 million. UST also agreed to pay the plaintiffs' attorneys \$15 million in fees, which was more than generous, but the class action attorneys wanted \$22.5 million. On March 7, 2006, the district court awarded the attorneys \$15 million as a reasonable fee, but held a subsequent hearing to consider whether it should award even more fees.

WLF argued in its brief that the \$15 million in fees was already excessive, amounting to almost 4 times the lodestar amount of \$4 million. WLF argued that the value of coupons depends upon their claim rate (*i.e.*, the rate at which class members sign up for coupons by a certain deadline), and the redemption rate (*i.e.*, the rate at which the coupons are actually redeemed by consumers). WLF cited cases where coupon redemption rates were only in the 3 to 6 percent range, and where part of the attorneys' fees were ordered to be paid in coupons. The federal Class Action Fairness Act provides that fees should be based on the amount of coupons actually redeemed.

Nevertheless, the district court, after considering testimony from expert witnesses on attorney fees, awarded class counsel an additional \$2 million, as well as \$900,000 for expenses that were incurred during the litigation. WLF will monitor the case for any appeal.

For further information, contact Paul Kamenar at 202-588-0302. WLF's brief is posted on its website at www.wlf.org.