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## COURT AWARDS ATTORNEYS \$8 MILLION IN CLASS ACTION CASE (*In Re American Family Publishers Business Practices Litigation*)

The United States District Court for the District of New Jersey in Newark, New Jersey, approved a final settlement in a major nationwide class action case last week, awarding the plaintiffs' attorneys approximately \$8 million in fees and costs. WLF, in conjunction with its Economic Freedom Law Clinic at George Mason University School of Law, had filed formal objections to the proposed class action settlement on behalf of a class member, arguing that the requested payment of up to \$11,750,000 in attorneys' fees and costs was unreasonable considering that class members would receive payments as small as five dollars.

This class action case began in 1998 when several plaintiffs filed both state and federal class actions against American Family Publishers and their related companies for direct mail solicitation of magazine subscriptions. The plaintiffs allege that the marketing materials sent to consumers misleadingly suggested that it was either necessary to purchase magazine subscriptions to win sweepstake prizes, or that purchasing the subscriptions or other merchandise enhanced their chances of winning a prize. The cases were subsequently consolidated in federal court in New Jersey.

The defendants denied all liability, but agreed to change their marketing practices and to pay \$32 million for partial refunds to those who purchased subscriptions between 1992 and 1999. At the same time, the settlement provides that the class counsel will apply for attorneys' fees and costs up to \$11,750,000 which will be paid separately by the defendants. The court notice of the proposed settlement stated that the refund amounts would not be affected by the size of the fees since they are being paid separately.

In its brief, WLF took issue with the payment scheme, arguing that the attorneys' fees should be viewed as part of the total settlement because the defendants are only interested in their total liability rather than how the money is divided between counsel and class members. WLF cited numerous cases which required the courts to take a hard look at these kinds of settlements that have the potential for a conflict of interest between class counsel and class members.

In his opinion, U.S. District Court Judge Nicholas Politan found that the \$8 million fee constituted approximately 24 percent of the settlement amount, which was lower than the usual one-third contingency and comparable to the benchmark 25 percent awarded in

complex litigation. In addition, Judge Politan compared his award to the "lodestar" figure, that is, the amount the attorneys would receive if they were receiving payment on a hourly rather than contingency basis. The court determined that approximately 16,600 hours were devoted to the case, and that lodestar multiplier of 1.8 was appropriate in this case.

The district court rejected the "sliding scale" approach, whereby the fee percentages are reduced incrementally based upon the aggregate settlement. The court determined that such an approach is appropriate for "megafund" cases involving settlements over \$100 million. The court also looked at the other pertinent factors in deciding the amount of the fee award, such as the quality of the representation and the results obtained by the counsel. The \$8 million fee award was agreed to by the parties in settlement discussions after initial objections were raised to the original request of over \$11 million in fees. Thus, the final fee award was approximately 30 percent lower than the original request.

The fee will be shared among 25 to 50 different law firms that had brought separate cases in various courts around the country before the cases were consolidated in federal court in New Jersey. Because American Family Publishers is in Chapter 11 bankruptcy, the fees and awards will be made by Time Inc. and a related entity, AFP Partners LLC. The settlement also requires that any future sweepstakes literature explain that no purchase is necessary to qualify for a prize and that the contest rules be in at least 8-point type.

WLF will be monitoring the case for any appeal. WLF had also filed a brief in another class action case, *In re Synthroid Marketing Litigation*, where the court recently reduced the fee award to 10 percent of the settlement amount, the most that WLF argued should be awarded in that case. The attorneys in the *Synthroid* case are appealing the reduced fee award, and WLF will file a brief in opposition.

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