

Lowery v. Rhapsody International, Inc.: Reasonableness of Attorneys' Fee Awards in Rule 23 Class Action Settlements

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In a recent Ninth Circuit decision, the court affirmed that the key factor in determining whether an attorneys' fee award in a Rule 23 class action settlement is reasonable is the benefit the class received under the settlement. Any attorneys' fee award must be proportional to the actual benefit realized by class members regardless of the amount of hours and resources spent on a particular case by plaintiffs' attorneys.

This is a significant decision for all involved in federal class action litigation as it could serve as an impediment to having class action settlements approved by district courts. However, it may also provide additional leverage for defendants faced with putative class actions during settlement negotiations where it is clear that a case is not meritorious and/or there will not be any significant benefit to class members given the scope of the class, damages at issue, etc.

In *Lowery v. Rhapsody International, Inc.*, the Ninth Circuit held that a \$1.7 million attorneys' fee award in a claims-made settlement was not reasonable under Rule 23 of the Federal Rules of Civil Procedure, where only a little more than \$50,000 out of a potential \$20 million was claimed by the class. Specifically, the Ninth Circuit held that district courts "must consider the actual or realistically anticipated benefit to the class—**not the maximum or hypothetical amount**—in assessing the value of a class action settlement." *Lowery v. Rhapsody Int'l, Inc.*, 69 F.4th 994, 1001 (9th Cir. 2023) (emphasis added). The Ninth Circuit also noted that while nonmonetary relief can result in a significant benefit to a class and is more difficult to value, no such relief was obtained by the *Lowery* plaintiffs. *Id.* at 997, 1000 n.1.

The *Lowery* court also stated that district courts should "cross-check" attorneys' fees calculations against a second method to ensure that the amount of fees requested is reasonable. For example, if the lodestar method is utilized by plaintiffs' counsel, then the court should cross-check using the percentage-of-recovery (or some other) calculation method. *Id.* at 1002–03. The decision also advised that if the "fee award exceeds 25% of the benefit to the class, the court should take a hard and probing look at the award because this disparity may suggest that the fee amount is unreasonable." *Id.* At 1002.

Pragmatically, this decision disincentivizes those representing putative or appointed class action representatives from considering claims-made settlements for cases pending in districts within the Ninth Circuit. However, the clear

directive to ensure that attorneys' fees are proportional to class relief will provide leverage for practitioners in the defense bar for the reasons discussed above.

In sum, counsel involved in negotiating a class action settlement governed by Fed. R. Civ. P. 23 should be cognizant of the district court's role in reviewing and approving attorneys' fees awards to ensure that the agreed-upon amount is proportional to the actual benefits the class is receiving under the settlement. Otherwise, the parties risk that the settlement process will be significantly delayed and increase the likelihood of disapproval of the settlement terms, which can result in the parties returning to the negotiating table to revise settlement terms to comply with a court's directives.

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