



Jeff Geiger Counters

\$304 Million Attorney's Fee Award?

By: Jeffrey Hamilton Geiger. *Friday, August 31st, 2012*

Attorneys' fees are fair when the work that is done is appropriate for the task that is demanded. Indeed, the **Rules of Professional Conduct** require that "A lawyer's fee shall be reasonable." Makes sense, right?

In a **110 page opinion**, the Delaware Supreme Court affirmed (among other things) an award for attorneys' fees in excess of \$304 million. This apparently amounts to \$35,000 per hour according to the **Wall Street Journal Law Blog**. Good work if you can get it. The **ABA Journal** further notes that the attorney requesting the payday noted the lower court's ruminations that:

"There's an idea that when a lawyer or law firms are going to get a big payment, that there's something somehow wrong about that, just because it's a lawyer. I'm sorry, but investment banks have hit it big, a lot of the bigger plaintiffs' lawyer firms have hit it big. They've hit it big many times And to me, envy is not an appropriate motivation to take into account when you set an attorney fee. It's not."

Mind you, they won \$2 billion—but does that mean the lawyer should get a piece of the action? I think not.

Still, the supreme court undertook an exhaustive analysis, noted that the "extraordinary benefit that was achieved in this case merits a very substantial award of attorneys' fees," and concluded that a 15% recovery of fees was appropriate and not atypical. Indeed, they make it clear that a great deal of work was done to achieve the very favorable result.

But I am stuck on the \$35,000 per hour figure and the lone dissenting justice's statement, who concluded that: "In sum, the trial court said that the fundamental test for reasonableness is whether the fee is setting a good incentive, and that the only basis for reducing the fee would be envy. That is not a decision based on" current law.

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