Yep, Incentive Awards Are Really Dead: En Banc Panel Denial-Issued Against A Blistering Dissent-Assures that Class Action Representatives Can’t Get Paid in the Eleventh Circuit

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So I have a really busy work day today so I can't give this story as much time as it
deserves.

Class actions are weird cases where one person brings a case on behalf of others.

To incentivize the person bringing the suit for doing the hard work of litigating–while everyone else benefits by sitting around–courts have developed a rule permitting an “incentive award” to class action reps. These amounts very from $5k-$30k, or more, depending on the circumstances.

Other than the joy of being a really big pain in the rear end, the incentive award is the primary compensation received by a class action representative.

Well back in September, 2020–as part of the Eleventh Circuit’s broader dismantling of the Florida TCPA Plaintiff’s bar–the Eleventh Circuit Court of Appeals got rid of incentive awards all together. In a ruling that is reminiscent of other oddly decided high court decisions of late, the panel reached back to two ancient Supreme Court cases that were decided in completely different contexts for the concept that class representatives can’t be reimbursed for anything more than the actual costs of litigation.

In those early Supreme Court cases the representative was literally seeking to draw a wage from representing a class, which seems like a pretty big no no–and also pretty different from the fixed fee awards granted by today’s modern courts.

But, no matter, the Eleventh Circuit did away with the incentive awards completely.

Class counsel took the matter to the Eleventh Circuit en banc, with support from the professor who wrote Newberg on Class Actions—the definitive guide on how to litigate complex cases. (BTW Plaintiff’s bar—you should read the sections on phasing discovery once in a while.)

Anyhoo, despite the really unusual nature of the ruling—which split with precedent from every other court—the Eleventh Circuit denied an en banc ruling and simply upheld the panel court’s decision.

The dissenting judges were peeved.

So incentive awards are dead in the Eleventh Circuit. Notably this applies not just to TCPA cases, but all class actions.

So—YAY! But also, weird.

Back to work.

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