

10th Circ. OKs \$133M Western Union Wire Transfer Settlement

By **Joe Van Acker**

Law360, New York (May 01, 2015, 8:05 PM ET) -- The Tenth Circuit on Friday rejected objections to a \$133 million settlement between The Western Union Co. and class action plaintiffs accusing the company of keeping money from failed wire transfers for five years despite having senders' contact information.

The appellate court said it was not unsympathetic to the arguments raised by two objecting class members claiming the settlement was unfair, particularly the fact that the named plaintiffs have already received refunds, so the unreturned money funding the settlement, which includes \$40.57 million in attorneys' fees as well as incentive awards, actually belongs to the other class members.

"Through the settlement, class members will recover interest for the time during which Western Union held these funds, something they would not have received simply by asking Western Union to return their money," the 10th Circuit said.

The court also noted that without the settlement, Western Union wouldn't have had any incentive to change its business practices, which it agreed to amend by informing customers when their transfers fail.

The suit stemmed from Western Union's practice of keeping money from failed transfers and earning interest, electing not to inform customers until their money was due to be absorbed by states' unclaimed and abandoned property departments.

The plaintiffs said Western Union waited so long that the contact information it had on file was often incorrect by the time it finally sent notice.

After U.S. District Judge John L. Kane granted preliminary approval to the deal in January 2013, Sikora Nelson and Paul Dorsey objected the judge's certification of the class as well as his approval of the settlement.

Dorsey, who proceeded pro se, adopted Nelson's arguments.

Nelson said that the class representatives couldn't protect her interests because, as a Michigan resident, she could have gotten treble damages and a better deal than she would through the settlement.

She also pointed out that she could have simply requested a refund from Western Union to get all of her money back and claimed that the company is getting off easy by not having to pay more for its improper conduct.

The Tenth Circuit said Nelson's arguments are ultimately unpersuasive, stating that the trial court had applied Colorado law rather than Michigan law in the case, and said that decision wasn't in error.

The appellate court also pointed out that Nelson would never even have known that Western Union still had her money if it weren't for the settlement in this case.

However, the circuit court acknowledged that the class members who don't opt out will have to release all claims related to Western Union's retention of their unclaimed money, and that they'll lose administrative fees the company charged to hold those funds.

"But that is the nature of a settlement," the court said.

Richard Burke, an attorney for the plaintiffs, said that the decision was a great result, noting that many of the class members are immigrants who sent money to family members, and said the real victory was forcing Western Union to change its policy.

"The settlement actually did something just," Burke said. "There's so much fighting about things that I think people ignore that [we were] able to change a reprehensible business practice."

Counsel for Western Union didn't immediately respond to requests for comment on Friday.

The plaintiffs are represented by Richard J. Burke, Jeffrey A. Leon and Jamie E. Weiss of Quantum Legal LLC, Jimmy Spurlock Calton Jr. of Calton Legal Services, John M. Agnello and James Edward Cecchi of Carella Byrne Cecchi Olstein Brody & Agnello PC, Seth A. Katz of Burg Simpson Eldredge Hersh & Jardine PC, Christopher Adam Seeger of Seeger Weiss LLP and Mitchell Baker.

Western Union is represented by Geraldine Mary Alexis, Jess Alexander Dance, Leonard Hawkes MacPhee and Jason A. Yurasek of Perkins Coie LLP and Thomas M. Barba, Charles Glaston Cole and Laura Lisa Sandoval of Steptoe & Johnson LLP.

Nelson is represented by John E. Anding and Theodore James Westbrook of Drew Cooper & Anding.

The case is Tennille, et al v. Western Union, et al, case no. 13-1310 in the U.S. Circuit Court of Appeals for the Tenth Circuit.

--Editing by Emily Kokoll.

All Content © 2003-2015, Portfolio Media, Inc.