

Eleventh Circuit Prohibits Class Representative Incentive Awards

“For years, class action settlements typically have included incentive payments to named plaintiffs. The payments usually represent a very small percentage of the overall settlement payout, and are designed to compensate named plaintiffs for their time and trouble in service to the class,” writes Donald R. Frederico in *Pierce Atwood’s Class Action Settlements and Mediation*.

“Unless, that is, you practice in the 11th Circuit. On September 17th, a divided panel of that court held that incentive payments in class action settlements are unlawful in light of two Supreme Court decisions from the 1880s ... involving common funds. In those cases, the Court held that creditors who successfully pursued claims benefiting other creditors could recover from the common funds amounts to reimburse them for the legal fees and litigation expenses they incurred, but not for their “personal services and private expenses,” such as travel and hotel expenses. Finding a close resemblance between the disallowed fees in the Supreme Court cases and incentive fees in class action settlements, the majority held that it was constrained to disallow the incentive payments.”

Read the article.