

State AGs take Action in Class Actions

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As we [previously discussed](#), the Class Action Fairness Act (CAFA) requires that notice be given to state attorneys general (State AGs or AGs) about proposed class action settlements, enabling them to review the terms and raise any concerns if they believe the settlement might negatively impact their state's residents. This creates a crucial role for State AGs in the class action settlement approval process, and in relatively rare instances they may act by filing amicus briefs to share their concerns with the court.

Recently, Iowa Attorney General Brenna Bird led two notable amicus objections to class action settlements.

Google Settlement

Iowa, along with nineteen other states through their Republican AGs, objected to a \$62 million class action settlement with Google, which was intended to resolve claims that the company illegally tracked smartphone users' location data. The core issue, as raised in the amicus brief, was that the settlement provided no direct benefit to the class members. Instead, the bulk of the settlement was allocated to cy pres recipients – third-party organizations – and attorneys' fees, leaving class members without financial relief. The settlement has secured preliminary approval earlier this year, but now faces additional challenges in the Ninth Circuit.

The State AGs argued that under Rule 23 of the Federal Rules of Civil Procedure, class action settlements require a *direct* benefit to the class, and that "when a settlement fails to award damages to class members, there is no direct benefit." The AGs contended that the settlement's approach of directing funds to third-party organizations failed to meet this requirement, as the class members received neither direct nor meaningful indirect benefits. As the brief emphasizes, "[a] class receives no benefit from a settlement that directs funds to groups whose interests' conflict with, or are even opposed to, those of the class."

Although the Ninth Circuit has previously approved cy pres only settlements, the AGs argued that many of the recipients, such as the ACLU, advance unrelated social and political causes, rather than addressing the privacy violations central to the suit. According to the AGs, there was no "substantial nexus" between these organizations and the harm suffered by the class. Additionally, the AGs took issue with the \$18.6 million in attorney fees, which represented 30% of the total settlement. The brief called this allocation "untenable" because these class members received nothing. The AGs argued that while a 30% fee might be reasonable in some contexts, "this settlement is better characterized as 100% of damages going to attorneys and third parties."

Wawa Settlement

In a similar amicus brief led by the Iowa AG, 16 Republican AGs objected to the proposed settlement related to Wawa's 2019 data breach. The settlement made \$9 million available in class relief ranging from \$5 and \$15 gift cards to up to \$500 in monetary payments for claimants. \$2.9 million was actually claimed by class members (mostly in the form of \$5 gift cards), while \$3.2 million is designated for attorney fees. The Third Circuit remanded the attorney fees award back to the trial court level, which ultimately granted approval. The AGs filed the brief on appeal with the Third Circuit where the case resides again.

The amicus brief emphasized that consumers received neither a meaningful direct nor indirect benefit, stating that the compensation offered – Wawa gift cards – was inadequate compared to the extent of the data breach and the attorney fees awarded. The AGs disputed the defense's claim that 97.2% of Wawa gift cards are typically redeemed, explaining that there is a significant difference between a customer who intentionally purchases a gift card, and one who receives an unsolicited gift card. The AGs argued that unsolicited gift cards are more comparable to "corporate issued promotional coupons," which typically have a redemption rate "between one and 3 percent." As a result, the AGs contended, nearly all the gift cards will remain unspent, leaving attorneys with a larger percentage of the settlement. Interestingly, of the states that joined the amicus brief, only two states (Florida and Alabama) have Wawa locations inside their borders.

State AGs have long expressed concerns over class action settlements that may not provide sufficient direct benefits to class members (see, e.g. [here](#)). As these settlements are reviewed, AGs are continuing to pay close attention to those where funds primarily go to attorneys or third-party organizations through cy pres arrangements. Moving forward, states are likely to remain active in ensuring that settlements strike a fair balance between compensating affected individuals and addressing broader concerns.