

## Switching Sides?: Large Defense Firm Aides Plaintiff's Lawyers to Net Biggest TCPA Settlement in History

Article By:

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*Editor's Note: After long deliberation I decided not to name the firm at issue here in the blog. I know some folks over there and I don't want to put them on blast-even if I think there was some questionable judgment exercised here. The name of the firm is public record, of course, if you're inclined to look it up for yourself.*

So I almost broke my "no Sunday" rule to blog about this one yesterday when I read it.

I already reported on the back story on the [huge Rash Curtis and associate story](#). In a nut shell: i) company [gets hit for ~\\$260MM TCPA judgment](#) for calling skip traced cell numbers without consent; ii) goes bankrupt; iii) assigns [bad faith insurance claim to class](#); iv) insurance company settles on behalf of company for \$76MM—biggest TCPA settlement of all time.

Now, at long last, we get the full picture here. And it is incredibly interesting.

Turns out a litigation funder stepped in to assist the Plaintiff's counsel to see the insurance challenge through while fending off the appeal in the underlying suit.

For the unfamiliar, a litigation funder is a fund that steps in to provide dollars to push litigation forward in exchange for a cut of any victory. So, for instance, they might give Bursor & Fisher \$10MM to fight the "good" fight against Rash Curtis in exchange for—oh, I don't know—a 50% cut, or \$5MM.

That wasn't hypothetical.

Something called Omni Net Expense—nice name—apparently fronted \$10MM to the Plaintiff's lawyers here. But the deal was that the Plaintiff's lawyers had to pay ONE \$15MM in return.

How's that for a return on investment?

I only know this because the Plaintiff's lawyers actually had the chutzpah (did I use that right?) to ask the Court to have the class pay back the \$5MM.

No, I'm serious.

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It's all right here in Perez v. Rash Curtis & Assocs., Case No. 4:16-cv-03396-YGR, 2021 U.S. Dist. LEXIS 189889 (N.D. Cal. October 1, 2021.)

See Plaintiff's argued that the involvement of the litigation funder actually added value to the settlement because—and this is, at long last, where we get to the headline—ONE retained counsel (a very well known defense firm that defends people in TCPA class actions) to help the Plaintiff to get the biggest settlement possible out of the case.

And it worked.

In fact, according to the Plaintiff's submissions in this case \_\_\_\_\_, LLP helped raise the cost of the settlement by 50%.

50%!

Here's what the Court says:

Class counsel submitted that the addition of counsel [\_\_\_\_\_, LLP] hired under the Omni Agreement increased the value of the settlement by 50%.

So, but for \_\_\_\_\_, LLP's involvement the settlement only would have been \$38MM according to Plaintiff's counsel.

I mean, I don't get it. How can you bill yourself as a defense firm that helps folks avoid TCPA dangers and then turn around and help a Plaintiff's firm fleece an insurer for millions of dollars and 76 times policy limits while enriching one of the most dangerous Plaintiff's firms out there?

Gross gross gross.

Anyhoo, the Court completely refused to charge the class the extra \$5MM that Plaintiff's counsel had incurred to obtain the \$10MM they needed to fund the litigation. In doing so it reminded everybody that litigation funders are controversial figures and probably class members shouldn't be paying their [totally reasonable] fees:

debate in the legal community remains regarding the pros and cons of such entities. While it may have been useful in this case, the Court is not inclined to approve such expenses on this record, and without vigorous debate before deliberation. Many plaintiff firms self-finance, and presumably have complex lines of credit with financial institutions. To allow such an expense here might suggest that other class counsel should or could request reimbursement for their own financing arrangements. Thus, the Court is not inclined to approve costs which fundamentally relate to the cost of doing business.

Don't worry though, thanks [in 50% part] to \_\_\_\_\_, LLP's assistance Bursor and Fisher will be taking home a cool \$27,972,000 in fees out of the settlement—for that is the amount of fees the

court approved.

So there you go:

1. Largest TCPA settlement ever-\$76MM;
2. \$10MM in borrowed money made it possible;
3. \$5MM paid on that borrowed money—but not by the class (thank goodness);
4. Insurer to pay it all—even though only \$1MM policy;
5. \$22,972,000 in net fees recovered by Plaintiff's lawyers;
6. \_\_\_\_\_, LLP helped them do it.

And now you see why I almost wrote about this over the weekend. But didn't.

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National Law Review, Volume XI, Number 277

Source URL:<https://natlawreview.com/article/switching-sides-large-defense-firm-aides-plaintiff-s-lawyers-to-net-biggest-tcpa>