

## **Private Attorney General Fees are Only Available in an Action Against the Opposing Party**

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In [McGuigan v. City of San Diego](#), 2010 DJDAR 5078 (2010), the [California Court of Appeal for the Fourth District](#) rendered a decision in a unique private attorney general case under the provisions of [C.C.P. § 1021.5](#).

A retired employee of the City of San Diego (San Diego) brought an action as a representative plaintiff for a class of similarly situated employees. The lawsuit was brought against San Diego alleging that the City seriously underfunded its retirement plans. The parties settled the lawsuit. The settlement agreement required the class representative to act in a similar capacity in further proceedings. After the settlement agreement was signed, there were extensive court hearings and several challenges raised to the settlement.

The trial court concluded that the objections submitted had been adequately addressed, and approved the settlement and issued judgment. The settlement agreement included an award of attorney fees to class counsel pursuant to C.C.P. § 1021.5 which the court approved. San Diego subsequently was ordered to pay \$1.6 million in attorney fees.

The settlement objectors appealed the court's ruling approving the settlement. Following successful defense of the settlement on this appeal, the class representative motioned for additional attorney fees from San Diego. The trial court denied the motion. The court stated that C.C.P. § 1021.5 allows a fee award only against an "opposing" party. The court found that on appeal, McGuigan and San Diego were not opposing parties. The class representative appealed that ruling.

The Court of Appeal affirmed, noting that C.C.P. § 1021.5 permits a trial court, in its discretion, to award private attorney fees to a successful party in any appropriate action against only an opposing party. The settlement agreement entered into by San Diego and McGuigan, and the subsequent judgment, altered the parties' relationship in the litigation. As a settling party and fellow respondent to the third party's appeal, San Diego was not an "opposing party" to McGuigan, as they were all allied in interest in defending the settlement.

Therefore, McGuigan was not entitled to attorney fees from the City under C.C.P. § 1021.5.