



## Jeff Geiger Counters

### Stop the Madness

**By: Jeff Geiger. *This was posted Monday, July 19th, 2010***

Attorneys' fees drive too much litigation. Under the American Rule, attorneys' fees are not awarded unless (a) there is a statute that says they should be awarded, (b) a contractual provision provides for such an award, or (c) a common law rule affords such a recovery. In other words, we do not have "loser pays system" in which the person who loses pays the other person's attorneys' fees and costs. While I appreciate arguments both for and against such a system, I have seen in close quarters how huge the issue of fees and costs can become the driving force in litigation.

And I get it. If I spend a lot of money in a case, I would want to recover it. My problem is that the fees and costs become the end all and be all. For example, a consumer complains that a retailer sold them something that didn't function as advertised. Typically, the case will involve minimal amounts of money or no damages at all. Yet, because the statute says that there are statutory damages by virtue of a technical violation, damages can accrue. That's not the problem, though—if you violate the law, pay for your sins (even if innocent). The problem is that the consumer can receive his or her attorneys' fees. So, if you have a claim with damages of \$1,000.00, the attorney can reap \$10,000.00, \$15,000.00, \$50,000 and so on—the sky is the limits. The consumer isn't paying the fee and there is no expectation that the consumer will pay it. Why would you? It is out of line with reality!

Let there be no misunderstanding, I understand the reasoning, even if flawed. If attorneys' fees were not awarded, lawyers would not take such cases because they would not be financially feasible. Why would you pay \$5,000.00 to get \$1,000.00? The problem is the absence of proportion. A minor, technical violation will lead to a *de minimis* award of damages and an inflated attorneys' fee award. Let me be clear: the leverage has shifted too far in favor of those who would prosecute claims for which there is little or no harm. When claims settle merely because of the concern that the attorneys' fees would dwarf any award, regardless of the merits, that is wrong. The stories I could tell....

As a disclaimer, I have been on both sides, representing plaintiffs and defendants. I would be interested in what you have to say. What say you?

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