

EXHIBIT 1

Corporate Counsel
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Litigation 2004
Hot Spots

FRINGE PLAYER

Lisa Lerer

. The Objector

JOHN PENTZ

Class Action Fairness Group

Sudbury, Massachusetts

AFTER THREE YEARS, CLASS action lawyer Lloyd Constantine could taste settlement. Visa U.S.A. Inc. and MasterCard Incorporated had finally agreed to pay his class more than \$3 billion. Constantine had avoided an antitrust trial and gotten a great result, and he was about to be rewarded with fees of over \$600 million for his efforts. It was a perfect class action ending.

Then the 'holdup artist' rode into the courtroom. The notorious class action **objector John Pentz** of the Class Action Fairness Group left his mark on the case, cutting Constantine's fees to \$220 million.

Pentz became the outlaw of class action litigation in 2000, when he opened his own firm after several years as an associate at Boston's Berman DeValerio Pease Tabacco Burt & Pucillo. Pentz says he was disturbed by class actions in which plaintiffs lawyers took home millions and class members won just a coupon. Even worse, he was annoyed by the scornful way judges and his colleagues treated 'objectors'-lawyers who challenge settlements and large fee awards.

Pentz founded the Class Action Fairness Group to focus almost exclusively on objecting to class action settlements. He usually shows up at the last minute to try to torpedo a settlement that is sometimes years in the making. Judges tend not to like that tactic. Case opinions are rife with examples of judicial scorn for Pentz's ilk. In a 2000 ruling approving a \$2.1 billion settlement with Toshiba American, Inc., for instance, Judge Thad Heartfield of the Eastern District of Texas criticized 'canned objections' filed by lawyers seeking 'to extract a fee by lodging generic, unhelpful protests.'

But Pentz embraces his role. 'No court has ever said that it's an illegitimate practice area or improper to devote most of your practice to objecting,' he says from his Sudbury, Massachusetts, office.

Only a handful of lawyers regularly object to class action settlements, and even fewer specialize in the field. Pentz quickly became one of the biggest

(and most reviled) names in the business, plaintiffs lawyers say, second only to Lawrence Schonbrun, a solo practitioner in Berkeley. Over the past four years, Pentz has objected to some huge class action settlements, including Bridgestone/Firestone Retail & Commercial Operations LLC, Lucent Technologies Inc., AT&T Corp., and The Goodyear Tire & Rubber Company.

Pentz insists that he's doing good work for class members. But class counsel Constantine claims that objectors had little to do with his reduced paycheck in the Visa/MasterCard case; New York Eastern District Judge John Gleeson independently found his fee petition excessive. 'The court swatted down every single one of [Pentz's] objections,' Constantine says.

So how does Pentz make a living? He refuses to generalize, arguing that every case is unique. But he will acknowledge that the bulk of his income does not come from court-awarded fees. When a judge amends a settlement after Pentz objects, Pentz receives a fee award, usually 1 or 2 percent of the total fees in the case; or, if his objection results in benefits to the class, around 20 percent of the value added. But that kind of fee is the exception rather than the rule, Pentz says.

Instead, objectors make most of their money when class counsel pay them to drop their objections. Pentz concedes that payments from class counsel usually dwarf court awards. Joe Whatley of Birmingham-based Whatley Drake, who faced off with Pentz in three different cases, says he has always paid Pentz to drop objections without making changes to the settlement. 'It's like having to pay a tax,' Whatley says.

Today, Pentz's practice is about to make a sharp U-turn. He is preparing to become class counsel himself, representing customers suing the DIRECTV Group, Inc., in Beaumont, Texas. His newest job isn't selling out the cause, he argues, but a natural outgrowth of his work. After all, the case began with an objection he filed in an Indiana settlement. Besides, the onetime crusader notes, at the end of the day, 'it becomes like any other job.' Today the party-crasher seems just to want an invite to the big bash.

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