

Lawyers and Settlements

Justice for Everyone



Interview with a Class Action Lawyer

February 13, 2006. By Jane Mundy

An interview with Michael Kelly, a lawyer specializing in class action lawsuits.

What unique challenges does the legal profession face in terms of promotion and marketing?

The legal profession has always been confused on how to advertise. Advertising is, for any profession, bringing the client to the professional, without making promises that you can't keep. The Internet has obviously reinvented that process for lawyers as it has for everyone else.

How has the Internet changed the way your firm does business?

The best advertising is, in the end, good results for clients. The Internet has allowed lawyers to make sure their particular training or skills, and good results, are a key search term. I recently obtained a \$63.9 million verdict in an age discrimination case for a corporate pilot. Some "A" list celebrities owned the jet he flew, so the verdict got a lot of play in the media. A Google search of my name - and you're on my firm's web site. Within two weeks, I was contacted by literally hundreds of pilots over the age 60, from almost every state in the U.S. And a few from Europe. I ended up taking two of them on as new clients.

How do you convince a client that you're the right lawyer for the job? Do you feel that you have to sell yourself to the client?

Again, I prefer to let my past results serve as my best selling point. To build a good working relationship with a client, they must trust your judgment, and trust you.

What do you do to earn a client's trust?

Be as honest as you can about the evaluation of their potential case, and don't oversell yourself. If you do that, their expectations should be reasonable, and the results something they can live with. Overselling is a recipe for dissatisfaction.

How much do you rely on the Internet?

Well, we do very little promotion elsewhere. The Internet is a great way to reach those who might have a need for your services. Search terms are the best "directed" advertising around.

Do you use our service, OLM?

Sure. I think I was one of your original clients. I signed up right after Al Gore invented the Internet. Seriously, yes. You have created a site that attracts consumers that have been wronged in small amounts, [monetarily or otherwise]-- people who would likely not ever consult a lawyer or bring their complaint to anyone's attention otherwise.

Are you talking about potential class action claims?

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Exactly.

Class Actions are sometimes perceived by the public as more beneficial financially for the lawyer than the plaintiffs. Is this true to some degree?

Well, unfortunately that could be true about the outcome of many cases. When a husband and wife spend their entire savings getting divorced, the lawyers still get paid, but in that case people don't blame the lawyers. What the public may not be aware of, is that most class action settlements must be approved by the Judge before they go forward. Hopefully, the Judges will not approve settlements that are unfair or inappropriate. But let me speak to the specific question you asked. One of the main reasons for class actions, is to deter wrongful conduct that affects a large number of people, just a little bit each. If a corporation wrongfully takes a dime from 500,000 people, it just made \$50,000 dollars. Now, who is going to sue over a dime? So the wrongful practice goes on until someone stops it. Those dimes add up. Class actions are the tool that lawmakers have enacted to prevent that.

But why are the fees for the lawyers sometimes in the millions of dollars?

Lawmakers had to build an incentive for lawyers to take on this type of case. It's high risk. Not every class action is successful. If it isn't, the lawyers don't get paid. If they are successful, the wrongful conduct is stopped. If each class member only gets a penny back from their dime, but the wrongful conduct is stopped, they may each end up saving a dollar over the next year. Also, the settlements serve as a deterrent for other corporations who might consider such wrongful conduct as attractive.

But some of the legal fees still seem so large?

The Judge in awarding fees in a class action case has the authority to actually increase the fees he or she awards to the lawyers if the Judge thinks they did an exemplary job. This is true especially in cases where the questions of law or the facts are novel or extraordinarily complicated.

When you are deciding whether to file a class action, how much are you influenced by the wealth of the defendant?

Not that much. A bad case against a wealthy defendant is still a bad case.

How much research is involved before you reach a decision?

Class actions have to be very extensively researched and investigated before you consider taking one on. They can be quite expensive to prosecute, and you don't want to file a case that will not serve the purposes that class actions serve. Unfortunately, a lot of the companies that commit egregious acts against consumers these days are ghosts on the Internet, such as offshore companies that just close down and come back with a different name and different URL in response to a law suit.

What variables make for a "successful" class action, for example, the number of plaintiffs, a large corporation etc.?

Well, class actions have to involve a significant number of plaintiffs, and should involve a specific action or fact pattern that is identical for all potential class members. Like a wrongful charge made to all customers on a bill. Where the claim involves a different fact pattern for each potential class member, like with a telephone solicitation, it is very hard to get a court to certify the claim as a class; that is because each class member will have slightly different facts.

How do you investigate potential class actions?

They usually start with one customer questioning one small act or charge by a large corporation. They often try to call to get information about it, and the company is, well...., less than responsive. Oftentimes the persons they are able to get on the phone don't know the answer, so they divert the question. So, when this person contacts you, you investigate to see if 1) the charge or act is legitimate and legal, and 2) if others have been subjected to the same discrepancy.

How do you do that?

Well again, the Internet plays a big part in that. Consumer blogs are key in that regard. Consumers sharing experiences with different companies on different issues, and all searchable by key word. Blogs are really able to shine a light in some heretofore dark corners of corporate America.

How do you think the public can be educated by our website — are there any other tools we can provide that can help the process?

Start a blog site on relevant topics. Sometimes the give and take between those who have had the actual negative experiences with potential defendants yield information that is nearly impossible to find any other way.

For more information, visit Michael Kelly at the firm's [[website](#)]

Or Email: [Michael Kelly](#)

