

Judge Rejects 'Phony' \$19M Weinstein Class Settlement

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By **Frank G. Runyeon**

Law360, New York (July 14, 2020, 11:18 AM EDT) -- A Manhattan federal judge on Tuesday abruptly rejected a proposed settlement and class certification bid in a sex abuse lawsuit against disgraced Hollywood producer and convicted rapist Harvey Weinstein, deriding the deal as "phony" and the class as nonexistent.

U.S. District Judge Alvin K. Hellerstein chastised attorneys for a group of women seeking approval of the proposed \$18.9 million settlement. The pact would have resolved a suit alleging Weinstein sexually abused and harassed dozens of women, as well as a separate hostile workplace suit filed by the New York attorney general.

Cutting the hearing short, the judge told the attorneys they could better serve their clients by pursuing individual judgments against Weinstein.

"That's what you should be doing instead of wasting your time with phony settlements and attempts to create a class that doesn't exist," the judge said, about 15 minutes into what was set to be at least 40 minutes of arguments by up to 10 attorneys. The only attorney who had a chance to speak was Elizabeth A. Fegan, proposed class counsel for nine women seeking to settle the case.

"I will not give preliminary approval to the settlement," Judge Hellerstein added. "I don't think there's any need for objectors to speak and make an objection to a settlement I am not approving, in light of the remarks I've made."

Several groups of accusers had **opposed the settlement deal** on Monday, with some branding it "a cruel hoax" that would benefit Weinstein more than his victims.

"Judge Hellerstein recognized all of the flaws of the agreement and class," Thomas P. Giuffra, counsel for one of the objectors, Alexandra Canosa, said Tuesday. His client opposed "a bogus class action settlement which was only fair to attorneys raking in millions at the expense of the victims."

"Judge Hellerstein's ruling today correctly dismantled a settlement that required women to accept being mistreated yet again by accepting small amounts in exchange for releasing Harvey Weinstein and all his enablers," Gloria Allred, counsel for Miriam Haley, said Tuesday.

In their opposition Monday, six of the accusers represented by Wigdor LLP said the structure of the proposed agreement and related global settlement of The Weinstein Co. bankruptcy proceeding is "patently unfair" because the alleged wrongdoers receive significantly more money than the proposed class of survivors.

"Although the deal speaks about individual awards up to \$750,000 and the New York state attorney general has bragged about a 'win' for victims, that is all a cruel hoax," the accusers said. "The truth is that the average award to class members under this proposal is likely to be in the range of \$10,000 to \$20,000."

"The main winners of this deal, if approved, are Harvey Weinstein, [his brother and former Weinstein Co. co-chair] Robert Weinstein, and the ultra-wealthy former directors of The Weinstein Company, who will be absolved from liability, contribute nothing to the settlement and collectively take in about \$15 million from the proposed settlement agreement," the accusers added.

Judge Hellerstein appeared to echo an element of that concern at one point in the hearing, decrying the idea that the now-infamous producer would get access to legal fees from the fund before his accusers.

"The idea that Harvey Weinstein can get a defense fund ahead of the claimants is obnoxious," said the judge. "I can't subscribe to that."

The judge repeatedly made rhetorical jabs at Fegan's argument in support of the deal, essentially ruling that on top of the mechanics of the settlement itself being defective, a class settlement simply did not make sense given the variety of allegations brought by the accusers.

"Why is this a case where the individual claims measured by the depravity that a particular woman suffered does not outweigh the common funds? Not every woman was captured in the same way," Judge Hellerstein said, reasoning that while some women say Weinstein forced himself on them, "some may have done it willingly."

"Your settlement would create an equality among all of those people. This is not a case suitable for a class. I've told you that many times," the judge said. Furthermore, the judge chided Fegan for not submitting a formal motion for class certification and instead seeking to "pressure" a judge who had already expressed "reservations he had about a class" by asking for his blessing "under the umbrella" of a settlement.

"This is not a class action. You want to test me? Make a motion," the judge said.

"We hear your concerns," Fegan said. "We will withdraw our motion."

A spokesperson from the New York attorney general's office, who had supported the deal, said the office would "review the decision and determine next steps."

Weinstein was tried and convicted of rape and sexual assault earlier this year, when he was sentenced to 23 years in prison for his crimes.

A slew of civil litigation has followed early allegations in news reports in 2017 that the once-powerful producer had used his position to lure women into situations where he sexually assaulted them. The suit at hand was filed in December 2017 against Weinstein, his affiliated companies and directors. The latest sex abuse lawsuit was **filed in May** by four more women.

After months of pressure, in March 2018, the Weinstein Co. filed for Chapter 11 bankruptcy protection in Delaware with plans for a sale. That maneuver has forced his accusers to file claims alongside other creditors with that court in an effort to recover compensation for Weinstein's alleged abuse from a pot of \$300 million garnered from selling off the business assets.

Earlier this month, Weinstein attorneys presented a **\$46.8 million agreement** to settle victim and bankruptcy creditor claims, including the proposed \$19 million settlement for the proposed class and an additional \$5 million to settle individuals' claims.

But Judge Hellerstein's decisive ruling in the Southern District of New York on Tuesday relegates that deal to the dustbin.

"We have been saying for over a year and a half that the settlement terms and conditions were unfair and should never be imposed on sexual assault survivors," said Douglas Wigdor, counsel for six claimants. "We were surprised that class counsel and the New York attorney general did not recognize this fact but are pleased that Judge Hellerstein swiftly rejected the one-sided proposal."

Paul H. Zumbro, counsel for Weinstein Co. Holdings LLC, told Law360 that "the estate is assessing the impact of Judge Hellerstein's ruling today."

Wedil David, Dominique Huett, Kaja Sokola, Rowena Chiu, Zelda Perkins, and Tarale Wulff are represented by Douglas H. Wigdor and Bryan L. Arbeit of Wigdor LLP, and Kevin Mintzer.

Alexandra Canosa is represented by Thomas P. Giuffra and Jeremy A. Hellman of Rheingold Giuffra Ruffo & Plotkin LLP.

Zoe Brock is represented by Daniel D. Williams and John C. Clune of Hutchinson Black & Cook LLC.

The settlement class representatives are represented by Elizabeth A. Fegan and Lynn A. Ellenberger of Fegan Scott LLC and Steve W. Berman and Whitney K. Siehl of Hagens Berman Sobol Shapiro LLP.

Weinstein Co. Holdings LLC is represented by Paul H. Zumbro of Cravath Swaine & Moore LLP.

Harvey Weinstein is represented by Elior D. Shiloh and Brian Pete of Lewis Brisbois Bisgaard & Smith LLP and Phyllis Kupferstein of Kupferstein Manuel LLP.

The Weinstein Co. is represented by Gerald L. Maatman Jr., Karen Y. Bitar and Lisa L. Savadjian of Seyfarth Shaw LLP.

The case is Louissette Geiss et al. v. The Weinstein Co. Holdings LLC et al., case number 1:17-cv-09554, in U.S. District Court for the Southern District of New York.