

# Judge Rejects Harvey Weinstein Settlement: ‘I Can’t Subscribe to That’

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A federal judge has rejected an \$46.8 million settlement of the Harvey Weinstein sexual misconduct cases, saying some of its terms are “obnoxious” and it is not suitable for a class action.

In a 20-minute hearing on Tuesday, U.S. District Judge Alvin Hellerstein said the settlement improperly nullifies claims of non-participating parties, and delegates his responsibilities as a judge to a special master. He also objected that Weinstein and other directors and officers of the Weinstein Co. will get millions in attorneys’ fees.

“The idea that Harvey Weinstein can get a defense fund ahead of the claimants is obnoxious,” he said. “The idea you can regulate the claims of people not in the settlement — I can’t subscribe to that.”

Hellerstein had previously dismissed most of the claims in the class action case, and continues to believe that the plaintiffs’ experiences are so various that the case should not be handled as a class action.

“Not every woman was captured in the same way,” Hellerstein said. “Some gave up their bodies because of blandishments... some by force, and some may have done it willingly. And yet your settlement creates an equality.”

The settlement set up a complex process whereby a special master would evaluate each woman’s claim and assign a monetary value. But Hellerstein said that such fact-finding is his prerogative.

“I don’t see how I could delegate that responsibility to someone who is not a judge,” he said. “There is no way I would approve a delegation for that suit. Zero.”

“This is not a class action,” he continued. “I will not give preliminary approval to the settlement.”

The settlement would have used insurance company funds to pay off the remaining claims in the Weinstein Co. bankruptcy. Under the proposal, \$18.9 million would have gone to class action claimants and their attorneys. Another \$5.4 million would have been set aside for individual plaintiffs, and other pools of money would have gone to Weinstein Co. trade creditors and defense attorneys working for Harvey Weinstein and the other Weinstein Co. officers and directors.

Douglas Wigdor and Kevin Mintzer, who represent three plaintiffs who had objected to the deal, said that its flaws were clear from the beginning.

“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,” they said in a statement, along with attorney Bryan Arbeit. “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. On behalf of our clients, we look forward to pursuing justice against Harvey Weinstein and his many enablers.”

Dozens of attorneys have been working on the settlement for more than 18 months. The judge’s comments struck at the basic foundations of the deal, and appear to leave little room for attorneys to modify the terms and bring it back for approval.

Attorneys in the Weinstein Co. bankruptcy had said they hoped to get approval of the deal and to confirm a liquidation plan by the end of 2020. Hellerstein’s decision is a severe setback in that process.

Paul Zumbro, the lead attorney representing the Weinstein Co. estate, issued a brief statement: “The estate is assessing the impact of Judge Hellerstein’s ruling today.”

The decision is a defeat for Elizabeth Fegan, the attorney who led the class action case, and the Hagens Berman class action law firm. Some of the individual plaintiffs’ attorneys had alleged that the class action attorneys would reap millions in fees from the case, and that the settlement had put those interests ahead of the interests of Weinstein’s accusers.

“We were disappointed in the judge’s decision this morning,” said Fegan and attorney Steve Berman, in a statement. “We’ve long held that we needed to find justice for all the women that Weinstein preyed upon in a fair and equitable way. Now, we need to turn our attention to litigating our clients’ individual cases. We will also seek to appeal an earlier court ruling that excused The Weinstein Company’s board of directors, who we contend had known of Weinstein’s behavior and did nothing to stop it. We believe they should be held accountable for their silence and inaction. The brave women who stood up to Weinstein and filed this action deserve our admiration, and we will continue to fight on their behalf.”

It is also a defeat for New York Attorney General Letitia James, whose office had filed a massive gender discrimination suit against Weinstein in 2018. The deal would have resolved that suit as well, and James had hailed the agreement as a “win” for all victims of sexual harassment.

“We will review the decision and determine next steps,” a spokesperson for the office said Tuesday. “Our office has been fighting tirelessly to provide these brave women with the justice they are owed and will continue to do so.”

The decision came as a surprise to attorneys who have been seeking to resolve litigation between Weinstein and various insurance companies. At a court hearing about an hour after Hellerstein scuttled the deal, some of the attorneys in that case had not yet heard the news.

“There’s been numerous discussions in various circles about what to do next,” said Jeffrey Schulman, who represents Weinstein in the insurance case. “This remains quite fluid... I think we’re all going to need to sharpen our pencils and figure out what to do next.”