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## Attorney's Fees: Florida Supreme Court Chooses the "Lodestar"

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**CASE COMMENT**

**ATTORNEYS' FEES: FLORIDA SUPREME COURT  
CHOOSES THE "LODESTAR"**

*Kuhnlein v. Department of Revenue*,  
662 So. 2d 309 (Fla. 1995)

*Rina Lyubkin*\*

Respondent, the prevailing attorney in a class action suit on behalf of state taxpayers against the Florida Department of Revenue,<sup>1</sup> filed a motion for allowance of fees and expenses from the common fund generated as a result of the attorney's efforts.<sup>2</sup> The Circuit Court entered an order setting the attorneys' fees based on a percentage of the common fund,<sup>3</sup> and the State appealed. The Supreme Court of Florida declared jurisdiction over the matter,<sup>4</sup> and HELD, that the trial court erred by applying the percentage-of-the-fund rather than the lodestar approach<sup>5</sup> in determining the amount of attorneys' fees.<sup>6</sup>

Historically, under the "American Rule," each party to a litigation was responsible for its own attorneys' fees.<sup>7</sup> Over time, however, courts began to recognize several exceptions to this rule.<sup>8</sup> Under the

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\* To Mom, Dad, Gregg & Jim, for their continuing love and support.

1. *Department of Revenue v. Kuhnlein*, 646 So. 2d 717, 720 (Fla. 1994). The action was successfully resolved on behalf of state taxpayers who challenged the constitutionality of an impact fee imposed on cars that were titled in other states but then later registered in-state by state residents. *Id.* at 726.

2. *Kuhnlein v. Department of Revenue*, 662 So. 2d 309, 310 (Fla. 1995). Because of the large fund recovery generated in the litigation, almost \$200,000,000, the class attorneys petitioned the court to obtain fees from the common fund even though they had originally signed contingency fee agreements with several of the class members. *Id.* at 310-11. The attorneys petitioned the court to obtain 14% of the total common fund recovered for attorneys' fees and expenses. *Id.* at 310.

3. *Id.* at 311. The trial court set the attorney's fee award at 10% of the common fund rather than the 14% originally requested by the class's counsel. *Id.* at 310-11.

4. *Id.* at 310.

5. *Id.* at 312. The number of hours reasonably expended by the attorney multiplied by a reasonable hourly rate produces the federal lodestar, which may then be adjusted upward or downward based on a number of factors, including the time and labor required, the amount of the fund, the attorney's time and efforts on the clients' behalf, etc. *Id.* at 313. This upward or downward adjustment to the lodestar amount is called a multiplier. *Id.* (citing *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145, 1151 (Fla. 1985)).

6. *Id.* at 311-12.

7. *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 245 (1975).

8. *Id.*

common fund exception, for instance, courts granted reasonable attorneys' fees<sup>9</sup> to prevailing attorneys who recovered a common fund for the benefit of parties other than their original client.<sup>10</sup> Courts justified attorney reimbursement from a common fund on the basis that if the costs of litigation were not spread to all parties who benefit from the fund, then those parties would be unjustly enriched by the attorneys' efforts.<sup>11</sup>

While recognizing the inherent equity and fairness in awarding attorneys' fees in successful common fund claims, courts were divided as to the appropriate determination of a "reasonable" fee.<sup>12</sup> Today, the two primary methods of calculating a "reasonable" fee are the percentage-of-the-fund<sup>13</sup> and the more recently evolved lodestar approach.<sup>14</sup> Throughout the years, courts have discovered advantages and disadvantages to both methods, so many jurisdictions have simply deferred the decision of which method to apply to the discretion of the trial court.<sup>15</sup>

In *Lindy Brothers Builders, Inc. v. American Radiator & Standard*,<sup>16</sup> the Third Circuit deviated from the well-settled percentage-of-the-fund approach and introduced the lodestar method of calculating attorneys' fees in common fund cases.<sup>17</sup> In *Lindy*, the plaintiff's attorney recov-

9. *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1265 (D.C. Cir. 1993). Many problems exist in assessing the reasonableness of attorneys' fees in class action lawsuits because parties with low individual stakes are reluctant to file objections, and the defendants who originally contributed to the fund are usually indifferent as to how the fund ultimately is divided. *Id.*

10. *Id.* at 1264; see also *Court Awarded Attorney Fees: Report of the Third Circuit Task Force*, 108 F.R.D. 237, 241 (1985) (asserting that the common fund exception derives from the basic common law concept that a trustee who acts on behalf of beneficiaries is entitled to be reimbursed from that fund for expenses and costs incurred in administering this trust).

11. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Swedish Hosp. Corp.*, 1 F.3d at 1265.

12. See *Court Awarded Attorney Fees*, 108 F.R.D. at 242. Studies demonstrate that, by far, the factor that is utilized most by trial courts in their calculation of a reasonable attorney's fee award is the size of the fund generated or the actual amount of benefit accrued to the class. *Id.*

13. *Id.*

14. *Id.* at 243. Severe and constant criticism from the public and the press about large fee awards recovered in several successive lawsuits in which the percentage-of-the-fund approach was used resulted in a shift towards the lodestar method of calculating attorneys' fees. *Id.*

15. See, e.g., *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (asserting that if the trial court provides adequate reasoning and justification for adopting a particular fee award calculation method, then the appellate court should defer to the trial court's discretion); *Harmon v. Lyphomed, Inc.*, 945 F.2d 969, 972 (7th Cir. 1991) (referring to the "well-established abuse of discretion standard" of review and stating that "[d]istrict courts are far better suited than appellate courts to assess a reasonable fee in light of the case's history").

16. 540 F.2d 102 (1976).

17. *Id.* at 108; see *supra* note 5.

ered a settlement fund in a private antitrust lawsuit and subsequently applied for attorney's fees and expenses.<sup>18</sup> The trial court calculated the attorneys' fees pursuant to the lodestar method,<sup>19</sup> and co-counsel appealed, contending that the lodestar should not have been doubled to reflect contingency and quality factors.<sup>20</sup>

The *Lindy* court ruled that the award of attorneys' fees must be placed within the informed discretion of the trial court.<sup>21</sup> In its reasoning, the *Lindy* court emphasized that the trial judge had superior insight into the unique facts and circumstances involved in the litigation.<sup>22</sup> Therefore, the trial judge was in a better position than the appellate court to evaluate the reasonableness of attorneys' fees based on the particular case.<sup>23</sup>

Additionally, the *Lindy* court implied that the potential for an inappropriate fee award arises when an appellate court overturns the actions of the trial judge without knowing the unique factual background of the underlying case.<sup>24</sup> The court concluded that a trial judge's award of attorneys' fees is final and should not be set aside on appeal except when the appellate court finds that there was a clear abuse of discretion.<sup>25</sup> Accordingly, the *Lindy* court held that the trial court did not abuse its discretion in doubling the lodestar award to reflect contingency and quality factors.<sup>26</sup> Because the trial court utilized the proper criteria for calculating attorneys' fees and clearly articulated its reasoning,<sup>27</sup> the appellate court deferred to its exercise of discretion.<sup>28</sup>

18. *Lindy Bros. Builders*, 540 F.2d at 107 n.1.

19. See *supra* notes 5, 17 and accompanying text.

20. *Lindy Bros. Builders*, 540 F.2d at 108.

21. *Id.* at 115. Discretion is defined as "[t]he power exercised by courts to determine questions to which no strict rule of law is applicable but which, from their nature, and the circumstances of the case, are controlled by the personal judgment of the court." *Id.* (quoting 1 Bouv. Law Dictionary 884 (Rawles' 3d Revision)).

22. *Id.* at 115 n.11.

23. See *id.*

24. See *id.* at 115-16.

25. See *id.* at 115 (quoting *Delno v. Market St. Ry.*, 124 F.2d 965, 967 (9th Cir. 1942)); *supra* note 15 and accompanying text.

26. *Lindy Bros. Builders*, 540 F.2d at 116. The district court specifically found that the contingency risk was substantial due in part to the uncertainty of the class members' ability to prove liability and damages. *Id.* at 113. The district court also expressed, in great detail, the quality of work demonstrated by the attorneys. See *id.* at 114.

27. *Id.* at 116. The district court correctly applied the proper criteria to the facts of the case and justified its rationale accordingly; hence, the appellate court deferred to the lower court's informed discretion. *Id.*

28. *Id.*

Similarly, in *Hensley v. Eckerhart*,<sup>29</sup> the United States Supreme Court recognized that, in view of the trial court's superior comprehension of the litigation as well as the "desirability of avoiding frequent appellate review of what essentially are factual matters," the trial court must be given discretion in calculating the fee award.<sup>30</sup> In *Hensley*, plaintiffs' counsel brought a class action lawsuit challenging the constitutionality of the treatment conditions at a state hospital.<sup>31</sup> The issue on appeal was whether, for purposes of calculating attorneys' fees, the plaintiffs had prevailed even though they were only partially successful in their claims.<sup>32</sup>

The *Hensley* Court recognized that, in view of strong public policy concerns against allowing a request for attorneys' fees to result in a second major litigation, the trial court should be given discretion in determining a reasonable fee.<sup>33</sup> However, in this case, the Court actually held that the trial court did abuse its discretion when it included unsuccessful claims in its attorneys' fees calculation.<sup>34</sup> The *Hensley* Court concluded that the trial court did not properly consider all of the relevant factors necessary to calculate reasonable attorneys' fees<sup>35</sup> and did not articulate the basis for its calculation adequately.<sup>36</sup>

29. 461 U.S. 424 (1983).

30. *Id.* at 437; see also *supra* notes 15, 21 and accompanying text.

31. *Hensley*, 461 U.S. at 426.

32. See *id.* at 428.

33. *Id.* at 437; see also *Swedish Hosp. Corp.*, 1 F.3d at 1271.

34. See *Hensley*, 461 U.S. at 438-40. The Court held that the trial court "did not properly consider the relationship between the extent of success [on the claims] and the amount of the [attorney's] fee award." *Id.* at 438. Because this was one of the key factors that should have been considered under the factual circumstances of the case, the trial court abused its discretion in failing to take this factor into consideration when calculating the attorneys' fees award. *Id.* at 440.

35. See *id.* at 440. The Court asserted that the trial court must consider 12 relevant factors in calculating the fee award. *Id.* at 430 n.3 (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)). The Court enumerated the following factors:

(1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

*Id.*

36. See *Hensley*, 461 U.S. at 438; see also *supra* notes 29-30 and accompanying text.

Concurring in part and dissenting in part, Justice Brennan asserted that even though the trial court neglected to consider an important factor in its fee calculation, the appellate court still had the duty to affirm the award since the fee was clearly within the reasonable range of fees based on the circumstances and facts of the case.<sup>37</sup> Justice Brennan strongly emphasized the importance of adhering to the abuse of discretion standard, and found no abuse of discretion in this case.<sup>38</sup> In support of imposing this higher standard of proof for reversal, Justice Brennan reiterated the basic concerns against wasting time in prolonged litigation over attorneys' fees and keeping the true plaintiffs in the action from collecting damages after the merits of the case finally have been resolved.<sup>39</sup>

Most recently, these policy concerns pertaining to unnecessary attorneys' fees litigation were addressed in *In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litigation*.<sup>40</sup> In this case, the class plaintiffs' attorneys in a mass disaster lawsuit arising out of a hotel fire were awarded attorneys' fees based on a percentage of the common fund.<sup>41</sup> The individually retained attorneys in the litigation appealed, contending that the trial court had erred as a matter of law in applying the percentage-of-the-fund rather than the lodestar approach in calculating attorneys' fees.<sup>42</sup>

The First Circuit Court of Appeals ruled that, in a common fund case, the trial court had discretion to calculate attorneys' fees using either the percentage-of-the-fund method or the lodestar approach.<sup>43</sup> In reaching its decision, the *In re Thirteen Appeals* court set forth the advantages and disadvantages of using each approach,<sup>44</sup> ultimately finding that the method of choice depended upon the unique facts and

37. *Hensley*, 461 U.S. at 442 (Brennan, J., concurring in part and dissenting in part).

38. *See id.* (Brennan, J., concurring in part and dissenting in part).

39. *Id.* at 456 (Brennan, J., concurring in part and dissenting in part).

40. 56 F.3d 295 (1st Cir. 1995).

41. *Id.* at 300.

42. *Id.* at 304.

43. *Id.* at 307. The court deemed either method reasonable, as long as the basis for using it is justified by the circumstances surrounding the case. *See id.* at 308; *see also supra* note 21.

44. *In re Thirteen Appeals*, 56 F.2d at 307-08. The court stated that the percentage-of-the-fund approach is easier to administer in complex litigation and so ultimately enhances the court's efficiency. *Id.* at 307. On the other hand, the percentage-of-the-fund approach may result in overcompensation of lawyers in situations in which cases are resolved before counsel has devoted any significant amount of time or resources. *Id.* As for the lodestar approach, it may lead to more consistent and objective results than the percentage-of-the-fund approach, but it also has been criticized for encouraging lawyers to expend excessive hours and prolong litigation even when early settlement may be more advantageous to the parties. *Id.*

circumstances of each case.<sup>45</sup> The court firmly stated that the amount of time, energy, and money devoted to litigation over attorneys' fees often was excessive and unnecessary, shifting the focus away from the underlying action.<sup>46</sup> Consequently, the *In re Thirteen Appeals* court concluded that the trial court must be given considerable discretion in deciding which approach to utilize in setting attorneys' fees.<sup>47</sup>

In the instant case, the issue on appeal was whether the trial court properly determined attorneys' fees by using the percentage-of-the-fund method.<sup>48</sup> Departing from the abuse of discretion standard, the Florida Supreme Court held that the lodestar approach must be applied as a matter of law and therefore overruled the trial court's fee calculation.<sup>49</sup> Concluding that the percentage-of-the-fund approach led to arbitrary and inconsistent results, the court in the instant case explicitly rejected this method of fee award calculation<sup>50</sup> and in turn mandated the use of the lodestar approach in all common fund cases.<sup>51</sup> The court asserted that

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45. *Id.* at 308.

46. *See id.* at 312.

47. *Id.* at 308.

48. *Kuhnlein*, 662 So. 2d at 311.

49. *Id.* at 312 n.4; *see also supra* notes 21, 25 and accompanying text.

50. *Kuhnlein*, 662 So. 2d at 313. The court concluded that the percentage-of-the-fund approach to calculating attorneys' fees often leads to inconsistent and subjective results because it forces the trial judge to arbitrarily choose a percentage without any in-depth assessment of other pertinent factors. *Id.*

51. *Id.* at 312. The court relied on RULES REGULATING THE FLORIDA BAR Rule 4-1.5(a) (1995) and articulated the following salient factors for calculating a reasonable attorney's fee:

- (1) the time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature;
- (4) the significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such service; and
- (8) whether the fee is fixed or contingent, and, if fixed as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation.

the lodestar method necessarily achieved the most reasonable and objective attorneys' fees award.<sup>52</sup>

In strong dissent, Justice Kogan, citing *In re Thirteen Appeals*, reiterated the view that there were many advantages and disadvantages to both methods.<sup>53</sup> In light of this fact, Justice Kogan stated that Florida courts should allow the use of either the lodestar or the percentage-of-the-fund method in determining reasonable attorneys' fees.<sup>54</sup> In contrast to the majority's firm stance against using the percentage approach in common fund cases, Justice Kogan asserted that, due to the variability of the facts and circumstances of a particular case, trial courts must have the flexibility to decide which approach is more appropriate.<sup>55</sup> Justice Kogan found that the trial court in the instant case had considered all relevant factors in its percentage-of-fund calculation<sup>56</sup> and articulated clearly its reasons for the fee award.<sup>57</sup> Accordingly, Justice Kogan concluded that the trial court did not abuse its discretion in setting reasonable attorneys' fees by using the percentage-of-the-fund approach.<sup>58</sup>

While many jurisdictions are becoming more deferential to the discretion of the trial court in deciding upon an appropriate method of fee calculation,<sup>59</sup> the Florida Supreme Court took a substantial step backwards by mandating one prescribed method of calculating attorneys' fees in all common fund cases.<sup>60</sup> Disregarding the general notion that the trial judge is in a better position to determine reasonable attorneys' fees,<sup>61</sup> the court in the instant case asserted that the judge must use the lodestar approach regardless of the factual background of the particular case.<sup>62</sup> Even though the majority did acknowledge the

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*Kuhnlein*, 662 So. 2d at 312 n.5 (quoting RULES REGULATING THE FLA. BAR Rule 4-1.5(a) (1995)).

52. *See id.* at 313.

53. *Id.* at 317 (Kogan, J., concurring in part and dissenting in part); *see also supra* note 43.

54. *Kuhnlein*, 662 So. 2d at 317 (Kogan, J., concurring in part and dissenting in part).

55. *See id.* (Kogan, J., concurring in part and dissenting in part).

56. *Id.* at 319 (Kogan, J., concurring in part and dissenting in part); *supra* notes 33-36 and accompanying text.

57. *Kuhnlein*, 662 So. 2d at 320 (Kogan, J., concurring in part and dissenting in part).

58. *Id.* (Kogan, J., concurring in part and dissenting in part); *see also supra* note 51.

59. *See supra* notes 15, 21 and accompanying text.

60. *See Kuhnlein*, 662 So. 2d at 312; *see also supra* note 43 and accompanying text. The court concluded that the percentage-of-the-fund approach has often led to inconsistent and arbitrary attorneys' fees awards in common fund cases. *Kuhnlein*, 662 So. 2d at 313.

61. *See Kuhnlein*, 662 So. 2d at 311-12; *see also supra* note 5.

62. *Kuhnlein*, 662 So. 2d at 312. Regardless of the specific facts surrounding the case, the court reasoned that because all common fund cases are similar, wherein the lodestar



significance of the unique facts surrounding each lawsuit, it nonetheless concluded, contrary to *Hensley*, that an appellate court may establish one specific method of calculating attorneys' fees for all trial judges to follow.<sup>63</sup>

In addition, by reversing the trial court's carefully calculated attorneys' fees award,<sup>64</sup> the court in the instant case disregarded the policy concerns addressed in *In re Thirteen Appeals* against wasting the appellate court's valuable time and scarce resources on attorneys' fees litigation after the underlying case has already been decided on the merits.<sup>65</sup> Furthermore, the majority failed to realize that the trial court did not abuse its discretion in setting attorneys' fees because the award actually fell within the reasonable range of fees established in prior similar cases.<sup>66</sup> The instant case court overlooked the basic goal set forth in *Hensley* of deferring to the trial court unless there is a clear abuse of discretion.<sup>67</sup>

In his dissent, Justice Kogan displayed a keen understanding of the potential problems that may arise when an appellate court simply overturns the informed judgment of the trial court in setting attorneys' fees.<sup>68</sup> For instance, the *Lindy* court recognized that tension generally tends to arise between a trial court and an appellate court when the latter completely retreats from the determinations of the former without a tangible basis for doing so.<sup>69</sup>

Just as in *In re Thirteen Appeals*, the trial court in the instant case carefully evaluated the advantages and disadvantages of both the

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approach of calculating attorneys' fees may be consistently applied to each case. *Id.* at 313 (citing *Rowe*, 472 So. 2d at 1149-50).

63. *Id.* at 312. *But see Hensley*, 461 U.S. at 437 (stating that the trial court should be granted the exercise of informed discretion in its determination of an attorney's fee award); *see also supra* notes 15, 21 and accompanying text.

64. *Kuhnlein*, 662 So. 2d at 311-12. The trial court calculated the attorneys' fees by taking into account such factors as the risks involved in the case and the magnitude of the benefit that counsel ultimately conferred on the class. *Id.* at 311. Based on these and other pertinent factors, the trial court determined that 10% percent of the common fund yielded reasonable attorneys' fees under the factual circumstances of the case. *Id.*

65. *See In re Thirteen Appeals*, 56 F.3d at 301-02 (asserting that there is always a substantial government and public interest in conserving valuable court time and scarce judicial resources).

66. *Kuhnlein*, 662 So. 2d at 320 (Kogan, J., concurring in part and dissenting in part).

67. *See Hensley*, 461 U.S. at 437.

68. *See Kuhnlein*, 662 So. 2d at 319-20 (Kogan, J., concurring in part and dissenting in part) (implying that trial court judges are usually in a better position than appellate court judges to assess the reasonableness of attorneys' fees awards based on the specific circumstances of the case).

69. *See Lindy Bros. Builders*, 540 F.2d at 115; *see also supra* notes 21, 25 and accompanying text.

lodestar and the percentage-of-the-fund methods,<sup>70</sup> concluding that the percentage-of-the-fund approach led to more reasonable attorneys' fees due to the factual circumstances of the case.<sup>71</sup> By compelling the trial court to adopt the lodestar approach in all common fund cases, the Florida Supreme Court expressed that the trial court was incorrect in determining that the percentage-of-the-fund approach resulted in a reasonable fee award.<sup>72</sup>

Even though the trial court clearly articulated the factors it utilized in its attorneys' fees calculation,<sup>73</sup> the majority failed to recognize that these were actually the same factors that are used in the lodestar calculation.<sup>74</sup> Hence, the Florida Supreme Court curiously overlooked a substantial part of the reasoning behind the trial court's decision to use the percentage-of-the-fund method,<sup>75</sup> simply declaring that the trial court should have computed the attorneys' fees using the lodestar approach.<sup>76</sup>

Additionally, the majority discusses, but subsequently downplays, the possible advantages of using the percentage-of-the-fund approach to calculate attorneys' fees in common fund cases.<sup>77</sup> Although the majority certainly desires to compute the most reasonable attorneys' fees possible under the circumstances of the case, it fails to comprehend that applying the same approach in every situation will not accomplish this goal.<sup>78</sup> The dissent exposes the majority's oversight when the dissent contends that the key to determining a reasonable fee lies in

70. *Kuhnlein*, 662 So. 2d at 312; *see also In re Thirteen Appeals*, 56 F.3d at 307-08; *supra* note 41 and accompanying text.

71. *Kuhnlein*, 662 So. 2d at 311.

72. *See id.* at 314 (concluding that the values of objectivity and consistency are best secured by the lodestar approach).

73. *Id.* at 311; *see also supra* note 35 and accompanying text.

74. *Kuhnlein*, 662 So. 2d at 314-15; *compare supra* note 35 (the 12 factors set forth in *Johnson*, 488 F.2d at 717-18) with *supra* note 51 (eight factors set forth in *Kuhnlein*, 662 So. 2d at 312 n.5 (quoting REGULATING THE FLA. BAR Rule 4-1.5(a) (1995))).

75. *See Kuhnlein*, 662 So. 2d at 319-20 (Kogan, J., concurring in part and dissenting in part). The trial court specifically discussed and carefully scrutinized the applicability of each of the 12 *Johnson* factors in calculating the fee award. *Id.*; *see also supra* note 33 and accompanying text.

76. *Kuhnlein*, 662 So. 2d at 312.

77. *Id.* at 311-13; *see also supra* note 44 and accompanying text.

78. *See id.* at 316 (Kogan, J., concurring in part and dissenting in part). Kogan stated that the principles in computing fee awards must be flexible in order to achieve the objective of " 'authorizing the setting of a reasonable attorney's fee' and [ensuring] adequate consideration of the unique circumstances present in each case." *Id.* at 317 (quoting *Standard Guar. Ins. Co. v. Quanstrom*, 555 So. 2d 828, 833 (1990)).

evaluating the specific factual circumstances of the case, not in applying the same approach in a consistently mechanical fashion.<sup>79</sup>

In conclusion, the impact of the instant case on future common fund cases in Florida is indisputable. Trial courts must adhere to the lodestar method in computing attorneys' fees in all common fund cases, regardless of whether the application of the percentage-of-the-fund approach would be more appropriate under the particular factual circumstances of the case.<sup>80</sup> Unless the trial court uses the lodestar method, the appellate court will not defer to the trial court's determination of reasonable fee awards.<sup>81</sup> In essence, the Florida Supreme Court's holding places specific limitations on the trial court's flexibility in determining attorneys' fees awards.<sup>82</sup>

Furthermore, as many other jurisdictions have long recognized,<sup>83</sup> inappropriate and unnecessary appellate review of a trial court's actions is a waste of judicial time and resources.<sup>84</sup> In the instant case, the court displayed a strong willingness to delve into purely factual determinations,<sup>85</sup> declining to make the statement that a trial court's careful calculation of an attorneys' fees award is final. The Florida Supreme Court had the opportunity to deter needless and expensive litigation over attorneys' fees by simply deferring to the trial court's discretion. Instead, the Florida Supreme Court has steered the focus away from the true plaintiffs in a lawsuit, opening the floodgates to superfluous litigation over attorneys' fees after the merits of a class action suit finally have been decided.

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79. See *id.* at 317 (Kogan, J., concurring in part and dissenting in part); see also *supra* note 68 and accompanying text.

80. See *Kuhnlein*, 662 So. 2d at 312.

81. *Id.* at 312 n.4.

82. See *id.* at 321 (Harding, J., concurring in part and dissenting in part); *supra* notes 55-58 and accompanying text.

83. See, e.g., *Hensley*, 461 U.S. at 454-55 (Brennan, J., dissenting); *Swedish Hosp. Corp.*, 1 F.3d at 1269-70.

84. See *supra* notes 56-58, 74 and accompanying text (demonstrating that the trial court considered the same factors that the Supreme Court used in making its determination).

85. *Kuhnlein*, 662 So. 2d at 314-15.