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Lawyers in Class Actions Should Make Certain Fees Are Fair

To the Editor:

Re your Nov. 21 Business Day article on the Bank of Boston class action suit:

Frankly, I find the way the attorney fees were paid in this case nothing short of outrageous. And I'm a plaintiff's lawyer and a strong opponent of so-called tort reform.

Lawyers representing a class have a fiduciary duty to the class as a whole to put the interests of the class members above the lawyers' own interests, as with any other client.

It should be part of the job of the class attorneys to make sure that the individual passive class members are not going to pay more than they receive and that fee payment formulas don't wind up doing the class members more harm than good.

It may be that the class members in the Bank of Boston suit derived more than \$40 million in benefits while the lawyers received a proportionally modest \$8.5 million fee. But if those numbers are correct, surely there were ways to get the lawyers paid without its costing people like

Dexter J. Kamilewicz far more than the award he received. Finding those ways is part of the duty of any responsible class attorney. It should also be a responsibility of the judge who approved the settlement.

We need class actions, just as we need contingency fees. Both are important tools that help lawyers help their clients, individually and in large groups, to redress wrongs.

These tools help level the playing field, giving the average Joes and Joans of America a chance against larger and more heavily bankrolled entities like the Bank of Boston.

But, as with any tool, the class action comes with instructions to use

it safely and wisely. It sounds as if the lawyers in this case didn't follow the instructions. RICHARD ZITRIN
 San Francisco, Nov. 21, 1995
The writer teaches legal ethics at the University of San Francisco.

No Puritans at the Feast

To the Editor:

Thanks be to John Demos, Yale history professor, for "Cannoe Diplomacy" (Op-Ed, Nov. 23), on the first Thanksgiving. However, he incorrectly identifies an original celebrant as a Puritan. Puritans were an ultra-orthodox sect within the Church of England and did not arrive in America until 1630. Plymouth Colony was settled in 1620 by Separatists, nonconformists who worshiped separately, and secretly, in England, where their breakaway religion was outlawed.

They migrated briefly to the Netherlands, but returned to settle an outpost in the New World, where they could live again in an English-speaking community, but away from official scrutiny.

The Puritans, on the other hand, established a rival Massachusetts community as an experiment to demonstrate their theory for achieving a purer civil society through rigorous religious practice, a foretaste of what would follow in Cromwellian England.

DENISE OUTLAW
 Setauket, L.I., Nov. 24, 1995



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