

# Fee Awards in 'Dollar-Damage' Cases Argued

## Key for Rights Suits

By Richard C. Reuben

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Taking on a pocketbook issue for civil rights lawyers, the U.S. Supreme Court today will consider whether the government has to pay their fees in cases where only nominal damages are awarded.

At issue is whether attorneys for a Liberty County, Texas, youth-care facility are entitled to recover more than \$300,000 they accumulated in fees and costs, even though the jury only awarded their client \$1 in nominal damages. *Farrar v. Hobby*, 91-990.

Though the case comes from the 5th U.S. Circuit Court of Appeals, which refused the fees, it is being watched closely by civil rights lawyers nationally — particularly in police abuse and civil injunction cases, where the issue comes up most frequently.

In California, for example, a ruling against the civil rights lawyers would reverse 9th Circuit precedent on the point. *Romberg v. Nichols*, 970 F.2d 512 (1992). That case has been on appeal to the U.S. Supreme Court since September. *Nichols v. Romberg*, 92-402.

"It is an important issue that has come up in many circuits," said David Grosz, an

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Abortion protest case argued, Page 16.

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associate who tracks attorney fee issues at the Century City firm Fisher, Fleischman & Moest.

Virtually all of the circuits have followed the approach taken by the 9th Circuit, that attorneys who win nominal damages are "prevailing" parties under the federal fee-shifting statute — 42 U.S.C. 1988 — and therefore entitled to their fees.

Still, Grosz warns, having "the weight of circuit authority" is not a predictor in cases involving civil rights attorney fees.

"The court appears generally hostile to the attorney fees act," Grosz says, pointing to a pair of recent decisions that have gone against rights lawyers.

Last term, the court said rights attorneys who take cases on contingency are not entitled to have their fee awards enhanced to reflect the risk they bore in taking the case on contingency. *City of Burlington v. Dague*, 112 S.Ct. 2638 (1992).

### More Quibbling to Come?

The preceding term, the court said rights lawyers were not entitled to recover expert witness fees as a part of their attorney fees. *West Virginia University Hospitals v. Casey*, 111 S.Ct. 1138 (1991).

Civil rights lawyers had the great weight of circuit authority in their favor in both of those cases, Grosz said, and they still lost.

Veteran civil rights lawyer Stephen Yagman, of Venice's Yagman & Yagman, is more optimistic.

"I think the Supreme Court has taken the case to put the issue to rest, and it will undoubtedly hold that the award of nominal damages based on a violation of constitutional rights will support the award of attorney fees," said Yagman, who represents the *Romberg* plaintiffs. "To rule oth-

See Page 16 — FEE