

~DATE & TIME~

**15 December 2009
(Tues)
12 noon - 1pm**

~VENUE~

**Room E457
Menzies Building
Clayton Campus
MONASH UNIVERSITY**



For any enquiries, please contact Russell Smyth at:
Russell.Smyth@buseco.monash.edu.au

You are cordially invited to attend the following seminar:

**ATTORNEY'S FEES AND EXPENSES IN CLASS
ACTIONS SETTLEMENTS: 1993-2008**

by

Professor Theodore Eisenberg

Abstract. We report on a comprehensive data base of eighteen years of published opinions (1993-2008, inclusive) on settlements in class action and shareholder derivative cases in both state and federal courts. An earlier study, covering 1993-2002, revealed a remarkable relationship between attorneys' fees and the size of class recovery: regardless of the methodology for calculating fees ostensibly employed by the courts, the overwhelmingly important determinant of the fee was simply the size of the recovery obtained by the class. The present study, which nearly doubles the number of cases in the data base, powerfully confirms that relationship. Fees display the same relationship to class recoveries in both data sets and neither fees nor recoveries materially increased over time. Although the size of the class recovery dwarfs other influences, significant associations exist between the fee amount and both the fee method used and the riskiness of the case. We found no robust evidence of significant differences between federal and state courts. The strong association between fee and class recovery persists in cases with recoveries of \$100 million or more, as do the significant associations between fee level and fee method and risk. Fees were not significantly affected by the existence of a settlement class, the presence of objectors, or opt outs from the class. Courts granted the requested fee in over 70% of the cases, with the Second Circuit granting the requested amount least often. In cases in which the requested fee was not awarded, the mean fee was 68% of the requested amount. Fees and costs exhibit scale effects with the percent of each decreasing as the class recovery amount increased. Costs are strongly associated with hours expended on the case.

Brief Biography of Speaker

Professor Theodore Eisenberg is Henry Allen Mark Professor of Law and Adjunct Professor of Statistical Science at Cornell University. He has emerged in recent years as one of the foremost authorities on the use of empirical analysis in legal scholarship. A groundbreaking scholar in the areas of bankruptcy, civil rights, and the death penalty, Eisenberg has used innovative statistical methodology to shed light on such diverse subjects as punitive damages, victim impact evidence, capital juries, bias for and against litigants, and chances of success on appeal. He currently teaches bankruptcy and debtor-creditor law, constitutional law, and federal income taxation.

(<http://www.lawschool.cornell.edu/faculty/bio.cfm?id=15>)