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Federal settlement value ranges from \$29M up to \$58M

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Southwest Airlines learned a costly lesson about taking free drinks away from fliers last week, reaching a class-action settlement that's potentially valued at \$58 million.

The dispute involves the airline's decision in 2010 to cancel unused alcoholic drink vouchers.

Filed last year in Chicago's federal court, the lawsuit alleged Southwest breached its contract with customers who received the \$5 drink vouchers as part of purchasing a plane ticket. The vouchers did not list an expiration date.

The settlement agreement says any customer holding one or more of the estimated 5.8 million unredeemed vouchers can receive a replacement. Depending on how many vouchers actually remain unused, that could cost Southwest free drinks valued between \$29 million and \$58 million, the settlement says.

"This is a grand-slam victory for the class," said the plaintiff attorney, Joseph J. Siprut of Siprut

PC. "The essence of the settlement is it gives the class 100 cents on the dollar."

One local lawyer not involved in the case said the settlement amount seemed higher than expected. That may result in part from the fact that the decision to cancel the coupons seemed to fly in the face of Southwest's customer-friendly image, burnished by TV commercials it runs ridiculing other airlines' treatment of travelers.

In addition to the replacement vouchers, Southwest agreed not to deviate from any expiration dates it sets for future drink vouchers. If it fails to list an expiration date, it will not cancel the voucher.

Class members do not need a physical voucher in order to replace it, Siprut said. The two sides argued over that point, he said, during roughly 13 months of litigation, which also included a judge's decision to drop two of three initial plaintiff's claims. Only a breach-of-contract claim remained at the time of settlement.

"We fought for a claims process where you don't have to have an actual copy of the old vouchers," he said. "All you have to do is fill out the claim form and attest to the fact that you had 'X' number of vouchers that you never had a chance to redeem."

When Southwest voided the coupons in August 2010, the airline said in a blog post that it needed to

SOUTHWEST, Page 24

Southwest resolves drink suit

"purge the system of these excess coupons," referring to different groups of free-drink coupons. The company issued some coupons in the 1980s.

Southwest did not return a call for comment.

The vouchers at issue in this settlement stem from a so-called "Business Select" ticket, which coupled the sale of a seat with a free alcoholic beverage. Southwest sold 11.6 million such tickets between October 2007 and August 2010, the settlement says.

"It seems like a pretty good settlement financially given the number of outstanding vouchers,"



Joseph J. Siprut

said William M. McEriean, a partner at Barnes & Thornburg LLP and chairman of the firm's litigation department.

The settlement came a "fairly short" time after the lawsuit filing, McEriean said.

"It would seem to me they settled it quickly to avoid negative publicity on it given their brand," he said.

David M. Schultz, leader of the business litigation department of Hinshaw & Culbertson LLP and former leader of the firm's consumer and class-action litigation practice, said participation in the settlement will ultimately deter-

mine the cost to the airline.

"You give notice to everybody," he said, "but only a certain percentage return the claim forms and participate."

Siprut said he expects that some Southwest customers won't try to get the free drink ticket.

"But that's also the point," Siprut said.

"For those people ... who were deprived of something that had value to them ... they have a chance to get 100 cents on the dollar."

The case is *In re Southwest Airlines Voucher Litigation*, No. 11-CV-8176.

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