

[Fee Award is Overturned Where Trial Court Failed to Consider the Question of Settlement Effort](#)

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In *[Environmental Protection Information Center v. California Dept. of Forestry and Fire Protection](#)*, 2010 DJDAR 17530 (2010), the [First District Court of Appeal](#) decided a novel question pertaining to the proper interpretation of [California Code of Civil Procedure § 1021.5](#), the private attorney general doctrine.

The case arises from a long-running legal dispute surrounding the administrative approval of logging plans issued to Pacific Lumber by [California's Department of Forestry and Fire Protection](#) ("CDF").

The [Environmental Protection Information Center](#) ("EPIC") prevailed at trial in litigation filed against the CDF and the [Department of Fish and Game](#) ("DFG") (collectively, the Agencies). The suit pertained to the approval of [Timber Harvesting Plans](#) ("THPs").

The trial court awarded EPIC attorney fees pursuant to CCP § 1021.5. The court ruled that EPIC was the prevailing party and that the actions of the group conferred a significant benefit on the general public.

The decision was reviewed by the intermediate appellate court and California Supreme Court. The appellate court reversed the trial court's judgment, and the Supreme Court affirmed most of the rulings of the court of appeal. This included the dismissal of nearly all of EPIC's environmental positions. The court did reverse on procedural issues relating to the approval of timber harvest plans. The Agencies then argued that in light of the outcome of the appeals, EPIC was no longer entitled to attorney fees.

The court of appeal reversed and remanded the decision of the trial court.

The court noted that the "significant benefit" that justifies an attorney fee award need not always represent a "concrete gain." The Agencies argued that the litigation did not result in any significant benefit because nearly all of the environmental protection aspects of EPIC's lawsuits were reversed by the court of appeal.

The appellate court disagreed with the Agencies.

The appellate court took a strained view of the record and concluded EPIC's work may have enhanced effective public review of future logging, resulting in a "significant benefit." The court did conclude, however, that the trial court failed to consider the question of settlement efforts in determining whether attorney fees were justified. For that reason, the case was remanded back to the trial court for further consideration.