

Class Counsel and Objectors May Both Be Entitled to Fees

Posted on May 21, 2009 by [Gary A. Bresee](#)

The 9th Circuit Court of Appeals has provided us with an interesting analysis into the entitlement of attorneys' fees -- *for both sides on appeal* -- of an anti-trust class action. In *Rodriguez v. West Publishing Corporation*, 08 C.D.O.S. 4853 (9th Cir., 4/23/2009), the 9th Circuit reversed and remanded the question of fees, and provided guidance to the District Court for its decision on remand. The trial court must now decide, not only the reasonableness of class counsel's fees, but also a reasonable amount of fees being claimed by certain Objectors to the settlement.

The class members sued West Publishing Corporation for violation of anti-trust statutes arising out of its BAR/BRI review courses. The District Court approved a \$49 million settlement between the parties, and granted class counsel a generous 1.75 multiplier up to twenty five percent of the settlement fund. Moreover, the District Court denied fees claimed by certain Objectors, concluding Objectors played no significant role in securing the denial of any incentive awards. Objectors claimed that certain incentive retainer agreements between class representatives and class counsel were not disclosed to the remaining class members. These "ex ante incentive agreements" were ultimately insufficient for the 9th Circuit to reject the entire settlement, but they *were* held to be relevant to the question of fees.

First, with respect to **class counsel's fees**, on remand the District Court was ordered to consider the effect, if any, of the conflict of interest arising out of the incentive agreements on the request for fees. Objectors claimed the 1.75 multiplier and the twenty five percent cap were grossly excessive. The 9th Circuit declined to address that due to the inadequacy of the record, and so directed that argument to the District Court on remand.

With respect to the **Objectors' fees**, the 9th Circuit also reversed and remanded the denial of fees. The Court of Appeals ordered the District Court to determine the reasonable amount of fees to Objectors, given their contribution to the denial of the requests for incentive awards.

This decision is a "must read" for any class action litigators.