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Attorneys' Fees

Contract Attorneys' Fees, Objectors Are Hot Issues



By Lisa Helem

July 29 — Attorneys' fees awarded to plaintiffs' counsel through class settlements and judgments should be based on their experience and type of work they're doing, not the terms under which they're employed, a plaintiffs' lawyer discussing contract attorneys' fees told Bloomberg BNA July 28.

Employment terms are private matters between lawyers and their firms and status of the attorneys shouldn't matter when courts assess the appropriateness of hourly rates, plaintiffs' attorney David S. Stellings said.

Stellings, a partner at Lief Cabraser Heimann & Bernstein in New York, has recovered \$2 billion for clients in litigation that includes consumer, commercial and financial fraud cases.

He was one of three plaintiffs' attorneys who participated in a July 23 conference call on hot class action topics hosted by the National Association of Legal Fee Analysis (NALFA).

Stellings, on that call, said that "[m]ore and more firms are using contract attorneys to do general document review." As a result, whether to markup contract attorney time in a fee request to a court has become a significant issue in the legal market.

Professional Objectors

Another hot issue for plaintiffs' lawyers is the rise of professional objectors.

Brian Kabateck, founding and managing partner with Los Angeles-based Kabateck Brown Kellner LLP, said that in the last 15 years, there has been a trend among objectors to proposed class settlements of "for profit people [who] are really doing it to flip around money."

Kabateck has recovered more than a billion dollars for clients in class action, personal injury and other litigation, according to his firm biography.

Stellings and Kabateck said that practitioners can use several methods to deal with objectors—including trying to persuade the objector that his objection is unfounded, noticing the objector's deposition and requiring him to show up for hearings.

Contract Attorney Fees

The NALFA presentation cited several cases relevant to the contract attorneys' fee issue. They included *In re Tyco Int'l Ltd.*, where the U.S. District Court for the District of New Hampshire rejected an objector's argument that contract attorney work should be treated as an expense and not included in the lodestar (*In re Tyco Int'l Ltd. Multidistrict Litig.*, 2007 BL 175996, D.N.H., No. 02-md-1335-PB, 12/19/07).

The court said that it is "appropriate to bill a contract attorney's time at market rates and count these time charges toward the lodestar."

Class counsel can submit lodestar figures that include contract attorney rates that are higher than what those attorneys are paid. But in another case cited in the presentation, *In re Weatherford Int'l Secs. Litig.*, the U.S. District Court for the Southern District of New York indicated that such markups have limits (*In re Weatherford Int'l Sec. Litig.*, 2015 BL 7116, S.D.N.Y., No. 11-1646, 1/5/15).

The court in that case rejected a 600-percent markup for contract attorney time.

"Generally speaking, a law firm's assigned hourly rate for an attorney should be based upon a combination of the attorney's experience and the type of work that the attorney is performing," Stellings told Bloomberg BNA in a follow-up July 28 e-mail.

"The specific terms under which an attorney is employed—i.e., the attorney's compensation structure, benefits, overhead costs, and the like—are a private matter between the firm and the employee or partner, and should not be considered when assessing the appropriateness of an hourly rate. The vast majority of fee decisions are consistent with this approach."

To contact the reporter on this story: Lisa Helem in Washington at lhelem@bna.com

To contact the editor responsible for this story: Perry Cooper at pcooper@bna.com

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