

## **\$208.66M Settlement Justifies \$41.73M**

### **Attorney Fee Award**

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The Ninth Circuit ruled on an objector's appeal of the amount of the attorneys' fee award and method of calculation in this mega-fund class action settlement. The student athletes claimed that the NCAA bylaws allowing maximum grants-in-aid for less than the full cost of attending NCAA schools was improper. After suit was filed, the NCAA amended its bylaws to allow "member schools to provide up to the full cost of attendance in athletic aid." Thereafter, the named plaintiffs and the NCAA and other defendants settled the case for a gross settlement amount of \$208,664,445.00 which resulted in an award of approximately \$6,000 for each class member who played sports for four years. There were estimated to be 53,000 class members. After the district court approved the monetary settlement and \$41,732,889.00 in attorneys' fees and \$3,184,274.38 in expenses, an objector to the fee award appealed.

Without oral argument, the Ninth Circuit ruled that the objector had not established that the district judge abused his discretion in approving the attorneys' fee award. The court noted that it had in the past "permitted awards of attorneys' fees ranging from 20 to 30 percent of settlement funds, with 25 percent as the benchmark award." However, the objector argued that "a fee award of 20 percent and a 3.66 multiplier of the lodestar is excessive because this is a 'mega-fund' case with a settlement of more than \$200 million." The district court overruled the objection because the 20 percent award was less than what had been awarded in "comparably sized cases" referred to in *Vizcaino v. Microsoft Corp.*, 290 F. 3d 1043, 1047 (9th Cir. 2002) and because plaintiffs' counsels' efforts had "exceptional, mega-fund results." The Ninth Circuit then found that the district courts' finding "that the large size of the settlement fund did not warrant a reduction of the 20 percent fee award" was not an abuse of discretion.

Although the objector quibbled with the method of calculation contending that the district court failed to “include litigation expenses in calculating the percentage award,” the court noted that the objector had waived that argument by not raising it in the district court. Further, the objection lacked merit because district court judges are allowed “to calculate the percentage of attorney fees based on either the gross or net fund.” The objector also complained that the lodestar cross-check was done improperly because it relied on summary billing records rather than obtaining the “background information that [the objector was convinced] would have ... revealed that the lodestar was inflated.” The Ninth Circuit dispensed with that argument noting that after reviewing the initial declarations the district judge asked for additional information which was then supplied. Although class counsel asked the court to sanction the objector, the Ninth Circuit rejected that request as well.

This case is not reported, but it is worthy of consideration because it illustrates how many district court judges are reviewing objections to attorney fee awards in mega-fund cases. The Ninth Circuit not only relied on Ninth Circuit case law in affirming the award, but it also looked to rulings by sister courts of appeal.

Case citation: National Collegiate Athletic Association Grant In-Aid Cap Antitrust Litigation, 768 Fed. Appx. 651 (9th Cir. 2019)