SANDBERG PHOENIX

CLASS ACTION BLOG

Nearly "Worthless" Class Action "Nuisance Case" Merits Minimal Fee Award

AUTHOR: ANTHONY MARTIN

CONTRIBUTOR: NATALIE KUSSART

Mega-fund class action settlements can result in substantial attorneys' fee awards. However, when a district court judge is confronted with a case that the judge deems "a nuisance case" resulting in a settlement "pretty close to … worthless," the attorneys' fee award is very likely going to be minimal, notwithstanding any lodestar calculation plaintiffs' counsel makes. That was the result in the *Cline* case. Even though defense counsel agreed not to object to a $2,000 incentive award for the class representative and not to object to class counsel's request for an award of attorneys' fees and expenses of up to $100,000.00, the district judge had a different idea. He determined that the maximum value of the case was probably $75,000.00 and further found that "class counsel's lodestar fee application was not supported by contemporaneous billing records." Furthermore, the record did not provide a substantial explanation for the $10,000 "consulting fee" for which reimbursement was requested. The judge awarded "class counsel attorney's fees of $0.20 for each song credit that class members *actually* redeem."

The Second Circuit found that the district judge did not abuse his discretion in making that award. First, rejecting the lodestar computation was acceptable because counsel had failed to "produce contemporaneous billing records, as required by our Circuit, to support a lodestar claim." In addition, the award of $0.20 per each credit redeemed was similar to the method approved in the Class Action Fairness Act (CAFA) for "coupon settlements." Although the *Cline* case did not involve a coupon settlement, the Second Circuit found it was "informative" even though "not controlling." Additionally, the district court's denial of an incentive award and approval of only the filing costs of the lawsuit was within the district court's discretion. Despite class counsel's argument that the district judge was biased, the appeals court found no such evidence of bias. Instead, there was evidence to support the district court's conclusion that the case was a virtually worthless nuisance case.

The *Cline* case confirms that not all class action cases are lucrative. Attorneys able to find cases which result in mega-fund settlements can expect to do well. Those who choose to pursue “nearly worthless” class action cases can easily lose money. The *Cline* case illustrates this reality.

Case citation: Cline v. Touchtunes Music Corporation, 765 Fed. Appx. 488 (2nd Cir. 2019).