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Attys Defend Fee Bid In \$9.5M Kaplan Antitrust Deal

By **Melissa Lipman**

Law360, New York (August 13, 2013, 4:32 PM ET) -- The attorneys who negotiated a \$9.5 million settlement in a putative class action accusing West Publishing Corp. and Kaplan Inc. of colluding in the bar exam prep business hit back Monday at objections to the \$1.9 million they have sought in fees.

Class counsel told the court that the hourly rates they billed and the overall fee total they requested are well within the range of acceptable fees despite claims from six objectors that they were seeking compensation for work they did on an earlier case.

"The court should ... compute class counsel's hourly rates based on the current legal market," the plaintiffs wrote. "When judged from this perspective, class counsel's rates are actually below what has been approved in the Central District [of California]."

The dispute is the latest in a long-running string of litigation claiming that law students overpaid for bar prep courses because of a deal between Kaplan and West in which Kaplan agreed not to enter the bar review prep course market and West agreed not to launch a prep course for the Law School Admission Test.

The first case brought over the alleged plot, known as *Rodriguez v. West Publishing Corp.*, settled for \$49 million in 2007, while the present case, which was filed in 2008, only sought damages from mid-2006 over what the plaintiffs call the residual effects of the agreement.

In the present case, U.S. District Judge Manuel L. Real originally granted preliminary approval to a \$5.2 million settlement, but he **denied final approval** in June 2011.

The objectors **said in late July** that while the current deal, **preliminarily approved by the court** in April, should win final approval, the \$1.9 million in fees and over \$40,000 in expenses being sought by class counsel are too high.

The objection says class counsel are seeking fees for work performed while they were representing objectors in the *Rodriguez* case.

The objectors also took issue with class counsel's requests to recoup costs paid out to experts, questioning what role there was for experts in a case in which discovery never took place.

But class counsel hit back at that claim Monday, saying that the objection should be rejected both because it was filed well after the deadline and because none of the objectors actually filed claims forms for the settlement. As a result they lack standing to challenge the fee award, according to the plaintiffs.

Class counsel also claimed the objectors' concerns about their hourly rates were outdated.

"When the lodestar 'crosscheck' is used to assess the reasonableness of a percentage-based fee request, California district courts look to current market rates ... not to rates from six years ago," the plaintiffs said. "Class counsel's claimed rates are consistent with the current rates set by the very market-rate index — the Laffey Matrix — utilized by the Northern District opinion on which the ... objectors rely."

They further argued that all of the time submitted in support of the attorneys' fee request was eligible for compensation, but pointed out that even without those disputed time entries their fee request was still well within the range of acceptable fee requests.

An attorney for the objectors was not immediately available for comment Tuesday.

The objectors are asking the court to deny all requests for the reimbursement of expenses related to the experts and to award class counsel only one-fifth of the attorneys' fees they are currently seeking, specifically no more than \$380,000.

The objectors' attorney, G. Richard Baker of Baker Law Firm PC, is also seeking fees for his work on the case, including a \$1,000 representative award for each of the six objecting class members, \$578,750 in attorneys' fees for the increase to the settlement fund as a result of the earlier objection, and 20 percent of any savings to the cash common fund by reducing or denying class counsel's fee and expense petition as a result of the present objection.

A hearing on final approval of the settlement is scheduled for Aug. 19.

The objectors are represented by G. Richard Baker of Baker Law Firm PC.

The plaintiffs are represented by Alan Harris and David Zelenski of Harris & Ruble and the Law Offices of Perrin F. Disner.

Kaplan is represented by Bradley S. Phillips and Stuart N. Senator of Munger Tolles & Olson LLP. West is represented by James F. Rittinger and Justin E. Klein of Satterlee Stephens Burke & Burke LLP, James P. Tallon and Wayne Dale Collins of Shearman & Sterling LLP, and Edward A. Klein and Heather H. Gilhooly of Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor LLP.

The case is Stetson et al. v. West Publishing Corp. et al., case number 2:08-cv-00810, in the U.S. District Court for the Central District of California.

--Additional reporting by Ciaran McEvoy and Abigail Rubenstein. Editing by Katherine Rautenberg.

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