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\$9.5M Kaplan Antitrust Settlement Challenged Over Fees

By **Abigail Rubenstein**

Law360, New York (July 29, 2013, 8:20 PM ET) -- Objectors to a previous settlement of a putative class action alleging West Publishing Corp. and Kaplan Inc. colluded in the bar exam prep business have attacked the attorneys' fees requested in the current \$9.5 million deal to end the suit, claiming Monday that the fees are excessive.

An attorney for the objecting class members said in a motion 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 motion says class counsel are seeking fees for work performed while they were representing objectors in a previous case known as Rodriguez v. West Publishing Corp., which alleged 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 earlier case was 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 preliminarily approved a \$5.2 million settlement, but he **denied final approval** in June 2011.

Monday's motion maintains that the objectors' decision to take issue with the earlier settlement led to major changes and enhancements seen in the current \$9.5 million agreement. But it says the fees sought as part of the new deal are too high, both because of the alleged billing of the class for work that actually benefited the objectors in Rodriguez and because the individual attorney's hourly rates are too high.

The motion also objects to 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.

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, also filed his own request for fees Monday.

That motion requests 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.

Class counsel were not immediately available for comment Monday.

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 Melissa Lipman. Editing by Elizabeth Bowen.

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