

Blog Entry: A Tale of Attorneys' Fees

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The backdrop is simple: Mistras Group operates a business that evaluates the structural integrity of energy, industrial and public infrastructure. Two plaintiffs brought a class and collective action against Mistras in the Northern District of California, alleging violations of California's Labor Code and the federal Fair Labor Standards Act. They claimed they were not paid for time spent training for and traveling on business and sought to represent "current and former non-exempt hourly employees who worked" for Mistras "as examiners and technicians."

The parties agreed to settle for \$6 million, of which \$3,900,000 was allocated to the California claim and \$2,100,000 was allocated to the FLSA claim.

The court approved the settlement, but one issue remained unresolved: class counsels' fees. They asked the court for \$2 million; one-third of the settlement fund. How much did they eventually receive?

We'll get to that. But first, consider these comments by the court in its February 17, 2017 order disposing of their fee request:

[T]he [\$6 million] settlement recovery represents a deep discount on the full verdict value of the claims being released.... Plaintiffs estimate the California claims to have a verdict value of \$33,536,339 and the FLSA overtime claim to have a verdict value of \$40,356,450. The California class, in other words, is receiving 11.6% of the full verdict value of the claims being released, while the FLSA class is receiving just 5.2% of the full verdict value. In total, the Settlement Agreement is worth 8.1% of the full verdict value.

Let's get this straight: Plaintiffs estimated their claims to have a verdict value of \$73,892,789, yet agreed to settle for \$6 million? And the court approved? *Why?*

Because "this steep markdown" the court determined, "was reasonable in light of the weakness of Plaintiffs' case."

Wait a minute. Mistras agreed to pay \$6 million to settle Plaintiffs' weak case? Class counsel must have been pleased; elated in fact, considering that "this settlement was reached quite early in the proceedings - indeed, before any substantive motions were filed."

But hold on a moment. Class counsels' \$2 million fee request was \$500,000 higher than the amount they'd be entitled to receive had their request comported with the Ninth Circuit's suggestion "that, when calculating attorneys' fees as a percentage of a common settlement fund, 25% of the fund is the presumptively reasonable benchmark." Did the court give them the extra \$500,000, given that they settled a "weak" case for the princely sum of \$6 million?

Negatory. “The weak strength of Plaintiffs’ case,” the court noted, “should not constitute a special circumstance justifying enhancement of the fee award. To the contrary, this rationale would have the perverse effect of rewarding counsel for taking on weak or otherwise dubious cases.”

Okay, so they didn’t get the \$2 million. What about \$1.5 million - the amount deemed “presumptively reasonable” by the Ninth Circuit. Did they get that?

Not quite. The court declined to award them a percentage of the settlement fund and instead looked to their “asserted lodestar” - that is, their hourly billing rates multiplied by the number of hours worked - as a baseline for analyzing their fee request. That amount was \$1,329,869, based on 2,240.65 billed hours.

But even *that* the court deemed too high, and here’s where the “ouch” factor comes into play:

The Court finds that this is an unreasonably high figure. For example, Class Counsel spent 408.55 hours on ‘administrative communications’ between class counsel and their staff ‘to facilitate the progression of the litigation.’ There is no explanation for why so many hours - significantly more than were spent on drafting pleadings or engaging in settlement discussions, and only slightly less than were spent on discovery - were required for such communications. When asked at hearing, Counsel stated only that the case required a significant amount of class outreach. But in their fee motion, Counsel states that it spent 255.60 hours on class outreach separate and apart from the 408.55 hours spent on administrative communications. Further, in the interval between the filing of their fee motion, on December 8, 2016 and the filing on February 1, 2017 of their updated declaration in advance of hearing, Counsel billed an additional 237 hours on the case. The only significant filing during that period was the motion for final approval, along with declarations in support thereof. Counsel does not explain how it billed so many hours during that period.

So how did the court finally resolve this? By applying, in its words, a 10 percent “haircut” to class counsel’s lodestar amount, reducing it to \$1,196,882.10. “These reductions,” it stated “are further warranted because of the relatively small recovery for the class in this case. Here, Counsel will still be fairly compensated for the hours reasonably spent on this case, while the class will receive over \$800,000 more than it would have given Counsel’s requested fee.”

So there you have it. \$1,196,882.10 in attorneys’ fees for bringing a weak case and scoring a \$6 million settlement. And so it goes.

The case is *Edgar Viceria v. Mistras Group, Inc.*, United States District Court, Northern District of California, case no. 15-cv-02198-EMC, 2017 WL 661352.