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# Lawyer Objects to Class Counsel's Nearly $3 Million in Attorney Fees: 'Most of the Relief is Illusory'

By **Michael A. Mora**

***The underlying issue is that most of the relief is illusory," said Theodore H. Frank, the director of Hamilton Lincoln Law Institute and the Center for Class Action Fairness.***

A Washington, D.C.-based lawyer objected to a settlement in a false advertisement class action in Miami federal court, in part by pointing to the multimillion-dollar attorney fee award as a reason the presiding judge should nix the deal.

But this objection is causing a stir, as critics point to Theodore H. Frank, the director of Hamilton Lincoln Law Institute and the Center for Class Action Fairness, as a "professional objector."

They call on legislators and courts to revise class action law to discourage similar behavior.

In an objection filing in Williams v. Reckitt Benckiser, Frank said that U.S. Magistrate Judge Jonathan Goodman, who sits in the Southern District of Florida, should deny final approval of the attorneys fees sought as part of the settlement in the Neuriva memory supplement case.

"The underlying issue is that most of the relief is illusory," Frank said. "They are not going to provide $8 million to the class, even though they are calling it an $8 million settlement. The injunctive relief is generally not going to change anything. You have a settlement where the attorneys are getting almost $3 million, and the class is going to get substantially less than that."

Jonathan Cohen, a partner at Greg Coleman Law in Knoxville, Tennessee, and lead attorney representing Williams, did not respond to a request for comment.

**Intention of Rule 23**

However, Adam Moskowitz, a partner at The Moskowitz Law Firm in Coral Gables, said he sees troubling similarities between this case and the Spartan Race Inc. class action in which Frank also objected. Moskowitz is not involved in the Williams v. Reckitt Benckiser litigation.

Among the similarities, according to Moskowitz: Frank allegedly provided a scientific argument and evidence without citing an expert, did not show evidence of his damages and filed the objection to "show his supporters how he fights class actions."

And Moskowitz, a University of Miami School of Law professor, suggested this raised a larger question of whether lawmakers should take another look at class action law in the context of “professional objectors.” He added that valid objections can play an important role after the parties agree to a settlement, but those objections must be viewed in context.

“It must be the law that simply buying a product after he knows a motion for class certification will be filed, cannot be what the Rule 23 drafters meant, when they encouraged aggrieved class members to voice their concerns,” Moskowitz said.

The Spartan Race class action dispute involved an alleged pass through fee the company charged those participating in its events.

Meanwhile in the Williams case, Frank objected to several aspects of the settlement, including a $2.29 million attorney fee award. The attorney fee award was 8.9% of the $25.6 million class member settlement. The standard for attorney fees and cost requested in class actions is 25% to 35%.

U.S. District Judge Beth Bloom overruled the objection, and Frank did not take the case on appeal, according to court documents.

The Reckitt Benckiser litigation involved allegations that the company deceptively touted the Neuriva memory supplement as both “backed by science” and “clinically proven,” without scientific evidence to back its claims of improved brain performance, according to court documents.

Goodman, the federal magistrate judge, tentatively approved a deal in April that the companies can state on their labeling and marketing that the product is “science tested” or “clinically tested.” The deal provided either $65 or $20 for class members, depending upon whether they have proof of purchase, and $2.9 million in attorney fees.

Now, Frank, in requesting that Goodman deny approval of the deal. He said class counsel might be in “pursuit of their own self-interest.” That is among the allegations Frank is planning to argue in an upcoming fairness hearing.

Frank said the label of “professional objector” is a “baseless smear.” He pointed to “hundreds of millions of dollars” that he has brought to class members since 2009, including an appearance in which he argued before the U.S. Supreme Court.

And Frank suggested that his nonprofits worked to enforce the provisions of Rule 23 that seek to bar approval of abusive settlements that benefited lawyers, at the expense of the class members they represent.

“We look for cases with clear-cut legal issues that can set precedents that can benefit class members in more than one settlement,” Frank said. “There are many more settlements that are bad than we have the resources to object to. We look for cases we can win and make a difference."