

June 3, 2004

SPECIAL MASTER HEARS WLF'S OBJECTIONS TO SETTLEMENT IN COSMETIC CLASS ACTION CASE

(Azizian v. Federated Dept. Stores, Inc.)

A Special Master appointed by a California federal court on May 25, 2004, to hear and resolve objections to a proposed \$175 million settlement in a class action case against cosmetic companies and department stores, held the hearing for all the parties and objectors in San Francisco, California, on June 1, 2004. The Special Master, retired federal judge Charles Renfrew, gave preference during the five-hour hearing to presentations made by WLF attorneys and the Assistant State Attorney General of Pennsylvania. In addition, WLF submitted a 25-page brief with exhibits to the Special Master to supplement WLF's original objections filed on behalf of 33 objectors.

In *Azizian v. Federated Department Stores*, a nationwide class action was filed in 1999 in California against a group of department stores such as Lord & Taylor, Nordstrom, Saks Fifth Avenue, and Target, for antitrust violations with respect to the sale of cosmetics manufactured by companies such as Estee Lauder, L'Oreal, Christian Dior, and Chanel. The complaint claims that the defendants unlawfully agreed not to sell the cosmetics and fragrances at discount prices and to limit gift with purchase offers.

The companies and stores denied any liability, but recently agreed to pay up to \$24 million in attorneys' fees to class counsel to settle the case, and to give away \$175 million in unspecified products to the estimated 38 million class members. In its preliminary and supplemental objections, WLF argued that notice about the proposed settlement was neither sufficient nor timely in reaching class members; notices were buried in fine print in the March 2004 issues of certain magazines, but the cut-off period for registering objections was March 26. Several of WLF's objectors contacted Washington, D.C., area stores, only to learn that virtually all of the cosmetic salespersons were not even aware of the lawsuit. Affidavits by those objectors were provided to the Special Master and the Court along with WLF's supplemental objections.

WLF's objections were filed on behalf of a group of 33 objectors to a proposed settlement that offers only a chance for consumers to get a "free" item of cosmetics allegedly valued between \$18-\$25 during a one-week giveaway period in January if they purchased so-called "high end" cosmetics or fragrances over the last 10 years. WLF called

upon the Special Master to order the parties to provide a new and more effective notice to the class about the case, including notifying the class by placing notices on the cosmetic counters and in their marketing and advertising materials sent to consumers.

WLF also argued that the settlement, which provides that unspecified "free" products would be given away, was vague, did not afford consumer choice of products, would lead to long lines at stores, and encourage non-class members to get one or more of the free gifts. During the hearing, WLF's Senior Executive Counsel Paul Kamenar objected to the giveaway program, and referred to news articles in which the plaintiffs' lead attorney predicted that there would be huge problems with the free-for-all distribution, such as long lines, depletion of product, and other problems during the one-week giveaway period. WLF argued that consumers should instead receive either cash or a coupon to redeem for products at their convenience. At a minimum, they should be able to register on line for their "gift" if that form of compensation to the class is determined by the Special Master and the Court to be sufficient and reasonable.

WLF further argued during the hearing that the attorneys' fees in this case should not be computed on the percentage-of-the-fund basis because there is no common fund of cash, only products valued at an inflated retail price of \$175 million. Accordingly, WLF argued that fees should be awarded on the basis of a lodestar amount, that is, the number of hours reasonably expended on the case by the attorneys, multiplied by their reasonable hourly rate. Thus, in this case, the lodestar amount claimed is \$13.5 million, which is less than the \$24 million request. But WLF argued that the lodestar amount of \$13.5 million should be reduced even further due to the poor results obtained and the excessive number of plaintiffs' law firms that worked on this case. WLF argued that any reduction in fees below the \$24 million figure should go the class members, and that payment of a portion of any fee awarded should be withheld until after the giveaway program has been completed to determine the efficacy of the distribution plan.

The Special Master indicated that further submissions will be made in the next several weeks before it issues a final report or recommendation to Judge Sandra Armstrong, the federal judge assigned to this case. Accordingly, the original June 8, 2004 hearing date has been postponed, and the new date will be set, probably in September.

* * *

WLF's Preliminary and Supplemental Objections are available on WLF's website at www.wlf.org. For further information contact WLF Senior Executive Counsel Paul Kamenar at 202-588-0302.