

June 18, 2003

**COURT UPHOLDS ATTORNEYS' FEES
IN COMPACT DISC ANTITRUST CLASS ACTION CASE
(*In re: CD Minimum Advertised Price Antitrust Litigation*)**

The United States District Court of Maine upheld a proposed settlement of a nationwide class action case where the attorneys were seeking \$12.5 million in fees. The underlying lawsuits, which were filed across the country by state attorneys general and private attorneys, and consolidated in the federal court in Maine, sought antitrust damages against the distributors of music compact discs (CDs) and certain retailers for engaging in a Minimum Advertised Price (MAP) program that had the effect of maintaining higher retail prices of CDs. WLF had urged the court on behalf of consumer objectors to reject the fee request as being excessive.

In the settlement that was recently approved by the court, consumers who purchased CDs between 1995 and 2000, and who made a valid claim by March 3, 2003, would each receive approximately \$13.00 for having been overcharged for the CDs; however, the amount refunded will be the same for each claim, regardless of the number of CDs the consumer may have purchased during the settlement period. The cash amount in the settlement offered by the defendants was \$67 million. In addition, the defendants are providing 5.6 million CDs which will be distributed to governmental and nonprofit organizations. The parties artificially valued the CDs as being worth approximately \$75.7 million. Thus, the aggregate worth of the entire settlement package was valued at \$143 million.

The district court decided to determine the attorneys' fee by using the percentage of the fund approach rather than the lodestar approach, which is the number of hours reasonably expended in the case times the reasonable hourly rate. The court then decided that a fee of 10% of the entire award, or \$14.3 million, was reasonable. But in doing so, the court ruled that the fee *and* expenses should be limited to \$14.3 million.

The court then noted that the attorneys had previously agreed that their fee would be capped at \$12.5 million, but was puzzled by that pre-determined amount since the attorneys did not explain how they arrived at that figure. The lodestar proffered by the attorneys was in excess of \$12.5 million, but WLF argued that the figure was highly inflated. In any event, the court determined that if the fee request, coupled with the amount requested for expenses, did not in the aggregate exceed \$14.3 million, the fee and expense request would be approved. If, however, adding all the expenses would bring the aggregate amount requested above \$14.3 million, the court

reserved the right to scrutinize the expense reports to determine whether hotel, food, and travel expenses were inflated.

WLF participated in the case on behalf of a group of class members, arguing that the award of \$12.5 million in fees alone was grossly excessive due to the fact that the Federal Trade Commission (FTC) and the state attorneys general had already investigated the matter thoroughly. The FTC entered in a consent agreement with the distributors on May 10, 2000. That very day, the first of 51 so-called "piggyback" lawsuits were filed by class action attorneys hoping to cash in by forcing the defendants to settle, and thereby reap windfall attorneys' fees. In short, the work done by the private lawyers was minimal.

WLF also argued that the value placed on the 5.6 million CDs was highly inflated, and that the actual value was much lower. The court nevertheless determined that even if the CDs were not counted in computing the value of the case, the attorneys' fee award would amount to 21% of the common fund, which the court suggested was also reasonable, despite authority presented by WLF to the contrary. The court rejected all requests that it appoint an independent expert to examine the reasonableness of the fee and expense requests, and the value of the 5.6 million CDs.

WLF filed the brief as part of its INVESTOR PROTECTION PROGRAM which is designed, in part, to challenge class action cases and huge fee awards that benefit the plaintiffs' attorneys, but provide little for consumers and shareholders.

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