

Objector Attys Get \$1.5M After 9th Circ. Hagens Berman Fight

By **Dorothy Atkins**

Law360 (September 9, 2021, 10:44 PM EDT) -- A California federal judge on Thursday awarded an objector's counsel \$1.5 million in fees after they helped convince the Ninth Circuit to throw out Hagens Berman Sobol Shapiro LLP's \$47.8 million fee award for work securing \$205 million in optical disk drive price-fixing settlements.

In a six-page order, U.S. District Judge Richard Seeborg granted objector Conner Erwin's request for \$1.5 million in attorney fees for his counsel Bandas Law Firm PC and Lang Hanigan & Carvalho LLP. The judge also agreed with Erwin that the amount should be deducted from Hagens Berman's \$31 million fee award, and not the class settlement fund.

According to the order, the \$1.5 million award represents 7% of the \$21.8 million increase in the settlement fund that will be distributed to the class after Erwin's attorneys successfully challenged before the Ninth Circuit Hagens Berman's initial \$47.8 million fee award for securing multiple price-fixing settlements.

Bandas Law Firm partner Robert Clore, who argued the case before the Ninth Circuit, said Thursday that the attorneys and their client are pleased that Judge Seeborg recognized Erwin's significant contribution to the settlement class.

"The result validates the important role of dissenting class members and their counsel in the class action settlement process," Clore said.

Representatives for Hagens Berman didn't immediately respond Thursday to requests for comment.

The ruling is the latest chapter in a decade-old multidistrict litigation alleging that Samsung Electronics Co. Ltd., Toshiba Corp. and other disk drive makers participated in an industrywide conspiracy to fix optical disk drive prices.

Then-U.S. District Court Judge Vaughn Walker appointed Hagens Berman as lead class counsel in 2010 and later struck multiple multimillion-dollar deals to resolve the disputes. After Judge Seeborg took over the case, Judge Seeborg awarded the law firm \$47.8 million in attorney fees for securing the settlements.

But in May 2020, a pair of Ninth Circuit panels vacated the fee awards after Clore argued before the

appellate court that Judge Seeborg erred by keeping Hagens Berman's initial proposal for lead class counsel under seal.

Clore told the Ninth Circuit that the trial judge also erred by allowing the firm to collect \$42 million, or 25% of the total settlements, instead of keeping fees capped at 12% of the settlement, or \$22 million, which it had originally promised it would seek.

The Ninth Circuit sided with Erwin and vacated the fee award, finding that the firm didn't explain why its fee requests differed significantly from estimates proposed in its bid to lead the case. The appellate court also said Hagens Berman "inexcusably failed to call attention" to its initial promise in its proposal not to seek reimbursement of expenses.

On remand, Hagens Berman requested the same \$47.8 million in legal fees, calling the \$25.9 million allotted under a fee grid the firm laid out when making its bid to lead the case more than a decade ago a "starting point."

Nearly two dozen objectors fought to defeat or lower the attorney fee bid, making a variety of arguments. Some pointed to the fact that while some defendants did settle, resulting in the \$205 million settlement sum, other defendants did not, and they ultimately prevailed in motions for summary judgment.

In July, Judge Seeborg awarded Hagens Berman \$31 million in attorney fees, finding that the firm was entitled to a 20% premium on top of the \$25.9 million it would be allotted under a fee grid in its proposal.

Days later, Erwin's counsel asked for a \$1.5 million cut of Hagens Berman's award for the hours and years Erwin's attorneys put in challenging fee awards on appeal. But Hagens Berman opposed the request and argued that there is no reason for "fee shifting" to occur in this case.

However, on Thursday, Judge Seeborg disagreed and said it would be inequitable for the court to take Erwin's "relatively modest" fee request from the class' recovery, particularly since Hagens Berman was found to have claimed too much in fees.

"Because a fee award to objectors is grounded in 'equitable principles,' it is more reasonable under all the circumstances here to fund the award from the amount already designated as attorney fees, rather than further reducing the settlement fund," the order says.

The indirect buyers are represented by Shana E. Scarlett and Steve W. Berman of Hagens Berman Sobol Shapiro LLP.

Objector Conner Erwin is represented by Christopher A. Bandas and Robert Clore of Bandas Law Firm PC and Timothy R. Hanigan of Lang Hanigan & Carvalho LLP.

The case is In re: Optical Disk Drive Products Antitrust Litigation, case number 3:10-md-02143, in the U.S. District Court for the Northern District of California.

--Additional reporting by Dave Simpson and Anne Cullen. Editing by Rich Mills.