

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH)	
BENEFITS FUND, et al.,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO. 05-11148-PBS
)	
FIRST DATABANK, INC. and)	
McKESSON CORPORATION,)	
)	
Defendants.)	

**ORDER RE: APPLICATION FOR ATTORNEYS'
FEES AND COSTS (DOCKET NO. 735)**

October 20, 2009

Saris, U.S.D.J.

Business Litigation Associates, P.C., attorneys for objector the National Automatic Sprinkler Industry Pension Fund ("NASI"), has moved for an award of attorneys' fees and costs based on its objection to the attorneys' fees and costs sought by class counsel for the First DataBank and Medi-Span settlement. It seeks attorneys' fees of \$29,433.54 and actual costs in the amount of \$371.53, calculated based on a lodestar approach. NASI objected to the lack of documentation supporting class counsel's requested fees and expenses. As a result of NASI's objection, class counsel waived its demand for \$1,050,000 in attorneys' fees, and waived its demand for \$160,000 in expert fees and expenses. The point about lack of documentation was well-taken, and NASI's objection led to a substantial benefit for class

members. See Duhaime v. John Hancock Mut. Life Ins. Co., 2 F. Supp. 2d 175, 176 (D. Mass. 1998) (awarding fees to objectors "where their efforts have conferred benefits on class members generally"). There was no objection to this request.

Objector supplemented the application for attorneys fees by seeking an additional \$28,144.00 in attorneys' fees and \$846.96 in costs for objecting to class counsel's request for \$84,000,000 in attorneys' fees and costs for the McKesson settlement. The Court ultimately awarded \$70,000,000 based on a percentage of the class fund of 20% rather than 24%. NASI's approach sought a full audit of attorneys' fees and costs. Its methodology was cumbersome, time-consuming and resource intensive. It was against the weight of the caselaw which approves of percentage of the fund as the methodology for determining attorneys' fees, with a lodestar calculation as a pragmatic cross-check. See In re Compact Disc Minimum Advertised Price Antitrust Litig., 216 F.R.D. 197, 215-16 (D. Me. 2003) ("[t]he lodestar approach (reasonable hours spent times reasonable hourly rates, subject to a multiplier or discount for special circumstances, plus reasonable disbursements) can be a check or validation of the appropriateness of the percentage of funds fee, but is not required."); In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig., 56 F.3d 295, 307 (1st Cir. 1995); see also Manual for Complex Litigation (Fourth) § 14.122 (2004)

("the lodestar is . . . useful as a cross-check on the percentage method by estimating the number of hours spent on the litigation and the hourly rate, using affidavits and other information provided by the fee applicant. The total lodestar estimate is then divided into the proposed fee calculated under the percentage method. The resulting figure represents the lodestar multiplier to compare to multipliers in other cases.").

Plaintiffs were clearly not surprised that I found a multiplier of 10.05 to be outside the bounds of reasonableness. Even without an objection, I would never have used this multiplier. To devise a fair percentage, I considered all relevant aspects of the litigation, and I looked at the materials submitted by plaintiffs (including the contingency fee payments typically made by third-party payors in similar cases) as well as the lodestar. In any event, because I fully rejected NASI's approach, its filings provided no substantial benefit to the class. Accordingly, I do not award these supplemental fees.

ORDER

The Consolidated Application for Award of Attorneys' Fees and Costs [Docket No. 735] is **ALLOWED** but the supplemental request [Docket No. 819] is **DENIED**.

S/PATTI B. SARIS
United States District Judge