

The Expert's Corner

WHY ARE FEE REDUCTIONS ALWAYS 50%?: ON THE IMPRECISION OF SANCTIONS FOR IMPRECISE FEE SUBMISSIONS

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In a recent series of fee decisions, federal judges (and a Special Master) have penalized class counsel for a variety of problems and reduced their fee requests accordingly. While the problems themselves differ, one theme running through these cases is that the penalty tends to be a reduction of 50% of the fee request. It may be that a 50% reduction happens to provide the appropriate level of deterrence for a wide variety of improper timekeeping practices. Nonetheless, there is some irony in the fact that these courts are penalizing class counsel for imprecision in their fee requests—and then proceed to do so by swinging the blunt hammer of a 50% penalty. Why not 51%? Or 18%? Or 79%? Somehow, often after a painstaking review of every hour billed, courts always arrive, rather magically, at the same broad penalty. Before considering the reasons they might do that, let's look at the cases.

Throughout his report, the Special Master demonstrates a profound faith in the 50% reduction. He painstakingly documents each of counsel's excesses, only to arrive at a 50% reduction as the appropriate solution for every one.

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1. In *UFCW Local 880-Retail Food Employers Joint Pension Fund v. Newmont Mining Corp.*, 2008 WL 113901 (D.Colo. 2008), U.S. District Judge Marcia S. Krieger appointed a Special Master (Thomas C. Seawell) to determine if the plaintiff's motion for attorney fees in a securities class action was reasonable. The defendants had settled for \$15 million. Lead Counsel – with the approval of Lead Plaintiff – sought 20%, or \$3 million, and had a lodestar of roughly \$950,000, suggesting a multiplier at 3.16. The Special Master rejected both the percentage fee request and the lodestar analysis. Performing his own lodestar analysis in which he adjusted the hourly fee, number of hours, and provision of services, the Special Master found that the plaintiffs' \$950,000 figure was inflated by a factor of two.

Throughout his report, the Special Master demonstrates a profound faith in the 50% reduction. He painstakingly documents each of counsel's excesses, only to arrive at a 50% reduction as the appropriate solution for every one. Some attorneys recorded a suspicious number of entries using whole-hour amounts, thus implying shoddy timekeeping. Reduction? 50%. Some attorneys charged hours using overly broad descriptions of their time. Reduction? 50%. Meanwhile on other occasions attorneys used vague or meaningless descriptions of service. Reduction? 50%. Finally, some entries charged unreasonable amounts of time for simple tasks. Reduction? You guessed it – 50%. Taken together, the Special Master's piecemeal reductions add up to an overall reduction of almost exactly one half the initial lodestar: instead of the \$950,000 lodestar, the Special Master recommended an award of \$450,000.

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