

The Expert's Corner

REASONABLE RATES: TIME TO RELOAD THE (LAFFEY) MATRIX

William B. Rubenstein*

What's an hour of your time worth? How would you know? How could you prove that to a federal judge? Ultimately, all class action fee petitions come down to these inquiries, either because fees are awarded on a lodestar (hours x rate) basis or because a percentage fee award is cross-checked using a lodestar calculation. The "hours" portion of the lodestar is fairly straightforward; judges may of course scrutinize counsel's submissions, but rarely does this lead to significant changes in sought-after fees. The "rate" portion of the lodestar has a lot more play in its joints in that there is no commonly-accepted and easily-identifiable standard by which to set the hourly rate.

There are, however, better and worse ways of establishing an acceptable hourly-rate. One methodology infrequently but recurrently used by courts – the so-called "Laffey matrix" – is a good example of a method that generally is pretty crummy. It may be surprising to learn, then, that Chief Judge Vaughan R. Walker, of the U.S. District Court for the Northern District of California, is the *Laffey* matrix's primary proponent in the federal courts. Judge Walker takes a greater interest in class action cases generally, and in fees issues specifically, than do most federal judges. His opinions are invariably thoughtful

**William B. Rubenstein, a law professor at Harvard Law School, specializes in class action law; he has litigated, and regularly writes about, consults, and serves as an expert witness in class action cases, particularly on fee-related issues. Professor Rubenstein provides regular reporting on class action issues, including fees, at www.classactionprofessor.com. The opinions expressed in this article are solely those of the author.*

and often quite interesting and novel – usually, though not inevitably, to the detriment of the plaintiffs' counsel. Regardless of his bottom line, a Walker class action opinion is worth reading and considering. Since April 2005, Judge Walker has employed the *Laffey* matrix to determine fee awards in nine separate cases and referenced it in another four. This is rather remarkable in that the matrix appears in only 76 federal cases altogether in the same time period, meaning that Judge Walker accounts for about 1 of every 5 references to the matrix in

this time period though he is only 1 of about 1,000 active and senior federal judges in the US.

A recent example of Judge Walker's use of the *Laffey* matrix is *In re Chiron Corp. Securities Litigation*, C-04-4293-VRW, 2007 WL 4249902 (N.D. Cal., Nov. 30, 2007). By this decision, Judge Walker denied preliminary approval to a class action settlement (how often do you hear about a judge doing that?). He gave four reasons for doing so, one of which

was that "the settlement proposes to pay class counsel fees that, for the amount of time worked, are eight to ten times typical hourly attorney fees." The case – six consolidated class actions filed in 2004 and 2005 – alleged false and misleading statements by Chiron concerning its capacity to deliver flu vaccine from manufacturing plants in England. The lead plaintiff (a union pension fund) appointed Milberg Weiss to be lead counsel. Counsel eventually negotiated a \$30 million settlement for which it sought approval from Judge Walker and from which it sought \$7,500,000, or 25%, in fees.

(continued on page 48)

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