

The Expert's Corner

2009: CLASS ACTION FEE AWARDS GO OUT WITH A BANG NOT A WHIMPER

William B. Rubenstein*

As 2009 pulled to a close, courts approved fees in three significant megafund cases: the long-running landmark *Fen-Phen Diet Drugs Litigation* (Third Circuit), the *IPO Securities Litigation* (S.D.N.Y.), and the *Currency Conversion Fee Antitrust Litigation* (“*Credit Card*”) (also S.D.N.Y.). All told, the three courts handed out over \$655 million in fees from funds totaling over \$7.4 billion. I sum up the year by taking a

closer look at the first of these decisions – the *Diet Drug* case – as it raises a few issues that will remain pertinent in coming years. In January, I will take a closer look at the *IPO* and *Currency Conversion* cases: they were both decisions coming out of district courts in the Southern District of New York, but they embody some interesting distinctions that I will review in my next column.

First, The Numbers:

Here is a comparison of the relevant statistics for the three cases discussed above.

	FUND	FEE	%	LODESTAR	HOURS	RATE	MULTIPLIER
Diet Drugs	\$6,437,211,516	\$434,511,777.33 (final in addition to interim fee)	6.75%	\$166,835,339.24	553,020.53	\$302 (blended)	2.6
IPO	\$586,000,000 Net fund: \$510,254,849.99	\$170,084,950	33.33% of net	\$202,359,423.63	1,027,000.00	\$197 (blended)	0.84
Credit Card	\$336,000,000	\$51,250,000	15.25%	\$31,990,501.60	76,877.94	\$416 (blended)	1.6

The Diet Drugs Fee Decision – The Issues

In December of last year, I wrote about the federal district court’s final fee award in the *Fen-Phen Diet*

Drugs cases – \$434 million, representing 6.75% of the settlement agreement valued by the court at \$6.44 billion.¹ Last month, the Third Circuit affirmed.² The \$434 million award represented a lodestar multiplier of 2.6, based on an estimated 553,020.53 hours spent by class counsel since the inception of the litigation. The appeal to the Third Circuit focused on three issues: the transparency of the process of determining the size of the award, the size of the award as derived from various

*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’s work can be found at www.billrubenstein.com. The opinions expressed in this article are solely those of the author. Kristin Hucek, Harvard Law School Class of 2011, assisted in the preparation of this column.

¹ *In re Diet Drugs Products Liability Litigation*, 2008 WL 942592 (E.D. Pa. 2008).

² *In re Diet Drugs Products Liability Litigation*, 582 F.3d 524 (3d Cir. 2009).

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