Ninth Circuit Finds Insufficient Basis for Large Attorney Fee Award

September 26, 2011 by David J. McMahon

In *Jones v. GN Netcom Inc.*, 2011 DJDAR 12668 (2011), the U.S. Court of Appeal for the Ninth Circuit decided an issue that frequently arises in class action litigation. That issue relates to the often minimal benefits paid to class members while plaintiffs' class counsel fees are often very high.

The case arose when numerous products liability class actions were fled against defendant Motorola Inc. The lawsuits alleged that Motorola purposefully failed to disclose the risk of hearing impairments caused by the use of Bluetooth headsets. The parties participated in mediation which resulted in a settlement. Motorola agreed to pay $100,000 in cy pres awards. The agreement also carved out up to $800,000 for fees to class counsel, and $12,000 for the class representative.

Certain class members objected to the fee award. Despite the objections, the district court approved the settlement and awarded $850,000 to class counsel for fees and costs based on the lodestar method. The trial court made the award despite the fact that the fees awarded were eight times more than the class recovery. The class objectors argued that the settlement was not fair and reasonable. They claimed the fee award advanced the interests of class counsel over the class itself.

The Ninth Circuit reversed the attorney fee award, noting that the trial court had an independent obligation to ensure that an award is reasonable. Because the record in the trial court did not contain an explicit calculation of the method utilized to calculate the lodestar amount, the Ninth Circuit found the award deficient. The Ninth Circuit found the record was not sufficient to support the award. Specifically, the Appellate Court found no comparison between the settlement's attorney fee award and the benefit to the class, or degree of success in litigation. As such, there was an insufficient basis for determining the reasonableness of the award.