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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: LITHIUM ION BATTERIES ANTITRUST LITIGATION, ---------- INDIRECT PURCHASER PLAINTIFFS, Plaintiff-Appellee, v. MICHAEL FRANK BEDNARZ, Objector-Appellant, v. PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA; SANYO ELECTRIC CO, LTD; SANYO NORTH AMERICA CORPORATION; HITACHI, LTD.; HITACHI MAXWELL, LTD.; MAXWELL CORPORATION OF AMERICA; TOSHIBA CORPORATION; TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC.; NEC CORPORATION; SAMSUNG SDI CO.	No. 21-15120 D.C. No. 4:13-md-02420-YGR MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

LTD.; SAMSUNG SDI AMERICA, INC.; SONY CORPORATION; SONY ENERGY DEVICES CORPORATION; SONY ELECTRONICS, INC.; NEC TOKIN CORPORATION; LG CHEM, LTD.; LG CHEM AMERICA, INC.,

Defendants-Appellees.

In re: LITHIUM ION BATTERIES ANTITRUST LITIGATION,

INDIRECT PURCHASER PLAINTIFFS,

Plaintiff-Appellant,

v.

STEVEN FRANKLYN HELFAND; MICHAEL FRANK BEDNARZ; CHRISTOPHER ANDREWS,

Objectors-Appellees,

v.

PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA; SANYO ELECTRIC CO, LTD; SANYO NORTH AMERICA CORPORATION; HITACHI, LTD.; HITACHI MAXWELL, LTD.; MAXWELL CORPORATION OF

No. 21-15200

D.C. No. 4:13-md-02420-YGR

AMERICA; TOSHIBA CORPORATION; TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC.; NEC CORPORATION; SAMSUNG SDI CO. LTD.; SAMSUNG SDI AMERICA, INC.; SONY CORPORATION; SONY ENERGY DEVICES CORPORATION; SONY ELECTRONICS, INC.; NEC TOKIN CORPORATION; LG CHEM, LTD.; LG CHEM AMERICA, INC.,

Defendants.

Appeal from the United States District Court
for the Northern District of California
Yvonne Gonzalez Rogers, District Judge, Presiding

Argued and Submitted October 17, 2022
San Francisco, California

Before: HAWKINS, McKEOWN, and BYBEE, Circuit Judges.

On December 10, 2020, the district court granted Indirect Purchaser Plaintiffs' ("IPPs") motions for final approval of the class-action settlement and for attorney's fees ("Settlement Order"). The court also partially granted objector Frank Bednarz's motion for attorney's fees ("Fee Order"). Bednarz appeals the Settlement Order, arguing that the district court abused its discretion in awarding attorney's fees in two respects: (1) by failing to consider a bid submitted by Hagens Berman Sobol Shapiro LLP ("Hagens Berman") to be lead class counsel as

a baseline and (2) by not reducing class counsel's fee award based on the conflict of interest present in representing plaintiffs from both *Illinois Brick*[1] repealer and non-repealer states. Bednarz also appeals the Fee Order, arguing that the district court erred by not granting his fee request in full. IPPs cross-appeal the Fee Order, arguing that the district court erred in awarding Bednarz fees at all. We have jurisdiction under 28 U.S.C. § 1291, and we review a district court's award of attorney's fees and its chosen method of calculation for abuse of discretion. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 940 (9th Cir. 2011). We affirm.

1. The district court properly declined to use the Hagens Berman bid as a baseline in awarding attorney's fees to class counsel. We have previously held that "when class counsel secures appointment as interim lead counsel by proposing a fee structure in a competitive bidding process, that bid becomes the starting point for determining a reasonable fee." *In re Optical Disk Drive Prods. Antitrust Litig.*, 959 F.3d 922, 934 (9th Cir. 2020). Here, however, the district court determined that a three-firm co-lead interim counsel structure was preferable to a sole lead

[1] *Ill. Brick Co. v. Illinois*, 431 U.S. 720, 735 (1977) (holding that indirect purchasers cannot recover damages under federal antitrust law). About thirty states (repealer states) have authorized indirect purchasers of goods to bring state antitrust claims, while the remaining states (non-repealer states) follow federal antitrust law and restrict such claims.

counsel structure. Consequently, Hagens Berman's bid to be sole interim counsel was not relevant to the district court's assessment of the reasonableness of class counsel's fee request because the firm did not "secure[] appointment as interim lead counsel by proposing a fee structure in a competitive bidding process." *Id.* Importantly, when interim counsel is selected in the manner it was in this case—as opposed to through a competitive bidding process—the risk that a firm will deliberately submit a low bid to secure the position as lead counsel only to make a substantially higher fee request when the case resolves is mitigated. And, when the counsel structure differs from that conceived of in the singular competitive bid submitted, that bid offers little insight into market rates. The district court did not abuse its discretion by excluding the bid from its calculations.

2. The district court did not abuse its discretion in rejecting Bednarz's objection based on the potential representational conflict faced by class counsel in representing both repealer-state class members and non-repealer-state class members. Although Bednarz argues that the district court concluded that there was no conflict simply on the grounds that "class counsel 'achieved an excellent result for *all* class members,' " the district court did more. After questions as to class certification and choice-of-law became more settled, the district court approved the third round of settlements subject to a 90/10 distribution plan. The plan allocated

90% of the settlement fund to repealer-state class members and 10% of the settlement fund to non-repealer-state class members to account for the differing strength of their claims.[2] In the Settlement Order, the district court approved the same 90/10 distribution plan for the first two rounds of settlements as well. The district court concluded that, among other things, "the structural assurances of fairness inherent in the proposed distribution plan" satisfied the court that "class counsel . . . have no conflict with the class and have represented all members' interests fairly." In addition to finding that the 90/10 distribution plan mitigated intraclass conflict concerns, the district court explicitly considered the primary case Bednarz relies on in his argument, *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948 (9th Cir. 2009), and concluded that it was inapposite because there was no similar conflict in the case at hand. The district court also noted that class counsel did not seek fees associated with Bednarz's earlier appeal, which involved issues relating to the potential conflict among class members, or the related hours incurred on

[2] IPPs made the 90/10 third round settlement distribution "recommendation based upon the parties' stipulated adversarial process before the Honorable Rebecca J. Westerfield (Ret.), in which Judge Westerfield considered extensive analysis and rendered findings and recommendations concerning an appropriate allocation as between the two groups of putative class members." Bednarz does not challenge the allocation.

remand. As such, the district did not abuse its discretion in declining to reduce class counsel's award because of an alleged representational conflict.

3. The district court did not err in partially granting Bednarz's motion for attorney's fees. Because Bednarz generated an extra $10 million benefit for repealer-state class members by successfully objecting to the original distribution plan for the second round settlements, he is entitled to attorney's fees for conferring a material benefit to a portion of the class. *See Rodriguez v. Disner*, 688 F.3d 645, 658–59 (9th Cir. 2012) (objectors "may claim entitlement to" attorneys' fees when they confer a substantial benefit on the class); *Rodriguez v. West Publ'g Corp.*, 563 F.3d at 963 (finding it "clearly erroneous" to deny fees to objectors who augmented the class's net fund); *In re Southwest Airlines Voucher Litig.*, 898 F.3d 740, 746 (7th Cir. 2018) (reversing denial of fees to objector who conferred benefit on the class). However, because the benefit represented a transfer from non-repealer-state class members to repealer-state class members, it is difficult to quantify the benefit to the class as a whole. We have held that the district court has "discretion to award fees based on how much time counsel spent and the value of that time" in situations where it is difficult to quantify the benefit to the class. *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1126 (9th Cir. 2020) (citing *In re*

Hyundai & Kia Fuel Econ. Litig., 926 F.3d 539, 571 (9th Cir. 2019)). Here, the district court did precisely that.

AFFIRMED.