

Circuit Court

Case: *Lindy Bros. Builders, Inc. of Phila. Et al. v. American Radiator & Standard Sanitary Corp. et al.*, 487 F.2d 161 (3d Cir.1973)

Judges: Seitz*, Weis, Scalera

Date: Oct. 31, 1973

Tags: Attorney fees, antitrust litigation, evidentiary hearing, award of fees, Clayton Act, settlement, equitable fund doctrine, class action, judicial discretion, abuse of discretion

Gravamen/Question(s) at issue: Did the District Court err in its award of attorney fees without an evidentiary hearing about the specifics of the attorneys' work?

Holdings: District Court erred in not holding an evidentiary hearing or following proper standards in awarding such fees. Orders of DC vacated and remanded.

Rationale: Since the fees were in dispute by other parties whose recovery would be lessened by the award of fees to a particular firm, there ought to have been an evidentiary hearing to hash out the facts of what the attorneys actually did in this matter.

Facts: A class action in a price-fixing antitrust case settled out of court. A single fund was created to recover damages for all members of the class, including claimants not directly involved in the litigation. Plaintiffs' counsel sought to recover attorney fees at district court level out of awarded funds in return for negotiations on behalf of beneficiaries who were not represented but gained award anyway as part of the class. Awarded in part by district court; appealed by those who would lose \$\$ from the general fund if attorney fees were taken out.

Prior Appeals & Trial Court Input:

- **District Court:** judge considered (1) % of claimant's recovery awarded as attorneys' fees in other cases; (2) amount of recovery in this case; (3) amount attorneys received under private agreements; (4) time spent by attorneys on this lawsuit (which was in no way inventoried).

Appeals to Statute & Precedent:

- **Clayton Act, 15 U.S.C. § 15 (1970):** "does not authorize award of attorneys' fees to a plaintiff who has settled his antitrust action rather than pursue it to successful judgment." (165)
- **Central Railroad & Banking Co. v. Pettus, 113 U.S. 116, 5 S.Ct. 387, 28 L.Ed. 915 (1885):** recovery of attorney fees
- **Trustees v. Greenough, 105 U.S. 527, 26 L.Ed. 1157 (1882):** establishing equitable fund doctrine & claim for attorney fees: plaintiff & others who benefit must bear cost of attorneys (from fund).

- ***Tranberg v. Tranberg*, 456 F.2d 173, 175 (3d Cir. 1972):** award of attorney fees is by judge's discretion; challenge must show he abused that discretion.

Dicta/Discussion:

- Under **Clayton Act**, no authority to award attorney fees if antitrust is settled out of court. But fees may be awarded under "general equitable powers" of the court & **equitable fund doctrine** if action was undertaken on behalf of a class of persons not participating in suit.
- Both successful plaintiff and attorney have causes of action to recover attorney fees for services rendered (whether to unrepresented beneficiaries from the class or as counsel).
 - "The attorney's claim is that his conduct of the suit conferred a benefit on all the class members, that one or more class members has agreed by contract to pay for the benefit the attorney conferred upon him, and that the remaining class members should pay what the court determines to be the **reasonable values** of the services benefitting them." (165)
- **Re. standards governing fee awards**
 - "In detailing the standards that should guide the award of fees to attorneys successfully concluding class suits, by judgment or settlement, we must start from the purpose of the award: to compensate the attorney for the reasonable value of services benefiting the unrepresented claimant. Before the value of the attorney's services can be determined, the district court must ascertain just what were those services." (167)
 - Court needs an inventory of who did what:
"without some fairly definite information as to the hours devoted to various general activities, e.g., pretrial discovery, settlement negotiations, and the hours spent by various classes of attorneys, e.g., senior partners, junior partners, associates, the court cannot know the nature of the services for which compensation is sought." (167)
 - **Value of services:**
 - "A single fund was created after negotiations on behalf of all claimants. Absent some contrary showing, we presume that all the attorneys' time contributed to the recoveries of each claimant." (167)
 - "The value of an attorney's time generally is reflected in his normal billing rate. A logical beginning in valuing an attorney's services is to fix a reasonable hourly rate for his time-taking account of the attorney's legal reputation and status (partner, associate)." (167)
 - Different for different attorneys/legal activities.
 - Take into account **contingent nature of success**—increase award to reflect the unlikelihood of success, so determining the probability of success would help. (Here: criminal actions against defendants.)
 - Take into account **quality of attorney's work**.
 - "In evaluating the quality of an attorney's work in a case, the district court should consider the complexity and novelty of the issues presented, the quality of the work that the judge has been able to observe, and the amount of the recovery obtained." (168)

- In the case of settlement, this may be the only indicator of attorney's work!
- "Any increase or decrease in fees to adjust for the quality of work is designed to take account of an unusual degree of skill, be it unusually poor or unusually good." (168)
- "in increasing or decreasing an attorney's compensation, the district judge should set forth as specifically as possible the facts that support his conclusion." (169)
- "Absent extraordinary circumstances, the unrepresented claimants should pay a percentage of the reasonable value of the attorneys' services to the class equal to their percentage of the class' [sic] recovery." (169)
- **Evidentiary Hearing**
 - "In determining the amount of time spent by various attorneys on different activities, the standard billing rate appropriate for each attorney, the extent of the contingency, and the degree to which an attorney's efforts advanced the interests of claimants from whom he seeks fees, the district judge must possess a great deal of information not presented below." (169)
 - "award of attorneys' fees harms the unrepresented claimant by reducing his net recovery." (169) – if there's a dispute, there should be an evidentiary hearing.
 - Expert testimony not required—judge ought to know what's reasonable.

Attorneys' Arguments:

- **For appellants:** the attorneys shouldn't be bringing this up, it should be the prevailing party clients.
 - **Court:** no, fees may be awarded at attorneys' petition.
 - "The thrust of appellants' contention here is more that, regardless of which person files the petition, the right to compensation is in the client rather than the attorney. We think that appellants misconceive the basis for award of attorney fees." (165)
- **For appellants:** judge abused discretion because he failed to observe the appropriate standards and procedures.

Commentary:

- **Clayton Act:** 1914 amendment to Sherman Anti-Trust act re. price fixing in antitrust situations.
- **Equitable fund doctrine:** attorney has right to compensation from common fund established in a class action suit—doctrine of restitution, preventing unjust enrichment.
- Action in **quantum meruit**: "The individual seeking compensation has, by his actions, benefited another and seeks payment for the value of the service performed." (165)