

Plaintiffs Reap Payoff From Auditor's Aid

Judge slashes \$7M attorney fee award to three firms.

BY GAIL DIANE COX
NATIONAL LAW JOURNAL STAFF REPORTER

A PIONEERING USE of auditors to curb plaintiffs' counsel fees in a class action settlement has paid off, resulting in a \$2.436 million cut for three law firms.

Federal Judge Helen Ginger Berrigan, of New Orleans, cited "basic deficiencies" in counsel's time records to scale down the attorney fees and expenses share of a proposed \$20 million settlement package. The package had been negotiated by plaintiffs' and defendants' attorneys to pay a total of 35 percent to two New York firms—Stull, Stull & Brody and Weiss & Yourman—and New Orleans' Gainsburgh, Benjamin, David, Meiner, Norica & Warshauer. The firms were awarded a total of about \$7 million. *Feinberg v Hibernia*, 90-4245.

Before several of the class members objected and hired an auditor to help them mount a challenge, the 1995 settlement was preliminarily approved by another federal judge. [N.L.J., March 10.]

Echoing allegations raised by the objectors' auditor, James Eccleston, of Chicago's Eccleston & Associates, the judge criticized the New York firms for "over-used block entries," that is, the listing of several tasks allegedly done within one block of time without differentiating how much time was spent on each task. The May 14 ruling by Judge Berrigan also scored all three firms for "apparent 're-billing'" during a motion to compel. "This duplication indicates at best carelessness in the time-keeping or at worst a deliberate attempt to pad," she wrote. Stull, Stull, Weiss Yourman and Gainsburgh Benjamin all declined to comment on the matter.

In its final, approved form, the settlement uses a lodestar multiplier of 1.44 to arrive at attorney fees of \$384,367 for Gainsburgh Benjamin, \$903,420 for Stull Stull and \$2,127,161 for Weiss Yourman. With reduced compensation for expenses added in, the total amounted to only \$4,563,645. The \$2.4 million savings will be used to increase money that goes to class members who lost money invested in Hibernia Corp. in the 1980s.

The court also applied the 1.44 enhancer to the hours submitted by the auditors to arrive at a payment of \$50,222 for their services, which the court specified would come out of the remainder of the pool after the class claimants' portion has been determined.

'A Tremendous Victory'

Mr. Eccleston, who is also a lawyer, accompanied his report to the court with complaints about the vigorousness of the plaintiffs' representation and repeatedly referred to the settlement as a "sellout."

The judge rejected this characterization, saying that even though she disagreed with "much if not most of the positions taken by the objectors, the court found the arguments of the objectors to be helpful in focusing on some of the issues in this case, such as the hourly rates for counsel and the propriety of certain expenses."

That was good enough for Mr. Eccleston, who greeted the ruling as "a tremendous victory." He added that although this was the first such use of an auditor he knew of, he now has a couple of new cases in the 9th U.S. Circuit Court of Appeals in which class members want his company to examine their attorney fees. ☐

Animal Abuse Targeted

Novel Oregon effort brings together prosecutors, animal protection groups.

BY CYNTHIA SCANLON
SPECIAL TO THE NATIONAL LAW JOURNAL

A GROUP OF Oregon attorneys has volunteered for the first program in the nation to prosecute animal abuse cases.

The program—a joint effort between the Multnomah County District Attorney's Office in Portland, the Multnomah County Animal Control, the Oregon Humane Society and the Animal Legal Defense Fund—is being formed to step up prosecution of animal abuse cases that otherwise might get shuffled to the bottom of the pile.

The program also is designed to relieve some of the pressure on the district attorney's office and allow their attorneys to pursue other cases. Most important, say its supporters, the partnership

is intended to warn the judicial system about potential violent criminals.

"There are a number of studies showing a direct link between animal abuse and violence against humans," said attorney Pamela Frasch, the director of the Anti-Cruelty Division for the Animal Legal Defense Fund and originator of the program. "The vast number of violent criminals in our criminal justice system today started out abusing animals or witnessing animals being abused."

According to Fred



Pamela Frasch: Says animal abuse and violence against humans are directly linked.

Lenzser, chief deputy for the Multnomah County District Attorney's Office, the 10 to 15 volunteer attorneys who will participate in the program are attorneys in the Portland area who will have the experience and official authority to prosecute misdemeanor and felony cruelty cases. Attorneys will be issued a case directly from the County Attorney's Office, which retains jurisdiction.

"We will contact one of the volunteer attorneys off of the list and then get them involved in the prosecution," Mr. Lenzser

said. "They will be deputized for the purpose of trying that one case."

The program has received substantial interest from other cities around the nation including Miami, Dallas, San Antonio, Pittsburgh, Grand Rapids, Mich., and Washington, D.C., as well as other counties in Oregon. "We are hoping to expand this throughout the country," said Ms. Frasch. "It's of real value, and it doesn't cost the taxpayers a nickel."

Last year, the Oregon Humane Society, a private organization funded solely by donations, investigated more than 1,000 animal abuse complaints through their agency alone.

79 Rottweilers

"Animal abuse is not like a property crime, or tax evasion, or a drug offense," said Sharon Harmon, operations director for the Oregon Humane Society. "Preparing a case of animal abuse takes different evidence, and the evidence we have is highly perishable. Letting these cases languish in the courts doesn't serve anyone, and it actually makes the animals a victim for a second time."

Ms. Harmon also points out that beyond the compassion factor, animal abuse cases can involve serious money. She cites a case of a woman in Oregon living with 119 dogs in a school bus. The case dragged out for two years, forcing the state to house those dogs in shelters. The costs exceeded \$125,000 to care for the animals and prosecute the woman, who was eventually convicted.

"The fiscal cost for caring for all those animals [over an extended period] can quickly bankrupt an organization," Ms. Harmon said. "You can quickly overwhelm a shelter with a cruelty case, too."

She offered another case, which is scheduled to go to trial in August, involving 79 rottweilers taken from a puppy mill. "It was fine when they were 3-week-old puppies," she said. "But then they doubled in size, and eventually we had one dog per kennel because they are huge dogs."

Ms. Frasch said she is delighted with what she sees as a progressive district attorney's office and with the quality and caliber of the attorneys who have volunteered for the program. As might be expected, she is passionate about the cause.

"Cruelty to animals, in and of itself, is a crime worthy of vigorous prosecution," said Ms. Frasch, the author of Oregon's anti-cruelty law for animals, which is considered one of the toughest in the nation. "Animals suffer and feel pain just like the rest of us. And we need to take these cases seriously because of the connection between animal abuse and violence against humans." Ms. Frasch said she is hopeful that "we will see less animal cruelty, and the cruelty that does occur [will be] more likely to be reported and more likely to be prosecuted." ☐



Law Scholar Honored: Prof. Paula Samuelson writes about software-related issues.

Prof. Gets 'Genius' Grant

Berkeley, Calif., intellectual property scholar wins.

BY VICTORIA SLIND-FIOR
NATIONAL LAW JOURNAL STAFF REPORTER

THE MONEY IS NOT the big deal about the \$295,000 MacArthur Foundation "genius" grant Prof. Pamela Samuelson was awarded June 16.

"I make a substantial salary, and this is not a situation where I need the resources to do work," said the 48-year-old intellectual property law professor at the University of California at Berkeley School of Law (Boalt Hall).

The recognition that goes with the award is far more important, she said. "It's good news for all of us who are in the law professor community and in the intellectual property legal community. It's something of a vindication that our field is a creative one."

Professor Samuelson holds a joint appointment at the law school and the university's School of Information Management and Systems. Together with three other authors, in 1994 she produced the iconoclastic "Manifesto for the Protection of Computer Software," which found existing forms of intellectual property law inadequate to the task of protecting the rights of those who create the innovations in software fueling today's information-based economic boom.

She was the author of one of the ami-

cus briefs submitted on behalf of Borland International of Scotts Valley, Calif., in its successful U.S. Supreme Court defense of a software copyright case brought by Lotus Development Corp. And for years she has been writing on the topic of the intersection of computer technology and the law for publications aimed not at lawyers but at computer industry professionals.

When he was at IBM Corp., Anthony R. Clapes was often on the opposite side of sometimes vitriolic debates with Professor Samuelson. She advocated interpretations of the law that favored inventors who wanted their creations to be interoperable with existing technology. Mr. Clapes, who now heads the Ridgefield, Conn.-based Technology Network, was more of a strict constructionist, supporting those who wanted to build high walls of legal protection around their inventions.

Mr. Clapes said that while the MacArthur award "is a wonderful thing for her and I am very happy for her," it is not an endorsement of the positions she espouses. "In terms of effect, I don't think the MacArthur award will have a great deal of effect on the acceptance of her ideas. Had I known she was a genius, I would not have said all those terrible things about her." ☐

"It's good news for all of us who are in the law professor community and in the [I.P.] legal community."