

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, )  
on behalf of itself and all others )  
similarly situated, )  
Plaintiff )

v. )

) C.A. No. 11-10230-MLW

STATE STREET BANK AND TRUST COMPANY, )  
Defendants. )

ARNOLD HENRIQUEZ, MICHAEL T. )  
COHN, WILLIAM R. TAYLOR, RICHARD A. )  
SUTHERLAND, and those similarly )  
situated, )  
Plaintiff )

v. )

) C.A. No. 11-12049-MLW

STATE STREET BANK AND TRUST COMPANY, )  
Defendants. )

THE ANDOVER COMPANIES EMPLOYEE )  
SAVINGS AND PROFIT SHARING PLAN, on )  
behalf of itself, and JAMES )  
PEHOUSHEK-STANGELAND and all others )  
similarly situated, )  
Plaintiff )

v. )

) C.A. No. 12-11698-MLW

STATE STREET BANK AND TRUST COMPANY, )  
Defendants. )

MEMORANDUM AND ORDER

WOLF, D.J.

June 18, 2020

On February 27, 2020, the court issued a Memorandum and Order that reduced the amount of attorneys' fees originally awarded to Labaton Sucharow LLP, Thornton & Naumes, and Lief, Cabraser,

Heimann & Bernstein, LLP ("Lieff"), in this class action from \$75,000,000 to \$60,000,000. See Dkt. No. 590 (the "February 27, 2020 Order"). Characterizing the decision to reduce the award to Lieff as an improperly imposed sanction for a violation of Federal Rule of Civil Procedure 11(b), Lieff alone has appealed the February 27, 2020 Order.

The Master, who had been appointed in connection with this matter, states "that counsel will need to be appointed to represent the court in defending the February 27, 2020 Order" and that Lieff should be required to pay the cost of such counsel. Dkt. No. 599 at 13. The Hamilton Lincoln Law Institute's Center for Class Action Fairness, which participated regularly in proceedings before this court, essentially as amicus curiae, asks the court to approve its long pending motion to be appointed guardian ad litem for the class in order to oppose Lieff's appeal. See Dkt. No. 592-1 at 20 of 23. Lieff opposes the appointment of counsel by this court and the imposition of the cost of any such counsel on it. See Dkt. No. 600 at 3.

As described in detail in the February 27, 2020 Order, the issues it addresses arose in meaningful measure because a petition for attorneys' fees in a class action is essentially an ex parte matter and the usual adversary advocacy does not operate to educate the court. Having read Lieff's June 9, 2020 appellate brief, the court believes that the First Circuit would benefit from an

adversarial presentation by counsel to be retained by this court to represent the court and the February 27, 2020 Order.

Therefore, the court intends to retain counsel to represent it and the February 27, 2020 Order in connection with Lief's appeal. It does not intend to impose the cost of such counsel on Lief or any other attorneys in this case.

The court will retain counsel as expeditiously as possible. It will attempt to have retained counsel file an appearance in the First Circuit by July 9, 2020. It will, however, not be possible for retained counsel to respond to Lief's appeal by that date, as is now required by the First Circuit's briefing schedule. See Arkansas Teacher Ret. Sys. v. State St. Bank & Tr. Co., No. 20-1365 (1st Cir.), Dkt. No. 1.

In view of the foregoing, the court hereby:

1. REQUESTS that the First Circuit suspend the July 9, 2020 date for the filing of a response to Lief's appeal, allow counsel retained by this court to file an appearance by that date, and establish a new briefing schedule after retained counsel files its appearance.

2. ORDERS that this Memorandum and Order be transmitted forthwith to the Clerk of the First Circuit.

*Charles P. Hay*  
UNITED STATES DISTRICT JUDGE