

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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

v. )

STATE STREET BANK AND TRUST COMPANY, )  
Defendants. )

C.A. No. 11-10230-MLW

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

v. )

STATE STREET BANK AND TRUST COMPANY, )  
Defendants. )

C.A. No. 11-12049-MLW

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

v. )

STATE STREET BANK AND TRUST COMPANY, )  
Defendants. )

C.A. No. 12-11698-MLW

MEMORANDUM AND ORDER

WOLF, D.J.

September 29, 2020

On February 27, 2020, the court issued a Memorandum and Order awarding \$60,000,000 in attorneys' fees and allocating it among counsel for the class. See Dkt. No. 590; Ark. Teacher Ret. Sys.

v. State St. Bank & Tr. Co., 2020 WL 949885 (D. Mass. Feb. 27, 2020). Neither Lief Cabraser Heimann & Bernstein, LLP ("Lief") nor any other counsel appealed the \$60,000,000 award. However, on March 26, 2020, Lief appealed the award to it of \$15,233,397, which is \$1,139,457 less than the amount it received as a result of the original, \$75,000,000 fee award. See Notice of Appeal (Dkt. No. 596).

Over the objection of Lief, Labaton Sucharow LLP ("Labaton"), and The Thornton Law Firm ("Thornton") (collectively "Class Counsel"), the court allowed the Hamilton Lincoln Law Institute's ("HLLI") motion to permit HLLI to request attorneys' fees after Lief's appeal is decided. See Dkt. No. 613. Class Counsel will oppose an award of attorneys' fees to HLLI.

As recommended by the Special Master, on July 9, 2020, the court approved a schedule for Class Counsel to return funds to be escrowed in January and March 2021, and for the escrowed funds, with the exception of Lief's, to be distributed to the class in January and April 2021. See Mem. & Order (Dkt. No. 619). The court also ordered that the class be given notice of the reduced fee award, and an opportunity to object and assert that the reduction should have been greater. Id. A hearing to consider any responses to the notice was scheduled for September 22, 2020. See Special Master's Response (Dkt. No. 624).

On September 3, 2020, the First Circuit dismissed Lieff's appeal without prejudice, deeming the February 27, 2020 award of attorneys' fees not to be a final order because it might be revised as a result of the notice of the class. See Dkt. No. 631. In doing so, the First Circuit cited García-Rubiera v. Fortuño, 727 F.3d 102, 116 (1st Cir. 2013), in which it stated that "[a] ruling on attorneys' fees is definitive 'where a dollar-specific order for attorneys' fees has been entered and further action on the main case will not require revisiting that order.'" Id. (citation omitted).

No objections to the February 27, 2020 award of \$60,000,000 in attorneys' fees were received. At the September 22, 2020 hearing the Special Master recommended that the repayments that Lieff had been ordered to make in January and March 2021 be distributed to the class in January and April 2021, unless Lieff again appeals and obtains a stay pending appeal. This proposal is persuasive. Therefore, the court intends to order repayment and distribution on the schedule attached hereto as Exhibit A.

At the September 22, 2020 hearing, Lieff stated that it would appeal as soon as a final judgment is entered and would submit the

previously filed brief in support of its appeal.<sup>1</sup> It asked the court to enter judgment now.

The court, however, expressed the concern that because HLLI intends to move for an award of attorneys' fees, which if granted and ordered to be paid by the class, rather than by Class Counsel, would alter the amount of attorneys' fees awarded, the First Circuit might again deem Lief's appeal to be premature. To avert this risk, the court orally ordered HLLI to file its motion for attorneys' fees, which the court intends to decide before entering a final judgment, including a final award of attorneys' fees.

At the September 22, 2020 hearing the court also discussed the possibility of ordering Lief to file its motion for a stay pending appeal now so it could be decided promptly after HLLI's request for attorneys' fees is decided and a final judgment is entered. On reflection, the court is not doing so. However, Lief should be prepared to appeal and move for a stay pending appeal soon after HLLI's request for attorneys' fees is decided.

Therefore, as stated at the September 22, 2020 hearing, it is hereby ORDERED that:

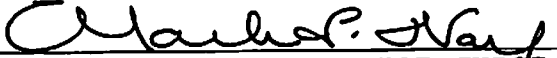
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<sup>1</sup> Lief also stated that it would not oppose the court's request that the First Circuit invite the court to retain counsel to argue that Lief's appeal is unmeritorious. See Sept. 22, 2020 Tr. 26-27 (Dkt. No. 642).

1. HLLI shall, by October 7, 2020, file: (a) a motion for an award of attorneys' fees, one or more affidavits and a memorandum in support of the motion, see Feb. 27, 2020 Mem. & Order (Dkt. No. 590) at 33-40; and, if it wishes, (b) a renewed motion to be appointed guardian ad litem for the class.

2. Any responses to HLLI's motions shall be filed by October 20, 2020.

3. Any reply shall be filed by October 27, 2020.

  
UNITED STATES DISTRICT JUDGE

# **Exhibit A**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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on behalf of itself and all others  
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Plaintiff,

No. 11-cv-10230-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

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THE ANDOVER COMPANIES EMPLOYEE  
SAVINGS AND PROFIT SHARING PLAN, on  
behalf of itself, and JAMES PEHOUSHEK-  
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Defendant.

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**REVISED PAYMENT PLAN**

Date	Purpose/recipient	Total amount paid	Payment by Labaton	Payment by Lief Cabraser	Payment by Thornton	Funds paid to the Class
9/1/20	Lead Counsel to file motion for authorization to conduct First Distribution to ERISA and Public & Other Class members; deadline by which Final Distribution to Registered Investment Companies (RICs) shall be conducted	\$128.75 million				All
1/4/21	First Customer Class Counsel payment into escrow	\$8,607,807.51	\$4,793,742.18	\$569,728.50	\$3,244,336.83	
1/15/21	First Supplemental Distribution to Class and ERISA counsel					\$7,192,413.59 to Class \$1,415,393.92 to ERISA Counsel
3/30/21	Second Customer Class Counsel payment into escrow	\$8,607,807.49	\$4,793,742.17	\$569,728.50	\$3,244,336.82	
4/30/21	Second Supplemental Distribution to Class and ERISA counsel					\$7,192,413.57 to Class \$1,415,393.92 to ERISA Counsel