

STATEMENT OF THE ISSUES

1. Whether an award of attorney fees to lawyers in an antitrust class action that is completely disproportionate to the amount that the class recovers is consistent with South Dakota law.

Pursuant to a settlement agreement in this action calling for an award of plaintiffs' "reasonable [attorney] fees," the circuit court awarded fees and expenses of \$2,278,286, payable to class counsel in cash, which is five times the value of vouchers that were expected to be issued to the class of South Dakota citizens on whose behalf the case was brought.

2. Whether the circuit court was correct to apply a large multiplier to fees of plaintiffs' counsel.

The circuit court doubled the fees of plaintiffs' lawyers -- *i.e.*, applied a multiplier of two -- even though the efforts of plaintiffs' counsel merely piggybacked upon the efforts of the United States Department of Justice and the efforts of counsel for other plaintiffs in other states.

3. Whether the circuit court was correct to apply a multiplier to post-settlement work of plaintiffs' counsel.

The circuit court applied a multiplier to all time logged by plaintiffs' counsel, even though a significant amount of that work was performed after the settlement agreement was executed -- *i.e.*, at a time when there was no risk of non-payment.

4. Whether the circuit court was correct in accepting the high hourly rates claimed by plaintiffs' counsel.

The circuit court expressly found the rates claimed by plaintiffs' counsel to be higher than the prevailing rates in South Dakota, but nonetheless concluded that these rates were reasonable in comparison to the rates of Microsoft's New York counsel.

5. Whether the circuit court was correct to accept an allocation to this South Dakota case of time worked on other cases in other states by plaintiffs' counsel, where the allocation was unsupported by contemporaneous itemized billing records.

The circuit court accepted the assertion by a Chicago law firm that it was proper to allocate to the South Dakota litigation 20% of the time logged by that firm to fourteen cases in eight jurisdictions, even though this allocation was unsupported by contemporaneous itemized billing records.