

Class Action News

# Wells Fargo's \$79 Million ERISA Settlement Gets Judge's Final OK

By Holly Barker

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- Class counsel awarded \$19.75 million, or 25%, for fees
  - Class members to recover about 28% of forfeited funds
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After three years of litigation, Wells Fargo's \$79 million class action settlement to resolve allegations that it illegally made thousands of former employees forfeit deferred compensation is final.

Judge Joseph F. Anderson's order approving the settlement awarded \$19.75 million, or 25% of the settlement fund, plus \$390,053, for fees and costs to Motley Rice LLC, Ajamie LLP, and Izard, Kindall & Raabe LLP for their roles as class counsel. Representative Robert Barry will receive a case contribution award of \$10,000.

The settlement, worth approximately \$31,000 per class member, was fair in light of litigation risks and disputes over whether the agreements constituted so-called "top hat" plans, the U.S. District Court for the District of South Carolina said Wednesday.

Top hat plans are nonqualified deferred compensation plans that are excluded from certain requirements under the Employee Retirement Income Security Act, including vesting rules.

Barry retired from Wells Fargo after twenty years, according to the order. When he started his own financial firm, the bank enforced a forfeiture clause in the benefit plan under which unvested portions of accounts were forfeited when an individual left in order to work for another financial services business. Barry claimed to have lost close to \$200,000 as a result.

What remains of the fund after attorneys fees and costs, Barry's award, and administrative expenses will be allocated to class members based on the amount of their respective forfeitures, the date their forfeitures occurred, and the number of years the class member worked for the bank. Each class member will receive about 28% of their respective deferred compensation, the court said.

Eight of the 2,500 class members objected. Complaints related to the amount of attorneys fees, the adequacy of the fund, and the possible preclusion of additional state law claims for members in California and North Dakota. But Anderson found none of the arguments persuasive.

The relatively low number of objections and apparent support for the settlement cut against a finding of inadequacy, and the issues raised didn't appear to impact a large number of class members, Anderson concluded.

Wells Fargo & Company and affiliated named defendants are represented by Haynsworth Sinkler Boyd PA and Seyfarth Shaw LLP.

The case is *Berry v. Wells Fargo & Co.*, D.S.C., No. 3:17-cv-00304-JFA, 7/29/20.

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