

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

In Re: Medical Informatics
Engineering, Inc., Customer Data
Security Breach Litigation
(MDL 2667)

Case No.: 3:15-MD-2667

This Document Relates to All Cases

**DECLARATION OF IRWIN B. LEVIN IN SUPPORT OF PLAINTIFFS'
LEAD COUNSEL'S FEE AND EXPENSE APPLICATION AND REQUEST
FOR APPROVAL OF SERVICE AWARDS**

I, Irwin B. Levin, state:

1. I am Managing Partner of the law firm of Cohen & Malad, LLP. I am competent to make this Declaration and have personal knowledge of the facts stated in it.

2. I have more than 40 years of experience in complex and class action litigation in state and federal courts, and my firm has served as lead and class counsel on behalf of numerous certified statewide and nationwide plaintiff classes in Courts in Indiana and other states. I have been directly involved in the negotiation, court approval, and administration of numerous class action settlements. I have extensive experience and familiarity with the standards applied by courts for the approval of class action settlements and the approval of class counsel attorneys' fees.

3. The litigation and settlement of this class action has been a long and complex process involving significant time and resources, including sophisticated

lawyering, to bring together numerous parties and government regulatory bodies to achieve a final resolution.

4. During the course of the litigation, the parties engaged in significant discovery and engaged in extensive, arm's-length settlement negotiations, including three full-day mediation sessions with the Honorable Sanford M. Brook (Ret.) of Judicial Arbitrator Group, Inc., with one session involving the participation of numerous multi-state attorneys general.

5. Plaintiffs' counsel has performed discovery, in the form of reviewing documents and deposing two of Defendants' senior management to confirm the financial position of Defendants and to confirm that Defendants had implemented and were continuing to implement certain data security enhancements and required injunctive relief pursuant to the Settlement.

6. After the relief to the Class was negotiated, the parties, under the auspices of Judge Brook, negotiated an agreed upon collective fee and expense amount to be paid by Defendants of \$1,000,000.

7. The fee and expense amount is to be paid in addition to the Settlement Fund and does not diminish the relief to the Class.

8. To date, counsel for Plaintiffs have expended over \$57,000 in expenses and over 2,745 hours in post-MDL time prosecuting this case, leading to a total lodestar exceeding \$1,000,000 and meaning that the requested fee is less than counsel's collective lodestar. This is in addition to the 1,000 hours expended by the

various counsel for Plaintiffs in preparing and filing complaints and performing other work prior to the creation of the MDL.

9. In class action litigation of this type, hourly rates ranging from \$400 to over \$900 are common and have been accepted by courts. These rates are consistent with my experience and knowledge of the rates typically recorded by class action lawyers in contingent fee litigation.

10. The lodestar recorded by counsel for Plaintiffs exceeds \$1,000,000. Thus, counsel will be receiving *less* than their hourly billed time and will not receive a multiplier. Given the financial realities of Defendants' ability to pay, counsel will receive less than what they would have received had they taken this litigation on an hourly, rather than a contingent, basis. Thus, counsel will actually receive a multiplier of less than 1.0 (a reduction in fees) rather than the 2.0 to 5.0 multipliers routinely approved by courts.

11. If the \$1,000,000 fee is approved, this would result in a blended average hourly rate for counsel of less than \$370/hr for post-MDL work. Taking into account the attorneys working on this case and their experience, in Counsel's opinion, this blended rate is well below the hourly rates usually commanded by counsel working on this matter.

12. If the requested fee and expense amount were combined with the Settlement Fund, after deducting the estimated costs of notice and settlement administration, the fee would amount to approximately one-third of the total amount paid by Defendants in the settlement of these cases.

13. In addition, further work will be required to obtain final approval of the settlement and to oversee administration of the settlement, yet no additional fees will be paid for these services.

14. My firm has regularly been awarded a one-third or higher fee in class litigation. In *In re Ready Mixed Concrete Antitrust Litigation*, No. 1:05-cv-00979-SEB-JMS (S.D. Ind.), Cohen & Malad, LLP, along with court-appointed co-lead counsel, secured settlements of nearly \$60 million on behalf of a class of direct purchasers of concrete in the Indianapolis area who were the victims of a price-fixing conspiracy. In considering lead counsel's request for attorneys' fees, the district court found that a fee award was warranted and awarded a fee of one-third. Cohen & Malad, LLP has been awarded fees of one-third of a settlement fund in several more recent cases in this Circuit. *See, e.g., Harvey Property Mgmt. Grp. LLC v. HMS Companies, Inc., et al.*, No. 1:16-cv-3164-WTL-TAB (S.D. Ind.) (awarding Cohen & Malad, LLP one-third of TCPA settlement); *Econo-med Pharmacy, Inc. v. Roche Diagnostics Corp.*, No. 1:16-cv-00789 (S.D. Ind.), ECF No. 67 (awarding Cohen & Malad, LLP and co-counsel one-third of a \$17 million settlement fund after deduction of the class representative service award and costs); *Dubinski v. Sentry Ins.*, No. 1:14-cv-00551-TWP-DKL, 2015 WL 13640103 (S.D. Ind.) (awarding Cohen & Malad, LLP and co-counsel one-third of a \$1.5 million settlement fund); *Selburg v. Virtuoso Sourcing Group, LLC*, No. 1:11-cv-01458-RLY-MJD (S.D. Ind.), ECF No. 61 (awarding Cohen & Malad, LLP and co-counsel one-third of a settlement fund achieved under the Fair Debt Collections Practices Act).

15. In *In re Iowa Ready Mix Concrete Antitrust Litigation*, U.S. District Court, No. C 10–4038–MWB (N.D. Iowa), Cohen & Malad, LLP was appointed co-lead counsel on behalf of a class of direct purchasers of concrete who were the victims of a price-fixing conspiracy in Northwest Iowa. After obtaining settlements in the combined amount of \$18.5 million, lead counsel sought approval of a fee award of one-third of the recovered funds. See *In re Iowa Ready Mix Concrete Antitrust Litigation*, Case No. C 10–4038–MWB, 2011-2 Trade Cases P 77,682, 2011 WL 5547159, at *1 (Nov. 9, 2011 N.D. Iowa). After considering several factors related to the case, the district court found the request for one-third of the common fund to be “quite modest, given the exceptional results in this case,” and extolled the work done by counsel. 2011 WL 5547159, at *2. Based on the results achieved, the district court awarded \$500,000 *more than counsel requested*, for a total fee of 36% of the common fund. 2011 WL 5547159, at *3.

16. Cohen & Malad, LLP has also been awarded fees of one-third in multiple class actions that resulted in substantial recoveries for class members in state court. In *Sally McCarty v. Indiana Construction Industry Trust (“ICIT”)*, No. 49C01-0207-PL-1884 (Marion Circuit Ct.), Cohen & Malad, LLP was retained as counsel to the Insurance Commissioner of the State of Indiana, acting as liquidator of the Indiana Construction Industry Trust. Through settlements and a jury trial, Cohen & Malad, LLP recovered approximately \$24 million for enrollees of an insolvent health benefits provider from Indiana and surrounding states. The State

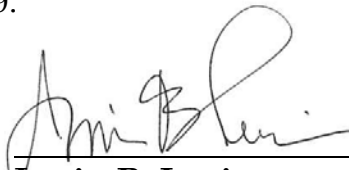
agreed to pay, and the court approved, fees of one-third and 40% from various recoveries in the case.

17. Combining the \$1,000,000 in fees and expenses with the \$2,750,000 Settlement Fund yields a total payment by Defendants of \$3,750,000. The Settlement Administrator estimates that the costs of notice and administration will be approximately \$750,000. Thus, the net benefit would be \$3,000,000, and the requested fee of \$1,000,000 would be equal to one-third, well within the range of the percentages routinely approved by courts in this Circuit and received by counsel in this case.

18. In this case, from the very outset, the Plaintiffs resolved to benefit the entire class, and not only themselves. They consulted with counsel, and without them there would be no recovery at all for hundreds of thousands of absent Class members. Now that a substantial recovery has been made on behalf of the Class, the Plaintiffs' efforts in bringing and litigating this case should be recognized and should be rewarded.

I affirm, under the penalties for perjury, that the foregoing representations are true.

Executed on this 10th day of December, 2019.



Irwin B. Levin