

District Court Issues Order Granting Great-West's Motion for Sanctions

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The U.S. District Court for the District of Colorado issued a judgment in favor of Great-West Capital Management, LLC and Great-West Life & Annuity Insurance Co. (together, Great-West) in a Section 36(b) excessive fee case on August 7, 2020. In the wake of trial, both the plaintiffs and Great-West sought sanctions against the other pursuant to 28 U.S.C. § 1927, under which “[a]ny attorney ... who so multiplies proceedings in any case unreasonably and vexatiously ... may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.” On September 28, 2020, the District Court granted GreatWest’s motion for sanctions, but did not issue a final award.

On August 16, 2022, the District Court issued an order providing that Great-West is entitled to a total of \$1.5 million in fees and related expenses against the two law firms that represented the plaintiffs in the action.

Plaintiffs’ counsel challenged Great-West’s fee request, contending that the attorneys’ fees being sought were excessive, that expert witness fees are not awardable under applicable law and that the expert witness fees being sought were excessive. The District Court rejected those arguments. In concluding that the rates charged and number of hours spent by counsel for Great-West were reasonable, the District Court noted Great-West’s counter-arguments that the plaintiffs sought tens of millions of dollars in damages, “challenged important facets of [Great-West’s] business,” and made claims that would harm Great-West’s reputation if successful. The District Court agreed with the assertion that the time spent on the trial and post-trial proceedings by defense counsel was reasonable, noting that it was a “high-stakes case,” and that Great-West’s victory was “the product of a wellprepared defense team and a well-tried defense case.” The District Court disagreed with plaintiffs’ counsel’s contentions that the expert witness fees are not awardable under 28 U.S.C. § 1927. Despite the absence of any binding Tenth Circuit authority on the subject, the District Court noted that allowing Great-West to recover expert fees would align with the purpose of that statute, which is to compensate victims of abusive litigation practices. The District Court did not address plaintiffs’ counsel’s contention that expert fees in the case were excessive because the District Court had previously capped the total amount available at \$1.5 million.

The District Court found that both firms that provided representation to the plaintiffs should be sanctioned. The District Court stated that there was “no basis for assigning more fault to one firm

over the other,” and that both firms were responsible for “unreasonably prolonging the litigation.”

In conclusion, the District Court found that Great-West was entitled to an award of \$1,403,452.87 in attorneys’ fees and \$96,547.13 in expert witness fees and related expenses. Fees were awarded jointly and severally against both law firms that represented plaintiffs.

The order was issued under the caption *Obeslo et al. v. Great-West Capital Management, LLC*, No. 1:16-cv-00230- CMA-SKC.

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National Law Review, Volume XII, Number 266

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