

## Judge in notorious State Street case requests counsel in Loeff appeal to 1st Circuit

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(Reuters) - U.S. District Judge Mark Wolf of Boston asked the 1st U.S. Circuit Court of Appeals on Thursday to authorize him to hire counsel to defend his February 2020 decision to claw back about \$1.1 million from the fees Loeff Cabraser Heimann & Bernstein received in the notorious State Street class action.

In the 2020 ruling, Wolf ordered class counsel, including Loeff Cabraser, to return a total of \$15 million of the \$75 million he previously awarded them in a \$300 million settlement of claims that State Street overcharged fees on foreign exchange transactions. The ruling followed an intense investigation of the relationship between the lead plaintiff, an Arkansas pension fund, and lawyers from Labaton Sucharow and the Thornton Law Firm. That investigation revealed that Labaton had agreed to pay \$4.1 million to a lawyer, Damon Chargois, who had introduced the Arkansas fund to the firm but had done no work on the case.

The judge found that Loeff Cabraser did not know the payment was improper because it had been told Chargois was acting as local counsel. But Wolf said Loeff Cabraser "should have at least suspected" something was awry.

"The fact that Chargois was being paid so much despite doing no work on this case should have prompted the Loeff lawyers to question Labaton carefully about the matter," Wolf wrote in the February ruling. "Its inaction and acquiescence contributed to the misconduct of Labaton and Thornton."

Labaton and Thornton are not appealing the fee ruling. But Loeff Cabraser has said Wolf unfairly tarred the firm. In addition to asserting that Loeff Cabraser might have uncovered the unsavory payment to Chargois, the judge dinged Loeff for signing on to the memo backing class counsel's original fee request, which, according to Wolf, contained a misleading description of a study of fee awards to class counsel in large cases; and for a declaration referring to Loeff Cabraser's fee rates because, Wolf said, Loeff is a contingency-fee firm that does not regularly charge clients an hourly rate.

Loeff Cabraser previously dismissed an appeal at the 1st Circuit of Wolf's February 2020 ruling because the decision was not yet final. The judge has since entered a final judgment, on Jan. 19, and ordered Loeff Cabraser to return the \$1.1 million, which will be placed in an escrow fund until the resolution of Loeff's appeal.

Lieff filed its notice of a new appeal at the 1st Circuit on Jan. 27. The firm will be represented by law professor Samuel Issacharoff of the New York University School of Law, according to Lieff's Richard Heimann.

Wolf said in Thursday's filing, fashioned as an "order requesting that the 1st Circuit invite (him) to retain counsel," that he believes the appeals court will be better positioned to decide the case if someone acts as an adversary challenging Lieff Cabraser's arguments. He proposed former Maine Solicitor Peter Brann of Brann & Isaacson. Brann, as Wolf noted in Thursday's filing, previously served as an amicus in a 1st Circuit case, 1991's [Weinberger v. Great Northern Nekoosa](#) (925 F.2d 518) involving trial judges' discretion over class counsel fees. Wolf proposed that Brann be paid by the U.S. Courts, not via the class recovery.

The trial judge said in his new filing that Lieff previously mischaracterized his February 2020 decision as a Rule 11 sanction against the firm. Wolf said he did not sanction Lieff but exercised his "inherent, equitable authority" to order the return of \$15 million in total to account for "the misconduct of Labaton and Thornton alone." Lieff's \$1.1 million hit, the judge said, was the result of his re-allocation of the \$60 million among the firms eligible for fees.

The judge said Lieff's previous, since-dismissed appeal shows why the 1st Circuit should allow someone to argue his side of the case. In Lieff's opening brief, Wolf said, the firm argued that it should not have been held responsible for errors in the initial memo in support of class counsel's fee request. Wolf said Lieff Cabraser did not assert that argument in the trial court – Heimann, in fact, presented oral argument on behalf of class counsel – and did not disclose to the 1st Circuit that it was raising that point for the first time on appeal.

Heimann said the firm will not oppose the appointment of counsel for Wolf.

The class action objection lawyers at Hamilton Lincoln Law Institute, which acted as an amicus in the investigation of State Street counsel fees and was awarded about \$61,000 for its efforts, had proposed that it serve as an amicus at the 1st Circuit to defend the class's interests. Ted Frank said he will file a brief "if the appointed counsel misses an argument." Lieff Cabraser has informed the 1st Circuit that it does not intend to challenge the fee award to HLLI.

Lieff Cabraser's opening brief in the new appeal is due on April 14.

The case is [Arkansas Teacher Retirement System v. State Street Corporation](#), No. 1:11-CV-10230 in the District of Massachusetts. The appeal is Lieff Cabraser v. Labaton Sucharow, No. 21-1069 at the 1st U.S. Circuit Court of Appeals.

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## References

[LABATON SUCHAROW LLP; THORNTON LAW FIRM \(THE\)](#)