

JUN 25 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: BEXTRA AND CELEBREX
MARKETING SALES PRACTICES AND
PRODUCT LIABILITY LITIGATION,

No. 09-16928

DC No. M 05-1699 CRB

PLAINTIFFS' STEERING
COMMITTEE,

MEMORANDUM*

Plaintiff - Appellee,

v.

DANIEL E. BECNEL, JR.; et al.,

Appellants.

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Submitted June 18, 2010**
San Francisco, California

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2)(C).

Before: TASHIMA and BEA, Circuit Judges, and READE, District Judge.***

Appellants Daniel E. Becnel, Jr., and the Becnel Law Firm, L.L.C. (together, “Becnel”), appeal the district court’s award of attorneys’ fees in this multidistrict litigation (“MDL”). We review the district court’s fee award for abuse of discretion. *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1296-97 (9th Cir. 1994). Because we see no such abuse here, we affirm.

1. The district court’s decision to strike the \$17,400 in fees recommended by the Special Master for the time billed by Ruche Marino was justified by Becnel’s failure to provide the Plaintiffs’ Steering Committee with Marino’s time records in a timely fashion.

2. We further agree that the negative multiplier applied to Becnel’s lodestar fee was appropriate in light of Becnel’s failure to identify any common-benefit work product that the firm produced over the course of this litigation.

3. Finally, the district court acted within its discretion when it declined to compensate Becnel for time spent on Bextra and Celebrex matters prior to the commencement of the MDL. Becnel’s fee request included only a minimal amount of hours that predated the MDL. Given that the district court consistently applied a

*** The Honorable Linda R. Reade, Chief United States District Judge, Northern District of Iowa, sitting by designation.

pre-MDL cutoff to the fee requests of all firms, its decision was not an abuse of discretion.

For the foregoing reasons, the district court's order awarding common-benefit attorneys' fees is **AFFIRMED**.