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CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 23-0215

DA 23-0215

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 143

PATRICIA TAFELSKI, et al., on behalf of themselves and all others similarly situated,

Plaintiffs and Appellees,

v.

MARK JOHNSON, TAMMI FISHER,

Plaintiffs, Objectors, and Appellants.

v.

LOGAN HEALTH MEDICAL CENTER,

Defendant and Appellee,

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. ADV-22-0108 (D)
Honorable John W. Parker, Presiding Judge

COUNSEL OF RECORD:

For Appellants:

Matthew G. Monforton, Monforton Law Offices, P.C., Bozeman, Montana

For Appellees Patricia Tafelski, et al:

David R. Paoli, Paoli Law Firm, P.C., Missoula, Montana

John Heenan, Joseph P. Cook, Heenan & Cook, PLLC, Billings, Montana

Andrew W. Ferich, Ahdoot & Wolfson, PC, Radnor, Pennsylvania

John A. Yanchunis, Morgan & Morgan Complex Litigation Group, Tampa, Florida

For Appellee Logan Health Medical Center:

Gary M. Zadick, Ugrin Alexander Zadick, P.C., Great Falls, Montana

Paulyne Gardner, Mullen Coughlin, LLC, Devon, Pennsylvania

Submitted on Briefs: December 20, 2023

Decided: July 9, 2024

Filed:

Clerk

Justice James Jeremiah Shea delivered the Opinion of the Court.

¶1 Appellants Mark Johnson and Tammi Fisher ("Objectors"), appeal the March 16, 2023 order granting final approval of the Settlement Agreement ("Final Approval Order"), awarding Class Counsel attorney fees, and denying Objectors' motion for discovery. We address:

> *Issue One: Whether the District Court erred by awarding Class Counsel attorney fees of 33.33% of the settlement fund.*
>
> *Issue Two: Whether the District Court erred by denying Objectors' motion for discovery.*

¶2 We affirm.

PROCEDURAL AND FACTUAL BACKGROUND

¶3 This dispute arises from the third in a series of significant data breaches of defendant Logan Health Medical Center's ("Logan Health") information technology systems, which occurred on November 22, 2021. On February 18, 2022, Logan Health announced the breach of highly sensitive personal identifying information and protected health information belonging to more than 200,000 current and former patients and others affiliated with Logan Health. This information included patient names, addresses, medical record numbers, dates of birth, telephone numbers, email addresses, diagnosis and treatment codes, dates of service, treating and referring physicians, medical bill account numbers, and health insurance information.

¶4 Numerous complaints followed shortly after Logan Health disclosed the breach.[1] Patricia Tafelski filed an Amended Complaint in Cascade County District Court on March 2, 2022. Allison Smeltz filed complaints in federal court on March 9, 2022, and Cascade County District Court on March 14, 2022. Two other plaintiffs filed separate actions in Flathead County District Court on March 11, 2022, and March 16, 2022, respectively. Smeltz moved for appointment of her counsel as interim Class Counsel on March 29, 2022, which the District Court granted on March 31, 2022. Tafelski moved the Cascade County District Court to consolidate the separate actions and appoint her counsel as additional co-lead interim Class Counsel, which the District Court granted on June 21, 2022.

¶5 Logan Health and Tafelski agreed to enter settlement negotiations under the supervision of a former Los Angeles Superior Court Judge, Hon. Louis M. Meisinger (Retired). The parties met on July 19, 2022, to negotiate a potential settlement, but no agreement resulted from the mediation. This led Judge Meisinger to propose a double-blind settlement of $4.3 million for a common fund, to which Logan Health and Tafelski agreed. The substantive terms of the settlement were negotiated and agreed to, leading to the execution of the Settlement Agreement on October 7, 2022. The District Court granted Tafelski's unopposed motion to direct the class notice ("Settlement Notice") and granted preliminary approval of the proposed settlement on December 6, 2022.

[1] Class members, except for Objectors, are referred to collectively as "Tafelski." Counsel for the Plaintiffs are referred to as "Class Counsel."

¶6 The Settlement Notice was distributed to 202,677 putative class members shortly after the District Court granted preliminary approval of the Settlement Agreement. The Settlement Notice informed putative class members of the nature of the lawsuit and the potential risks members faced as a result of the data breach. The Settlement Notice spelled out in great detail the rights and options of the class members. Those receiving the Settlement Notice were provided with information regarding the benefits of the Settlement Agreement, which included: (1) three years of credit monitoring services paid from the $4.3 million Settlement Fund; or, alternatively, (2) payments of up to $125 per class member; and in addition, (3) cash payments of up to $25,000 per class member for reimbursement of out of pocket expenses; and/or (4) cash payments of up to $125 per class member for reimbursement of attested time. The benefits, and the specific procedures for invoking each, were also described in the document. The very next sentence following the summary of these benefits also noted that the settlement fund would be used to pay for the costs of the settlement administration, court-approved service awards for the named plaintiffs, and the fee and cost award for Class Counsel.

¶7 In terms of the rights and responsibilities of class members, the Settlement Notice provided information regarding deadlines and described the legal consequences of filing a claim, requesting exclusion from the class, objecting to or commenting on the Settlement Agreement, appearing at the Final Approval Hearing, and doing nothing. More specifically, class members were informed that filing a claim by the April 3, 2023 deadline was "the only way that you can receive any of the Settlement Benefits provided by this

Settlement." The Settlement Notice explained that by submitting a claim form, class members would "give up the right to sue Logan Health and certain related parties in a separate lawsuit about the legal claims this Settlement resolves." Paragraphs 16 and 17 of the Settlement Notice explained in even greater detail the claims forfeited by opting into the Settlement and led class members to more information posted on the website created and administered under the Settlement. Class members were informed that "the only option that allows you to sue, continue to sue, or be part of another lawsuit against Logan Health, or certain related parties" was to request exclusion by February 13, 2023.

¶8 The Settlement Notice informed putative class members of their right to object or comment on the Settlement Agreement by February 13, 2023, and the substantive and procedural requirements for doing so. The document informed recipients that "[i]f you object, you may also file a Claim Form to receive Settlement Benefits, but you will give up the right to sue Logan Health in a separate lawsuit about the legal claims this Settlement resolves." Later in the Settlement Notice was a paragraph advising of the difference between objecting and requesting exclusion.

¶9 Regarding Class Counsel's fees, the Settlement Notice informed recipients of the identities of Class Counsel, the details of the fee request, and how Class Counsel's fees would be paid. The Settlement Notice also informed class members that the fee request would be made available online or by requesting it from the Settlement Administrator prior to the deadline for commenting, objecting, or requesting exclusion. The Settlement Notice and Agreement also provided the contact information of Class Counsel and invited contact

if the class members needed additional information. In addition, the entire 22-page Settlement Agreement itself was made readily available to class members online, which contained in terms and substance most of the same information conveyed by the Settlement Notice.

¶10 Within approximately one month of distributing the Settlement Notice, 6,026 responses were received. Of those responses, 6,017 people (2.9% of the putative class) submitted claims for benefits, six (0.003% of the putative class) opted out of the class, and three (0.0015% of the putative class) objected.[2] Class Counsel noted that the claims rate was "on par with or exceed[ed] data breach claims rates across the United States" and that because the claims deadline had not passed yet, "numerous additional claims [were] expected."

¶11 On January 13, 2023, Class Counsel filed a motion for attorney fees and expenses, and service awards for the ten class representatives. Objectors filed timely objections on February 8, 2023, arguing the attorney fees sought by Class Counsel—33.33% of the settlement fund—were unreasonable considering the short amount of time between commencement and settlement of the action. Objectors did not object to any of the terms of the Settlement Agreement, or to the benefits and settlement fund created by the Agreement.

¶12 Based on this objection, Objectors sought leave to obtain discovery from Tafelski and Logan Health. Through five requests for production, Objectors sought from Tafelski:

[2] All three objectors were represented by the same counsel and their objections were filed jointly.

1) All timesheets, billing records, or other documents supporting the claim for attorney fees;

2) All documents supporting the claim for expenses;

3) All communications between Tafelski and any person serving as a mediator in this action, including but not limited to settlement briefs and brochures;

4) All communications between Tafelski and Defendant relating to the data breach; and

5) To the extent not already produced in prior responses, all documents relating to any insurance policy applicable to any damages or injuries arising from the data breach, including documents evidencing such policies and communications between Tafelski and Logan Health.

Objectors also sought leave to serve three requests for production on Logan Health. These requests included:

1) All communications between Logan Health and any person serving as a mediator in this action, including but not limited to settlement briefs and brochures;

2) All communications between Logan Health and the Settlement Class, Class Counsel, or other agents relating to the data breach; and

3) To the extent not already produced, all documents relating to any insurance policy applicable to any damages or injuries arising from the data breach, including documents evidencing such policies and communications between Tafelski and Logan Health.

¶13 A final fairness hearing ("Fairness Hearing") was held before the District Court on March 9, 2023, and the Agreement was approved on March 16, 2023. In the District Court's Final Approval Order, the court first overruled Objectors' objection to final approval of the Agreement, reasoning:

> The only objection to approval of the [Agreement] was [counsel for Objectors'] request to "see" the insurance policy to confirm it is a "wasting"

> or "cannibalistic" policy.[3] [Class Counsel and counsel for Logan Health] all confirmed on the record that the policy is an eroding policy. As officers of this Court, I am satisfied with their clear confirmation and no further discovery on this issue or any other discovery is necessary or permitted by Objectors.

The District Court also denied Objectors' motion for discovery in whole. The denial of the discovery motion was based on the court's explanation that:

> Objectors' offered authority in support of the Motion for Discovery, [*Pallister v. Blue Cross & Blue Shield of Mont., Inc.*, 2012 MT 198, 366 Mont. 175, 285 P.3d 562], is factually distinguishable as Objectors did not present any evidence of collusion. [Tafelski] and [Logan Health] objectively presented proof that this settlement was the result of arms-length negotiations facilitated by a retired judge serving as mediator. The requested discovery by Objectors would not serve the best interests of the class as it would cause delay in payment and remedies afforded under the settlement to the class, and could expose Objectors themselves to legal risks.

¶14 The District Court's Final Approval Order granted Class Counsel's request for attorney fees of one-third of the settlement fund, amounting to just over $1.4 million. The court further approved reimbursement of costs and expenses incurred by Class Counsel, raising the total award by another $23,334.12. To this end, the District Court found that:

> The offer of proof from Class Counsel confirmed that significant time and effort went into achieving this settlement. There was no contravening offer of proof by Objectors to contest the degree of work that was performed. The

[3] In a traditional insurance policy, the insurer is required to pay for covered claims up to the policy limits, while the costs of defending the suit are separate. In an "eroding" or "cannibalizing/wasting" insurance policy, the costs of defending the suit are drawn from the policy limits, with the net effect being that the higher the defense costs, the lower the amount that is available under the policy to satisfy a settlement or judgment. *See Rolan v. New West Health Servs.*, 2022 MT 1, ¶ 25, 407 Mont. 34, 504 P.3d 464 (demonstrating how increased defense costs decrease the amount payable under the insurance policy to satisfy an adverse judgment). In the present case, this meant that the longer the litigation persisted—thus increasing the defense costs to Logan Health—the less money Logan Health would have to contribute to the settlement fund from its insurance policy.

assertion by Objectors and their counsel that very little time was spent litigating this action is rejected as unfounded.

¶15 Objectors orally preserved their objections regarding the terms of the insurance policy and the fee award after the District Court ruled from the bench at the close of the Fairness Hearing.[4]

STANDARDS OF REVIEW

¶16 "Where legal authority exists to award attorney fees, we will not disturb on appeal the amount of a party's fee award absent an abuse of discretion." *Gendron v. Mont. Univ. Sys.*, 2020 MT 82, ¶ 8, 399 Mont. 470, 461 P.3d 115 (citations omitted). A district court's discovery rulings are reviewed for an abuse of discretion. *Pallister*, ¶ 9 (citation omitted).

¶17 Our review of a district court's discretionary ruling does not turn on whether we agree with the court, but instead focuses on whether the district court, "in the exercise of its discretion act[ed] arbitrarily without the employment of conscientious judgment or exceed[ed] the bounds of reason, in view of all the circumstances, ignoring recognized principles resulting in substantial injustice." *TCH Builders & Remodeling v. Elements of Constrs., Inc.*, 2019 MT 71, ¶ 15, 395 Mont. 187, 437 P.3d 1035 (citation omitted).

DISCUSSION

¶18 *Issue One: Whether the District Court erred by awarding Class Counsel attorney fees of 33.33% of the settlement fund.*

¶19 Objectors argue the District Court erred by awarding Class Counsel attorney fees and costs because: (1) Class Counsel's failure to provide billing information deprived the

[4] Tafelski requests sanctions pursuant to M. R. App. P. 19(5), contending Objectors' appeal is frivolous. While we conclude the appeal is without merit, we decline to impose sanctions.

District Court of its discretion to choose between methods of calculating and awarding attorney fees; (2) the record does not contain evidence sufficient to support the percentage-based fee award; and (3) the fee award constitutes a windfall for Class Counsel considering the amount of time between commencement and settlement of the action.[5]

¶20 Tafelski responds that the District Court acted within its discretion in selecting the method of calculating attorney fees and awarding Class Counsel fees amounting to one-third of the settlement fund. Logan Health took no position on the fee award before the District Court and advances no argument for or against the award on appeal.

¶21 Objectors rely primarily on our holding in *Gendron* and the authorities cited therein to argue that the District Court abused its discretion in approving an unreasonable award of fees to Class Counsel. In *Gendron*, we announced several factors for courts analyzing fee awards to consider in determining whether the fee award is reasonable. *Gendron*, ¶¶ 13-14. We explained that the factors applicable to the award sought in each case, while largely overlapping, depend to some extent on the method of calculating the fee award. *Gendron*, ¶ 12. Montana recognizes two methods of calculating fee awards: the lodestar method and the percentage of recovery method. *Gendron*, ¶ 12. The lodestar method is calculated by "multiplying the number of hours reasonably spent on the case by an appropriate hourly rate in the community for such work." *Gendron*, ¶ 12 (quoting *Tacke v. Energy West, Inc.*, 2010 MT 39, ¶ 32, 355 Mont. 243, 227 P.3d 601). The percentage of

[5] Objectors have advanced no argument regarding the fairness of the Settlement Agreement under M. R. Civ. P. 23(e), and challenge only the District Court's award of fees and costs under M. R. Civ. P. 23(h), in addition to its denial of the discovery motion.

recovery method "authorizes fees to be paid from a percentage of a common fund or a contingency fee agreement." *Gendron*, ¶ 12 (citations omitted). Consistent with the rule that trial courts have broad discretion in selecting the method of calculation, "[w]e have never endorsed the rule that a district court is required to employ one method of calculation over the other in any particular case." *Gendron*, ¶ 15 (citations omitted). Rather, "[a]s long [as] the district court's decision is supported by an adequate rationale, the court maintains broad discretion in its selection of the method of calculation and consideration of the guiding factors when awarding fees based on the competent evidence presented." *Gendron*, ¶ 15 (internal citations omitted).

¶22 Notably, we have stopped short of requiring contemporaneous time records to support fee requests. *Tacke*, ¶ 38 ("[W]e strongly urge counsel to keep and provide contemporaneous time records in support of attorneys' fees requests in fee-shifting cases, and we encourage district courts to look askance at requests not so supported."). While *Tacke* involved a statutory fee-shifting component absent from this case, our holding there is nevertheless instructive. We acknowledged that the burden of proving the reasonableness of fees rests with the party seeking the fees. *Tacke*, ¶ 34. Counsel for the prevailing party submitted "two affidavits containing a total of seven sentences, expert deposition testimony, and testimony from Tacke's counsel." *Tacke*, ¶ 34. Yet we affirmed the award of fees, explaining that the district court "conducted a careful review of the fee issue and . . . exercised conscientious judgment and did not clearly err in evaluating the evidence or abuse its discretion in approving the fee award." *Tacke*, ¶ 38. This deference

to the district court reflects our oft-repeated recognition that because the district court is in the best position to hear and weigh the credibility of testimony and proffered evidence, we afford the district court's resolution of factual issues great deference. *Mt. West Bank, N.A. v. Cherrad, LLC*, 2013 MT 99, ¶ 38, 369 Mont. 492, 301 P.3d 796 (citations omitted).

¶23 Objectors also premise their argument that the court abused its discretion by awarding Class Counsel a windfall in part on the United States Supreme Court's holding in *Gisbrecht v. Barnhart*, 535 U.S. 789, 808, 122 S. Ct. 1817, 1828 (2002) (noting instances when fee awards were reduced below the recovery contemplated by contingent fee agreements). Objectors state "[i]t is black-letter law that fee awards, including percentage-based awards, must not result in a windfall for attorneys who performed relatively few hours." We first note that the language relied upon by Objectors in *Gisbrecht* is by no means dispositive, because *Gisbrecht* concerned the issue of contingency fee agreements in cases that fall under the attorney fee cap imposed by 42 U.S.C. § 406, and considering the narrow issue before the Court there, the quoted language was dicta.

¶24 While *Gisbrecht* does not demand the result advanced by Objectors in the present matter, its reasoning is informative. While *Gisbrecht* expressed obvious disapproval of unreasonable fee awards and windfalls, *Gisbrecht*, 535 U.S. at 808, 122 S. Ct. at 1828 (citations omitted), it also concluded that "district courts are accustomed to making reasonableness determinations in a wide variety of contexts, and their assessments in such matters, in the event of an appeal, ordinarily qualify for highly respectful review." *Gisbrecht*, 535 U.S. at 808, 122 S. Ct. at 1829.

¶25 The common thread of our jurisprudence, supported by the great weight of authority in state and federal courts across the country, reflects significant deference to trial courts when it comes to fee and cost awards. *See Gendron*, ¶ 15 (compiling cases). The exercise of this discretion, however, remains subject to the requirement that the award of fees and costs be reasonable. *Gendron*, ¶¶ 13-14. "The reasonableness of fees depends on the facts of each case." *Gendron*, ¶ 11 (citation omitted).

¶26 With these principles in mind, we turn to the *Gendron* factors underlying the District Court's reasonableness assessment of its fee award. In *Gendron*, we again endorsed a nonexclusive list of factors for district courts to consider in awarding attorney fees under the percentage of recovery method of calculation, including:

> (1) The novelty and difficulty of the legal and factual issues involved;
>
> (2) The time and labor required to perform the legal service properly;
>
> (3) The character and importance of the litigation;
>
> (4) The result secured by the attorney;
>
> (5) The experience, skill, and reputation of the attorney;
>
> (6) The fees customarily charged for similar legal services at the time and place where the services were rendered;
>
> (7) The ability of the client to pay for the legal services rendered; and
>
> (8) The risk of no recovery.

Gendron, ¶ 14 (citing *Stimac v. State*, 248 Mont. 412, 417, 812 P.2d 1246, 1249 (1991)).

¶27 The District Court made findings as to each of these factors in approving the fee request. Based on the allegations and claims advanced in Tafelski's amended complaint, the court found that the "issues in this data breach case are complex and novel" and that

the issues "are a different order of business outside the scope of what a general practitioner is capable of litigating." The District Court found that the percentage-of-recovery method was proper because it "incentivized Class Counsel to be efficient with the prosecution of this case and in seeking maximum relief to the class, particularly given the cannibalizing/wasting insurance policy at issue." Regarding the character and importance of the litigation, the District Court noted that the case "involved very important issues to the class of data breach and remedies, and the resolution secure[d] significant remedies for the Class Members." The District Court commented in the Final Approval Order that "Class Counsel secured an exceptional result for the class . . . reflect[ing] a significant monetary recovery for the Settlement Class and robust forward-looking relief with respect to Logan Health's business practices." On the experience, skill, and reputation of Class Counsel, the District Court stated, "Class Counsel are experienced in the fields of class actions and data breach cases and possessed the experience, skills, and reputations to achieve the results secured." The District Court noted that fee awards of one-third of the recovery are standard for contingent fee cases in Montana and it cited several other Montana cases in which class counsel have been awarded one-third of the common fund recovery. On the final two *Gendron* factors, the District Court found that individual class members "lacked the means to prosecute these cases individually . . . without a contingency fee agreement" and that "[r]isk in this litigation was profound, both to the Class and to Class Counsel." Except for their contention regarding the amount of work Class Counsel performed, Objectors do not challenge these findings on appeal.

¶28 As for Objectors' argument that the record is insufficient to support the fee award given the lack of billing records submitted by Class Counsel, we note that in addition to the District Court's findings, the Settlement Agreement established a common fund, which favors the percentage of recovery method of calculating the fee award. *See Gendron*, ¶ 17. In support of the fee motion, Class Counsel detailed sixteen broad services performed on behalf of the class and noted the time and expenses they expected to devote going forward. These included Class Counsel's declaration that they:

a. Diligently investigated the circumstances surrounding the Data Breach;
b. Articulated the nature of the Data Breach in detailed complaints;
c. Stayed abreast of and analyzed voluminous reports, articles, and other public materials discussing the Data Breach and describing Logan Health's challenged conduct;
d. Reviewed public statements concerning the Data Breach, including the contents of the breach notification letter sent to impacted Class members;
e. Researched Logan Health's corporate structure and potential co-defendants;
f. Fielded numerous contacts from victims and potential class members inquiring about this matter;
g. Investigated the nature of the challenged conduct at issue here by interviewing potential clients who contacted them;
h. Investigated the adequacy of the named Plaintiffs to represent the putative class;
i. Communicated and met and conferred internally amongst Plaintiffs' counsel regarding the most efficient manner to organize this litigation, successfully engaging in private ordering and self-organizing leadership in this litigation;
j. Served robust discovery requests on Logan Health;
k. Met and conferred with Logan Health about the possibility of attending mediation;
l. Obtained and analyzed pre-mediation discovery from Logan Health to focus settlement negotiations;

m. Drafted and served a detailed mediation statement;

n. Attended a full-day mediation with Logan Health;

o. Continued [to] meet and confer and [pursue] settlement negotiations beyond the mediation to finalize the terms of the Settlement; and

p. Filed a detailed motion for preliminary approval and all of the accompanying notices and forms, which were granted and approved by the [District] Court.

While we have routinely avoided endorsing specific evidentiary requirements to support fee requests, "we have held it improper to award attorney's fees solely on the affidavit of counsel without holding an evidentiary hearing on the matter." *Stark v. Borner*, 234 Mont. 254, 258, 762 P.2d 857, 860 (1988) (citation omitted). The District Court fulfilled that mandate here.

¶29 Beyond the work that Class Counsel has already put in, Objectors' contentions fail to recognize the distinct possibility that in a case like this, Class Counsel's work may not necessarily end with the final approval of the Settlement Agreement. The settlement funds in this case will be administered and Logan Health's promises in the Agreement will be monitored for compliance. It is not inconceivable that issues in this litigation could persist well beyond the execution of the Settlement Agreement. *See, e.g., Southwest Mont. Bldg. Indus. Ass'n v. City of Bozeman*, 2018 MT 62, 391 Mont. 55, 414 P.3d 761 (involving a class action settled in 2005 with issues still being litigated on appeal thirteen years later). Perhaps the administration of this Settlement Agreement will require minimal further involvement, but history demonstrates there is no safe bet in this regard.

¶30 Objectors do not object to any of the terms of the settlement Class Counsel obtained for them—only to the fee Class Counsel is seeking. In that regard, Objectors' argument

basically boils down to an objection that the result was achieved too quickly for Class Counsel to have earned the fee award. This argument ignores the fundamental point that, in terms of maximizing recovery for this particular class, time was of the essence since, as the District Court observed and placed great emphasis on, Logan Health's insurance policy was an eroding policy. With that in mind, the longer Class Counsel protracted the litigation, the less money would remain for the Settlement Fund. Given the complete absence of objections to the terms of the settlement itself, Objectors' objection amounts to a contention that Class Counsel was simply too efficient to have earned their fee.

¶31 Objectors' assert that affirming this fee award "will transform Montana into a class-action magnet." Our case law suggests otherwise. We note Objectors have relied heavily on our recent precedent in *Gendron*, a case in which we affirmed the district court's substantial reduction of Class Counsel's requested fees for the same reason that we are affirming the District Court in this case—a "fail[ure] to show [that] the District Court's decision was arbitrary, decided without employment of conscientious judgment, or in excess of the bounds of reason under the circumstances." *Gendron*, ¶ 17 (affirming reduction of counsel's claimed hours by 20% "for those hours not contemporaneously recorded" after determining counsel's after-the-fact approximation was "incredible and inflated," for total fee award amounting to 16.5% of the fees requested by counsel); *see also Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S. Ct. 1933, 1939 (1983) ("Where the documentation of hours is inadequate, the district court may reduce the award accordingly."); *Tacke*, ¶ 35 (compiling cases).

¶32 At the Fairness Hearing, the District Court elicited argument on the applicable standard for reasonableness of the fee award, settling on the *Gendron* factors. The District Court considered which fee calculation method to employ, concluding the percentage of recovery method was better suited to this litigation on several grounds. The District Court made adequate findings on each of the *Gendron* factors, and those findings are supported by the record. The record demonstrates that the District Court carefully analyzed the parties' positions, attempted to address and assuage Objectors' concerns, and exercised conscientious judgment in approving the Settlement Agreement and fee award. We conclude that the District Court did not abuse its discretion.

¶33 *Issue Two: Whether the District Court erred by denying Objectors' motion for discovery*.

¶34 Objectors claim the District Court erred by denying their motion for discovery because the lack of billing records deprived Objectors of information that could have armed them with additional grounds for objection to the fee request. Both Tafelski and Logan Health respond that because Objectors have provided no evidence of collusion between Logan Health and Class Counsel, the District Court properly denied their motion for discovery.

¶35 Objectors assert that objecting class members have a broad right to discovery based on our acknowledgment in *Pallister* that objectors play an important role in ensuring the fairness, adequacy, and reasonableness of proposed settlements. *Pallister*, ¶ 27. At the outset, we note that one of the key distinctions between this case and *Pallister* is that Objectors in this case have not raised any concerns about the fairness, adequacy, and

reasonableness of the settlement terms themselves, other than Class Counsel's attorney fee award. In *Pallister*, the objector seeking discovery asserted that vital information "'about how many class members exist, the methodology used by [the defendant insurer] to identify class members, [and] the medical bills incurred by class members' was not available to the class members, counsel, the mediator, or the court in determining the fairness of the Settlement Agreement." *Pallister*, ¶ 18. Objectors have raised no such concerns in this case.

¶36 In the Final Approval Order, the District Court distinguished the present case from *Pallister* on the grounds that "Objectors did not present any evidence of collusion." The District Court emphasized that Tafelski and Logan Health "objectively presented proof that this settlement was the result of arms-length negotiations facilitated by a retired judge serving as mediator." Finally, the court concluded that "[t]he requested discovery by Objectors would not serve the best interests of the class as it would cause delay in payment and remedies afforded under the settlement to the class, and could expose Objectors themselves to legal risks."

¶37 We explained in *Pallister* that discovery should have been permitted because:

> [T]he objectors' efforts to obtain information about negotiations and the underlying settlement were stymied at every critical turn. . . . The court issued a protective order precluding the dissemination of any settlement information. Thus, the court's conclusion in its order denying the request for discovery that Pallister had failed to show independent evidence of unfairness begs the question of just how such evidence could be obtained in such a closed proceeding. Moreover, the submission by [the defendant insurer] of affidavits and disclosures of the nature and amount of the settlement claims *on the morning of the Fairness Hearing*—the very information which the objectors had long sought—effectively denied the

> objectors any reasonable opportunity to digest and analyze the information. The last minute production of this information also arguably impaired the court's ability to determine in a comprehensive manner whether the settlement was "fair, reasonable and adequate."

Pallister, ¶ 34 (emphasis in original).

¶38 The crux of our decision in *Pallister* was that "there [must] be sufficient information provided to the class representatives, any objectors, and the district court to enable the parties and the court to reach a well-informed decision of whether the proposed settlement is fair, adequate and reasonable." *Pallister*, ¶ 35. However, we also stressed that our decision was fact-specific and based on "the unique progression of [the] proceedings," which included a protective order precluding the dissemination of any settlement information. *Pallister*, ¶ 34. In this case, the Settlement Notice was disseminated to those impacted by the data breach well in advance of the Final Approval Hearing. The 22-page Settlement Agreement was published online for class members to access and digest. Class members, potential objectors, and opt-outs alike were able to access the entire Settlement Agreement, which included copious information such as the scope and administration of the settlement fund; benefits to the class members, such as credit monitoring, identity restoration, and alternative cash payments; business practice commitments by Logan Health; notice, opt-out, and objection procedures and deadlines; duties of the settlement administrator; descriptions of the claims against Logan Health released under the Settlement Agreement; and information regarding Class Counsel's fee request.

¶39 The District Court placed great emphasis on the burden to the class and delay that could arise from granting Objectors' discovery request. The District Court noted that the

nature of Logan Health's insurance policy, which both Class Counsel and counsel for Logan Health confirmed was a "cannibalizing" or "wasting" insurance policy, placed pressure on the parties to resolve the case efficiently to maximize recovery for the class. The record also shows that in the months between dissemination of the Settlement Notice to the more than 200,000 individuals implicated and the Final Approval Hearing, only three putative class members objected to the proposed settlement and attorney fee request. Given the factual differences between this matter and *Pallister*, as well as the District Court's conscientious consideration of the nature of the litigation and the interests of the class, we conclude the court did not abuse its discretion in denying Objectors' motion for discovery.

CONCLUSION

¶40 The District Court did not abuse its discretion in awarding Class Counsel attorney fees. The District Court did not abuse its discretion in denying Objectors' motion for discovery. We affirm.

/S/ JAMES JEREMIAH SHEA

We concur:

/S/ MIKE McGRATH
/S/ LAURIE McKINNON
/S/ BETH BAKER
/S/ JIM RICE