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Re: IN RE: LITERARY WORKS IN ELECTRONIC DATABASES  
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APPELLANTS' LETTER SUBMITTING  
SUPPLEMENTAL AUTHORITY - FRCP 28(j)

There is a new decision on adequacy of representation. *Drennan v. PNC Bank, NA (In re Comty. Bank of N. Va. & Guaranty Nat'l Bank of Tallahassee Second Mortg. Loan Litig.)*, 2010 U.S. App. LEXIS 19708, \*38-\*40 (3d Cir. 2010) (“*Drennan*”). Appellants rely on an earlier decision in the same case. *In re Cmty. Bank of N. Va. & Guar. Nat'l Bank of Tallahassee Second Mortg. Loan Litig.*, 418 F.3d 277 (3d Cir. 2005). We describe it as “remarkably similar,” and this decision reinforces that view. Brief for Appellants-Objectors, p. 24-25.

The crux of the adequacy question in *Drennan*, which as here involves a proposed settlement for a unitary class, is that the named plaintiffs face a statute of limitations defense that does not apply to a portion of the class. *Drennan*, at \*77-\*78. That is functionally identical to the instant case where named plaintiffs do not face a categorical defense that applies to most of the class. As here, the proposed settlement reflects the issue giving rise to a conflict. *Drennan*, at \*79-\*81. It specifically reflects the issue, as here, by the allocation of compensation in different ways. *Drennan*, at \*25-\*26. *Drennan* holds the defense is relevant to the adequacy

determination. *Drennan*, at \*46-\*50, \*77-\*79. It finds the settlement approval in error because the district court failed to analyze the conflict for its adequacy implications. *Drennan*, at \*57, \*80 (ignores conspicuous evidence of intra-class conflict in the very terms of the settlement).

*Drennan* notes that there is no “harmless error” argument available based on the assertion that the settlement is, notwithstanding the potential conflict, fair. *Drennan*, at \*101-\*102. The parties’ argument that the C Reduction is irrelevant, or harmless, because filed claims show it will not occur is just such an argument.

Lastly, the decision addresses and rejects an argument that an objection was waived in terms that are applicable to the parties’ assertion that consideration of the foreign works treatment has been waived. *Drennan*, at \*79-\*81.

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