

# Attorneys Collect \$23.3M Payday in EDVA Antitrust Settlement

## Virginia Rocket Docket Blog

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On October 18, Judge Rebecca Beach Smith of the Eastern District of Virginia approved a \$70 million settlement in an antitrust case, with more than \$23.3 million awarded to the plaintiffs' attorneys. This case helpfully illustrates the factors courts in the Fourth Circuit analyze when considering class action settlements and showcases the sizable fees plaintiffs' attorneys can obtain. The case is *In re Zetia (Ezetimibe) Antitrust Litigation*, No. 2:18-md-02836-RBS-DEM.

The plaintiffs alleged that the defendants violated state competition and unjust enrichment laws by agreeing to delay generic versions of one of the defendant's drugs. According to plaintiffs, this unlawful agreement resulted in inflated prices for the cholesterol-lowering drug, known as Zetia.

The court determined that the settlement was fair, considering: "(1) the posture of the case at the time settlement was proposed; (2) the extent of discovery that had been conducted; (3) the circumstances surrounding the negotiations and (4) the experience of counsel in the area of class action litigation."

- The first factor was met because the parties reached settlement after trial began, and had already litigated motions to dismiss, discovery disputes, *Daubert* motions, and motions for summary judgment.
- Under the second factor, the court found it relevant that the parties had produced and reviewed millions of pages of documents and dozens of witness depositions.
- The objective of the third factor is to ensure that "counsel entered into settlement negotiations on behalf of their clients after becoming fully informed of all pertinent factual and legal issues in the case." According to the court, that factor was met because counsel had a thorough understanding of the case and settlement was guided by a mediator who was also a former federal judge.
- Finally, examining the fourth factor, the court ruled that the attorneys had years of experience litigating similar cases.

The court also had to assess the adequacy of the settlement, considering: (1) the relative strength of the plaintiffs' case on the merits; (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial; (3) the anticipated duration and expense of additional litigation; (4) the solvency of the defendant[s] and the likelihood of recovery on a litigated judgment; and (5) the degree of opposition to the settlement.

- The court considered the first two factors together. It found that the advanced stage of the case demonstrated the strength of plaintiffs' position because plaintiffs had already survived a motion to dismiss and a motion for summary judgment. However, the court noted that the plaintiffs faced significant risk in proving liability and damages. An outstanding motion *in limine* challenging admissibility of the defendants' evidence also increased the inherent uncertainty of trial for both sides.
- The third factor was satisfied because the trial was anticipated to last five weeks, and the court anticipated that litigation could continue after trial.
- On the final factor, the Claims Administrator sent out over 42,000 post cards and 1,200 emails, but no member of the class objected to the settlement.

Finally, the court determined that the award of \$23.3 million in attorney's fees was warranted. Of that award, almost \$4 million will go to reimburse costs and expenses, and the seven class representatives will each receive \$300,000 in incentive awards.

The court noted that a \$4 million reimbursement award is high, but stated that it was "satisfied that this request is reasonable given the duration of the proceedings, the complex questions of facts and law present in this case, and the advanced stage of proceedings when the parties reached settlement. Moreover, the requested expenses are consistent with expenses courts have awarded in cases of comparable size."

#### Takeaway

While the court expressed some hesitation to grant such a large fee, the case demonstrates that hefty awards may be secured where the litigation is sufficiently complex and the attorneys demonstrate expertise in the relevant practice area.

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