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## \$15M Deal To End Adderall Buyers' Class Action Wins OK

By **Nathan Hale**

Law360, Miami (November 9, 2016, 8:46 PM EST) -- A Florida federal judge approved a nearly \$15 million settlement Wednesday ending a consumer class action accusing Shire US Inc. of paying rival drugmakers to delay selling cheaper versions of its attention deficit drug Adderall, overruling objections that included allegations class counsel padded their fee request.

U.S. District Judge Joan A. Lenard struck down **three objections** in ruling that the settlement, **reached in April** after three years of contentious litigation, is fair, reasonable and adequate. She also granted class counsel's request for attorneys' fees in the amount of 35 percent of the \$14.75 million settlement fund as well as \$1.3 million in costs.

"We're happy to have reached this resolution. It's been a long time coming," class co-counsel Conlee Whiteley of Kanner & Whiteley LLC told Law360 after the fairness hearing in Miami. "The class members should be paid in full, and we hope to implement it quickly."

Plaintiffs Monica Barba and Jonathan Reisman also were each granted service awards of \$5,000, and 10 named plaintiffs in three related cases were granted \$2,500 awards as part of Judge Lenard's ruling, which was issued from the bench.

The settlement administrator has received 23,452 timely claims requesting reimbursement for more than 855,000 prescriptions of the attention deficit hyperactivity disorder drug, with only five class members deciding to opt out of the deal and three class members lodging objections, Whiteley told the court.

The settlement fund is expected to cover all of those claims and have an estimated \$1 million left over, which Judge Lenard approved to be donated to CHADD, a national nonprofit devoted to education and advocacy for people with attention deficit hyperactivity disorder.

The case dates to April 2013, when Florida and Pennsylvania consumers first accused Shire of inking pay-for-delay settlements in sham patent litigation against Teva Pharmaceuticals USA Inc. and Impax Laboratories Inc. to stave off generic competition for Adderall.

The suit contended that the arrangement violated antitrust laws established by the U.S. Supreme Court's *FTC v. Actavis* opinion and caused millions of dollars in damages to consumers. In that case, the high court ruled that patent law doesn't shield so-called pay-for-delay deals from antitrust scrutiny.

Similar lawsuits were later filed in federal courts in New Jersey and Massachusetts. The related suits will be dismissed as part of the settlement agreement, the parties said.

The possibility of a settlement in the case was first revealed in February, just weeks before trial was set to begin in the Southern District of Florida, when the two sides asked the court to vacate all scheduled court dates and deadlines.

In April, when the proposed deal was submitted, the Adderall buyers acknowledged that in order to succeed at trial they would have to overcome Shire's objections to class certification and the drugmaker's pending motion seeking a favorable judgment in the case.

At Wednesday's hearing, class member Steven F. Helfand, an attorney representing himself in the matter, argued that the settlement notice process — which included magazine ads, targeted digital ads and a longer, more detailed notice on a settlement website — was “inadequate” and “ineffectual,” as evidenced by class counsel's acknowledgment that they had conducted a “claims stimulation program.”

The number of claims cited by class counsel was potentially a tiny, insignificant portion when the overall class, whose size was not specified, could have numbered in the millions, Helfand argued.

He also challenged the attorneys' fee and cost requests, suggesting that the 16,000 hours reported by the plaintiffs' legal team, which drew from four firms, was inflated through duplication of work and was billed at stratospheric rates because high-priced partners handled work that should have been taken care of by associates and staff.

“It's mind-boggling,” Helfand said, adding, “You have attorneys' fees so out of proportion they're in outer space.”

Class co-counsel Gillian L. Wade of Milstein Adelman LLP rebutted Helfand's objections, saying the stimulation program was simply an effort to ensure maximum response and that consumer class actions such as the instant case commonly top out at about 1,000 claims or less than 1 percent of an overall class.

Judge Lenard concurred when issuing her ruling, saying, “It's a very good response, from my experience.”

The attorneys' fee request represented a 20 percent reduction from the their Lodestar calculations, Wade said. Far from duplicating work, the plaintiffs' legal team was actually shortstaffed, given the breadth and complexity of the litigation, and the vast majority of work was handled by associates billing at lower rates.

Shire co-counsel Porter F. Fleming of Frommer Lawrence & Haug LLP, who earlier in the hearing voiced the company's support for the settlement agreement, joined class counsel in arguing against Helfand's objection, telling the court that Helfand is a “serial objector” or “professional objector” who has lodged objections in 12 other class actions.

Helfand conceded that he could be called a “professional objector,” a point Judge Lenard noted in her ruling.

Judge Lenard said she found no basis for Helfand's objection but deemed it to have been a validly submitted objection. She also overruled two other objections, filed by Patrick S. Sweeney and his son, and Daniel F. Bachman, which she determined were not made in good faith.

The plaintiffs are represented by Brian T. Ku, Louis Mussman and M. Ryan Casey of Ku & Mussman PA, by Conlee Whiteley, Alan Kanner and John R. Davis of Kanner & Whiteley LLC, by Ruben Honik, Richard M. Golomb and Kenneth J. Grunfeld of Golomb & Honik PC and by Gillian L. Wade and Sara D. Avila of Milstein Adelman LLP.

Shire is represented by David A. Zwally, Edgar H. Haug, John F. Collins, Porter F. Fleming, David S. Shotlander and Michael F. Brockmeyer of Frommer Lawrence & Haug LLP, by Eric Christu and Daniel Barskey of Shutts & Bowen LLP and in-house counsel Chris Allen.

The case is Barba et al. v. Shire US Inc. et al., case number 1:13-cv-21158, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Matthew Bultman and Alex Wolf. Editing by Jill Coffey.

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