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\$12M Atty Fee Slashed In Defective Toilet Settlement

By **Mike Curley**

Law360 (April 24, 2020, 6:15 PM EDT) -- READY FOR SLOT -- A Texas federal judge on Friday cut a request for \$12 million in attorney fees in a settlement between Porcelana Corona De Mexico and consumers alleging the company knowingly sold defective toilet seats, giving class counsel a \$4.7 million award of fees and costs.

U.S. District Judge Amos L. Mazzant rejected both arguments from the class counsel that the \$4.3 million lodestar calculation should get a 2.9 times multiplier and arguments from Porcelana that the lodestar should have a negative multiplier in Friday's order.

The settlement encompasses two class actions filed against Porcelana and its predecessor, Sanitarios Lamosa, over toilets made in 2011 that were allegedly defective, and caused property damage. In the settlement, class members can get up to \$300 to replace the defective tanks and up to \$4,000 for property damage resulting from the alleged defect, according to court documents.

After a settlement was reached in June, class counsel requested the \$12 million in fees, citing the complex, cross-border litigation involved in the three-year case, its risk as a contingency case and that tens of thousands of class members have secured benefits.

Porcelana, however, argued that the lodestar should be reduced through the multiplier as the class counsel ended up giving up on several claims the class initially pushed for, such as punitive and treble damages, and shouldn't be rewarded for time spent on claims that didn't pan out.

Judge Mazzant disagreed with both arguments, saying the time and labor required for the complex litigation was already accounted for in the lodestar itself, adding this case was not particularly novel in its claims or arguments such that it warrants a multiplier.

Likewise, the judge said the risks of a contingent-fee arrangement are also accounted for in the lodestar, and class counsel did not show how the case was "undesirable" aside from the assertion that it was novel and was taken on contingency.

The class and Porcelana most vigorously disputed how the end result should affect the lodestar multiplier, Judge Mazzant wrote, with the plaintiffs touting their success in getting both monetary and non-monetary relief, and Porcelana arguing that the class counsel gave up on several claims.

While the judge found the overall results of the settlement did not justify a multiplier, he wrote that the lodestar does not need to be reduced just because the class counsel did not get everything the plaintiff class requested.

The class counsel's work was done in good faith, the judge wrote, and class counsel is not seeking fees for time spent on punitive or treble damages after those claims were dropped, adding the work that was done was not fruitless.

And while the judge largely allowed class counsel's request for costs and expenses, he knocked it down by about \$2,000 for expenses that were not necessary or reasonable for prosecuting the case, ending up with an award of \$371,000.

N. Scott Carpenter of Carpenter & Schumacher PC, representing the plaintiffs, told Law360 on Friday

that he was happy with the court's order and with the settlement.

"It was an overall excellent result for the entire case, including the attorneys working on it," he said. "It was a long, hard-fought three years of litigation."

Representatives for Porcelana could not immediately be reached for comment Friday.

The plaintiffs are represented by N. Scott Carpenter and Rebecca E. Bell-Stanton of Carpenter & Schumacher PC.

Porcelana is represented by Darrell L. Barger, Melissa Dorman Matthews, Angela S. Gordon and L. Abigail Foreman of Hartline Barger LLP.

The cases are Fessler et al. v. Porcelana Corona De Mexico, S.A. DE C.V., case number 4:19-cv-00248 and Cone et al v. Sanitarios Lamosa S.A. DE C.V. et al., case number 4:17-cv-00001, both in the U.S. District Court for the Eastern District of Texas.

--Editing by Amy Rowe.

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