

# *In re Pfizer Inc. Shareholder Derivative Litigation*

**COURT:** United States District Court for the Southern District of New York

**CASE NUMBER:** 1:09-cv-07822-JSR

**CASE LEADERS:** Jeroen van Kwawegen, Jonathan D. Uslaner

This is a shareholder derivative action brought by Court-appointed Lead Plaintiffs Louisiana Sheriffs' Pension and Relief Fund ("LSPRF") and Skandia Life Insurance Company, Ltd. ("Skandia") and fellow shareholders, in the name and for the benefit of Pfizer Inc. ("Pfizer" or the "Company"), against members of the Board of Directors and senior executives of the Company.

On September 2, 2009, the U.S. Department of Justice announced that Pfizer agreed to pay \$2.3 billion as part of a settlement to resolve civil and criminal charges regarding the illegal marketing of at least 13 of the Company's most important drugs-including the largest criminal fine ever imposed for any matter and the largest civil health care fraud settlement in history.

On November 4, 2009, the Honorable Jed S. Rakoff appointed BLB&G as Lead Counsel in this matter. On November 18, 2009, Lead Counsel filed an amended, consolidated and verified complaint (the "Amended Complaint") alleging that Pfizer's senior management and Board breached their fiduciary duties to Pfizer by, among other things, allowing unlawful promotion of drugs to continue after receiving numerous "red flags" that Pfizer's improper drug marketing was systemic and widespread. The Complaint also asserted an unjust enrichment claim and that the Board had violated Section 14(a) of the Securities Exchange Act (the "Proxy Claims"). A copy of the Amended Complaint can be found under the **Case Documents** section of this webpage.

## **Court Grants Final Approval to Landmark Settlement in Pfizer Shareholder Derivative Litigation**

On April 29, 2011, the Federal District Court of the Southern District of New York granted final approval of the historic settlement of this action. Under the terms of the settlement, Defendants agreed to create a new Regulatory and Compliance Committee of the Pfizer Board that will be supported by a dedicated \$75 million fund provided by the Company. The new committee will have a broad mandate to oversee and monitor Pfizer's compliance and drug marketing practices. In its coverage of the litigation, *The New York Times* quoted former BLB&G partner Mark Lebovitch as stating that this is "one of the largest derivative settlements ever and a good outcome for shareholders."

Under the terms of the proposed settlement, Defendants agree to create a new Regulatory and Compliance Committee of the Pfizer Board of Directors (the "Regulatory Committee") that will exist for a term of at least five years. The Committee will have a broad mandate to oversee and monitor Pfizer's compliance and drug marketing practices and, together with Pfizer's Compensation Committee, to review the compensation policies for Pfizer's drug sales related employees. The new Regulatory Committee's activities will be supported by a dedicated fund of \$75 million, minus any amounts awarded by the Court to Plaintiffs' Counsel as attorneys' fees and expenses. The proposed settlement also provides for the establishment of an Ombudsman Program as an alternative channel to address employee concerns about legal or regulatory issues.

Recognizing that the "arduous settlement negotiations were hard fought" and "took full account of the needs of the settlement class," in its written order, the Court concluded that "the settlement is likely to provide considerable corporate benefits to Pfizer and its shareholders, in the form of a significantly improved institutional structure for

detecting and rectifying the types of wrongdoing that have, in recent years, caused extensive harm to the company."

A copy of Judge Rakoff's Order granting final approval of the settlement can be found under the **Case Documents** section of this webpage.

### **Background**

Following the filing of the Plaintiffs' Amended Complaint on November 18, 2009, Defendants moved to dismiss the derivative action on December 16, 2009. After briefing and oral argument, the Court issued an Order on March 18, 2010, dismissing the Proxy Claims and unjust enrichment claims, but denying the motion to dismiss with respect to the breach of fiduciary duty claims. On July 13, 2010, the Court rendered a formal opinion explaining that demand was excused because the Complaint alleged "misconduct of such pervasiveness and magnitude, undertaken in the face of the board's own express formal undertakings to directly monitor and prevent such misconduct, that the inference of deliberate disregard by each and every member of the board [was] entirely reasonable." A copy of the Court's Opinion can be found under the **Case Documents** section of this webpage.

The Parties engaged in extensive discovery between March 31, 2010 and November 12, 2010, including discovery-related evidentiary hearings before the Court, the production by Defendants and various third parties of millions of pages of documents, the taking of over 30 fact depositions, the exchange of extensive interrogatories and requests for admission, the exchange of seven expert reports and the depositions of Defendants' four experts.

On October 22, 2010, the Defendants served a motion for summary judgment seeking dismissal of all Plaintiffs' claims. On November 12, 2010, Plaintiffs served their opposition papers. On November 15, 2010, the Parties entered into a Settlement Term Sheet setting forth the principal terms of the proposed Settlement. On December 2, 2010, the Parties entered into a Settlement Stipulation Agreement, which can be found under the **Case Documents** section of this webpage. The terms of the proposed settlement are subject to Court approval. Plaintiffs and Defendants have independently requested that the Court grant preliminary approval for the proposed settlement. Plaintiffs submitted an affidavit of corporate governance Professor Jeffrey N. Gordon. Defendants submitted affidavits of former SEC Chairmen Harvey L. Pitt and Richard C. Breeden. Copies of the Gordon Affidavit, the Pitt Affidavit, and the Breeden Affidavit can be found under the **Case Documents** section of this webpage. As described above, the Court approved the settlement in a written decision dated April 29, 2011.

### **Case Documents**

- April 29, 2011 - Order and Judgment Approving Class Action Settlement
- December 14, 2010 - Notice of Pendency and Proposed Settlement
- December 2, 2010 - Stipulation and Agreement of Settlement
- December 14, 2010 - Order Preliminarily Approving Settlement and Setting Settlement Hearing
- December 2, 2010 - Declaration of Richard C. Breeden
- December 2, 2010 - Declaration of Harvey L. Pitt
- December 2, 2010 - Declaration of Jeffrey N. Gordon

- December 2, 2010 - Defendants' Memorandum of Law in Support of Preliminary Approval of Settlement and Affidavits
- December 2, 2010 - Plaintiffs' Memorandum of Law in Support of Preliminary Approval of Settlement
- December 2, 2010 - Plaintiffs' Motion for Preliminary Approval of Settlement
- July 13, 2010 - Court Opinion Granting in Part and Denying in Part Defendants' Motion to Dismiss
- January 22, 2010 - Reply Memorandum of Law in Further Support of Defendants' Motion to Dismiss Plaintiffs' Shareholder Derivative Complaint
- January 8, 2010 - Memorandum of Law in Opposition to Defendants' Motion to Dismiss the Shareholder Derivative Complaint
- December 16, 2009 - Memorandum of Law in Support of Defendants' Motion to Dismiss Plaintiffs' Shareholder Derivative Complaint
- November 18, 2009 - Amended Complaint
- November 18, 2009 - Amended Complaint