

Portfolio Media, Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Shkreli, Retrophin Strike \$3M Deal To End Investor Suit

By **Carmen Germaine**

Law360, New York (February 3, 2016, 2:21 PM ET) -- A New York federal judge has signed off on a \$3 million settlement to end Retrophin Inc. shareholders' claims that now-indicted former CEO Martin Shkreli used company funds to settle legal claims against him and his hedge fund and improperly handed out stock.

U.S. District Judge P. Kevin Castel granted preliminary approval Monday to the \$3 million settlement reached between Retrophin investors and the company and five of its former directors, including Shkreli, ending claims that Retrophin allowed Shkreli to mismanage the company's finances and use its cash to pay off claims against his hedge fund MSMB Capital Management, allegations that also formed the basis for Shkreli's arrest in December.

In the settlement motion filed Friday, the investors said that the \$3 million deal was approximately 7 to 10 percent of their likely recoverable damages, noting that proving stock drops were caused by Retrophin's disclosures of the third-party transactions and irregular stock trading would be difficult.

"While the factual merits of plaintiffs' case are strong, the proposed settlement is an excellent result in light of the risk, expense, and uncertainty of prosecuting this litigation through trial," the motion said.

Lead plaintiff Grachya Kazanchyan first filed his complaint in October 2014, shortly after Retrophin's CFO and chief medical officer stepped down and Shkreli was terminated. The suit, later consolidated with another shareholder suit filed in December 2014, alleged that Shkreli had granted shares of Retrophin stock to other employees in violation of a Nasdaq listing rule requiring stock issuers to obtain shareholder approval of all equity compensation plans.

Kazanchyan then amended his complaint in March 2015 to add claims that Retrophin had failed to disclose a number of transactions designed to benefit Shkreli and MSMB, including sham "consulting agreements" that were used to settle claims against the hedge fund and Shkreli himself.

The allegations were later confirmed, Kazanchyan said, when Retrophin launched a \$65 million suit in August claiming Shkreli breached his loyalty to the company by forcing it to make payments to the nearly bankrupt MSMB.

Further proof came, according to the settlement motion, when Shkreli and Retrophin's former outside counsel, Kaye Scholer partner Evan L. Greebel, were arrested on charges they committed securities fraud by defrauding investors in MSMB and misappropriating Retrophin's assets to pay the hedge fund's

investors.

According to the motion, the investors first reached a settlement in principal with Shkreli, Retrophin and the other directors at the end of November, before the former CEO was arrested.

As part of the settlement, which is set for a final approval hearing on June 10, lead counsel Pomerantz LLP will request attorneys' fees of \$1 million, plus interest and \$48,685 in expenses. The settlement will cover a class of all shareholders who purchased Retrophin stock between June 13, 2013, and Sept. 30, 2014, when Shkreli was fired.

Shkreli also filed a letter Tuesday requesting to substitute Fox Rothschild LLP as his counsel. Shkreli had been represented by Arnold & Porter LLP but had dropped the firm from representing him in his criminal case earlier in the year.

Shkreli also faces a number of other legal battles. The day after he was indicted, he resigned from his position as CEO of Turing Pharmaceuticals AG, where he gained notoriety in August when the company hiked the price of an AIDS drug by more than 5,000 percent, and he was ousted as CEO of KaloBios Pharmaceuticals Inc. several days later.

He also faces a lawsuit filed by KaloBios shareholders who claim his arrest caused the company's stock to drop more than 53 percent.

An attorney for Shkreli, Scott Vernick of Fox Rothschild LLP, said Tuesday that they were glad to end the suit.

"There has been no admission of wrongdoing or liability by Mr. Shkreli, and we are pleased to see that the matter has been resolved," Vernick said.

A representative for Retrophin said in a statement Tuesday that the company was happy with the deal.

"Retrophin is pleased with this settlement, which fully resolves this piece of litigation and is another step forward for the company," the statement said.

An attorney for the investors declined to comment.

The investors are represented by Jeremy A. Lieberman and Murielle J. Steven Walsh of Pomerantz LLP.

Retrophin is represented by Ian Shapiro and Stephanie B. Turner of Cooley LLP. Shkreli is represented by Scott Vernick of Fox Rothschild LLP. Former Retrophin CFO Marc Panoff is represented by Andrew T. Solomon and Paul E. Summit of Sullivan & Worcester LLP.

The case is In re Retrophin Inc. Securities Litigation, case number 1:14-cv-08376, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Jacob Batchelor, Pete Brush and Dani Kass. Editing by Jeremy Barker.
