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**Pfizer Spent a Fortune to Settle a Class Action. Will its Insurers Share the Pain?**

**Jenna Greene**

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With dozens of lawyers from these firms and more, it’s easy to see how Pfizer spent $82 million over 12 years defending a sprawling securities class action.

The plaintiffs claimed that Pfizer and individual corporate officers made false representations and omissions about the cardiovascular risk of its drug Celebrex. In late 2016, Pfizer agreed to pay nearly half a billion dollars to settle the case.

But that’s not where the story ends.

Pfizer had 13 layers of directors’ and officers’ insurance policies providing $225 million in coverage for just such an occasion.

That would be too easy though, wouldn’t it? In a not-entirely shocking move, some of the insurers balked at providing coverage.

Last week, McKool Smith’s Robin Cohen, Adam Ziffer and Marc Ladd plus John Ditomo, Kenneth Nachbar and Barnaby Grzaslewicz of Morris Nichols Arsht & Tunnell scored for Pfizer in the fight for coverage. They won partial summary judgment when a Delaware state court judge held that Arch Insurance Company and U.S. Specialty Insurance Company cannot apply a “specific litigation exclusion” in their D&O policies to deny Pfizer coverage.

The fight provides an interesting backdoor look at the Celebrex class action. One thing that struck me: Pfizer and its officers spent $82 million on a small army of outside counsel--star litigators including Lynn Neuner, Beth Wilkinson, Miguel Estrada, Jason Halper, John Wellschlager, Jennifer Spaziano and George Stamboulidis, according to the docket.

It sounds like a lot of money, but not compared to what the plaintiffs lawyers from firms including Grant & Eisenhofer and Kessler Topaz Meltzer & Check raked in—$136 million in fees plus $20 million in expenses.

Yes, of course the plaintiffs counsel took a risk and would have walked away empty-handed if they didn’t win. But still. That’s almost twice as much as top lawyers from top Big Law firms were paid for their work on the matter.

The two recalcitrant insurers, which were represented by White & Williams; Loss, Rosenthal, Monhait & Goddess; and Judge & Ward, argued that they shouldn’t have to pay up because the suit, Morabito et al v. Pfizer, was related to prior litigation that also involved Celebrex—which would preclude coverage under the terms of the policies.

“Protections of this nature are consistent with the principal purpose of claims-made coverage, which is to insure purely fortuitous risk, and to protect insurers against the risk of insuring a ‘house already on fire,’” counsel for the insurance companies wrote in a complaint seeking declaratory judgment that was moved to Delaware from the Southern District of New York.

But Delaware Superior Court Judge Paul Wallace didn’t buy it. While the prior litigation, Garber v. Pharmacia, was also a securities fraud class action alleging misrepresentations about Celebrex, it was brought by shareholders of Pharmacia prior to Pfizer’s 2003 acquisition of the company.

The Garber plaintiffs alleged the misrepresentations involved the gastrointestinal risks of Celebrex, while the Morabito plaintiffs said the misrepresentations concerned the drug’s cardiovascular risks.

“The wrongs alleged in the Garber and Morabito actions involved entirely different misrepresentations of very different health risks associated with Celebrex,” Wallace wrote. “The underlying actions are not fundamentally identical. And so, the court must find, as a matter of law, that the specific litigation exclusion in the D&O policies does not excuse defendant insurers’ coverage obligations.”

See also: Del. Court Orders Insurers to Provide Coverage in $486M Settlement of Pfizer NY Shareholder Dispute