SeaWorld to pay $65M to settle claims it deceived investors about 'Blackfish' effect

The settlement, which still must be approved by a judge, comes just a week before a jury trial was to begin on the 2014 case

SeaWorld Entertainment announced Tuesday that it has agreed to pay $65 million to settle a longstanding lawsuit alleging that the company deceived investors when it failed to disclose early on the ill effect the anti-captivity documentary "Blackfish" was having on park attendance.

The settlement comes just a week before a jury trial was to begin for the case, which originated in 2014 and was later certified as a class-action lawsuit. In a Tuesday filing with the Securities and Exchange Commission, SeaWorld said that the settlement does not "constitute an admission, concession, or finding of any fault, liability, or wrongdoing by the Company or any defendant."

The proposed $65 million payment, says SeaWorld, is still subject to approval in federal court.

SeaWorld last year had tried to have the class-action case thrown out, but in November U.S. District Judge Michael Anello in San Diego ruled against SeaWorld and concluded that a trial should move forward, stating that "a rational jury could conclude that there has been a primary violation of federal securities law."

SeaWorld said it will fund the total settlement with $45.5 million in insurance proceeds, plus $19.5 million in company cash. To put the settlement in perspective, the $65 million is more than half the nearly $114 million in net income SeaWorld realized during the first nine months of 2019. The company is not due to release financial results for the full year until the end of this month.

In addition to targeting the Orlando-based company, the lawsuit named as defendants former CEO Jim Atchison, former chief financial officer James Heaney, current CFO Marc Swanson, and The Blackstone Group, which purchased SeaWorld in 2009 and later sold its stake in the company in 2017.

Attorneys representing the class of SeaWorld investors said Tuesday their decision to settle was guided, in part, by the potential risks of winning little or nothing at the end of a jury trial.

"We were ready to try this case," said Jeff Angelovich, one of the lead attorneys in the case. "That being said, there are a million things that could happen, and you have to win a unanimous jury verdict, and we had the burden of proof on everything so we could have walked out of there with nothing. We balanced all that with this settlement offer, which guarantees recovery of a substantial sum for the class."

Investors in the long-running litigation claimed that by the time SeaWorld executives finally acknowledged on Aug. 13, 2014 that the 2013 "Blackfish" film and the media exposure surrounding it had dampened attendance, shareholders lost nearly 33 percent of the value of their SeaWorld stock in a single day.

SeaWorld, however, consistently countered that there was no evidence that the company failed to disclose internal information showing that "Blackfish" was negatively impacting attendance. In a quarterly report filed last November, SeaWorld said at the time that "the lawsuit is without merit and intends to defend the lawsuit vigorously; however, there can be no assurance regarding the ultimate outcome of this lawsuit."

Under the settlement agreement, shareholders eligible for a potential payout had to have purchased SeaWorld stock sometime between Aug. 29, 2013 and

Aug. 12, 2014 and have held onto the investment until at least Aug. 13, 2014, the date when SeaWorld eventually disclosed some impact.

According to the proposed settlement, the potential payout per share of SeaWorld stock is estimated to be $1.05, although it could be even lower once attorney fees are approved by the court. Lawyers are seeking fees of up to 22 percent of the settlement fund, plus reimbursement of litigation costs not to exceed $2.8 million. They point out that because it's unknown how many people will seek a portion of the settlement, the per-share distribution could change significantly.

As large as the overall settlement figure is, it made sense for SeaWorld to pay the money and avoid a trial that would have revisited the company's darker days when it was bleeding revenue and losing park visitors quarter after quarter, said analyst Bob Boyd. SeaWorld, which has been investing heavily in thrill rides and roller coasters in recent years, mounted an impressive comeback in 2018, posting the first attendance gain in three years, although at the time it was still far off its 2012 peak attendance of 24.4 million visitors. The company also has yet to eclipse its highest yearly revenue of more than $1.4 billion, recorded in 2013.

"The $65 million is certainly a significant dollar amount, and you don't spend that amount of money lightly," said Boyd, a theme park analyst with Pacific Asset Management. "Continuing to bring up those old issues is definitely a negative, but the bigger risk was they could potentially pay a lot more.

"This marks the end of what was really a pretty dark era for the company."

The company was facing potentially damning evidence, some of which had been released earlier in the form of depositions taken of former SeaWorld employees.

In one such deposition, former Vice President of Communications Fred Jacobs acknowledged on multiple occasions he made false statements to reporters when he told them that SeaWorld had not experienced any harm to its reputation, business or attendance following the release of "Blackfish." When asked in the deposition why he said something he knew to be false, he answered, "I was instructed to answer the question by Jim Atchison."

The $65 million payout is dramatically higher than the $5 million sum that SeaWorld and Atchison paid in 2018 to settle fraud charges by the SEC that they misled investors about the impact "Blackfish" had on the theme park company. Jacobs at the time also agreed to settle a fraud charge and was ordered to pay disgorgement and interest accrual of approximately $100,000. The SEC said at the time that Jacobs was not assessed a penalty because of his "substantial assistance" in the SEC's investigation.

While mediation was attempted in April of last year, no resolution was reached at the end of a full-day session, according to attorneys representing the investors. In January, talks resumed, culminating in a mediator's proposal that the lawsuit be settled for $65 million.

Wall Street on Tuesday seemed unfazed by the settlement. SeaWorld stock rose 1 percent to $35.99 a share at the close of trading.

4:07 PM, Feb. 11, 2020: *New details throughout, including what the deal means for stockholders and other financials.*