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Petrobras, Pomerantz And The Impact Of Corporate Misconduct

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Petrobras has agreed to pay a settlement of U.S. $2.95 billion

After a little more than three years of litigation, Petrobras, the largest natural gas and oil company in Brazil, entered into a settlement agreement to pay $2.95 billion to shareholders as a result of a securities class action filed against the company in December of 2014.

Filed under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Sections 11, 12(a)(2) and 15 of the Securities Act of 1933, this class action case set records across multiple fronts, such as being the largest class action involving a non-

U.S. -issuer and -lead plaintiff. Making its way to being the fifth largest class action settlement ever achieved in the United States, the proposed settlement will be paid in three equal installments over the course of the next year.

“Universities Superannuation Scheme, the largest private pension fund in the United Kingdom, diligently prosecuted this case as lead plaintiff to assist in securing a stunning sum in monetary damages for defrauded investors,” says Jennifer Pafiti, Partner at Pomerantz LLP and one of the attorneys representing the class of defrauded investors.

In line with significant losses to investors, the loss of billions of dollars in kickbacks, as well as tens of billions of dollars in overstated assets, were also a part of this “scheme.” “The scandal involved a decades-long kickback and money-laundering scheme which has ensnared former executives of the company, as well as two former presidents of Brazil and at least 1/3 of Brazilian Congress,” states Pafiti.

Among it’s record-breaking results, this class action stands out from others because, given its size, “there were a number of opt-outs,” explains Pafiti. “One attraction for an investor to opt-out of a class action is to attempt to achieve a recovery with a premium over that achieved had the investor remained a passive class member.”

She continues, “Here, based on the charges taken by Petrobras relating to the opt-out settlements to date, this class settlement represents a significant premium over the settlement of the individual actions on a pro rata basis.”

Pomerantz’s achievement is also significant for the precedent-setting decisions achieved during the litigation. During the class action, defendants appealed to the Southern District of New York court’s opinion certifying classes of both purchasers of Petrobras equity and debt on multiple grounds, including failures to satisfy the requirement of ascertainability, and failure to satisfy the burden of showing that the Petrobras securities traded in efficient markets – both of which were rejected by the court

“In addition, throughout the course of this litigation, plaintiffs achieved important precedents at the Second Circuit Court of Appeals,” said Jeremy Lieberman, Co-Managing Partner at Pomerantz, who oversees the litigation regarding Petrobras, “regarding the ascertainability requirement during class certification, as well as the utility of event studies for establishing predominance in securities class actions.”

Lieberman continued, “These precedents will form the bedrock of class action jurisprudence in the Second Circuit for decades to come. Simply put, this litigation

and its ultimate resolution have yielded an excellent result for the Class."

While Petrobras agreed to the settlement, a statement from their website on Jan. 3rd, 2018 explains that:

"The agreement does not constitute any admission of wrongdoing or misconduct by Petrobras. In the agreement, Petrobras expressly denies liability. This reflects its status as a victim of the acts uncovered by Operation Car Wash, as recognized by Brazilian authorities including the Brazilian Supreme Court. As a victim of the scheme, Petrobras has already recovered $1.475 billion in restitution in Brazil, and will continue to pursue all available legal remedies from culpable companies and individuals."

Satisfied with the result of the litigation, Pafiti says, "The settlement also serves as a reminder to companies, both foreign and domestic, who raise money by issuing stock on a U.S. exchange that when it comes to corporate misconduct, their investors will be afforded the protection provide by the U.S.'s robust securities fraud laws."

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