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BofI Class Attys Get $3.5M Award From $14M Stock-Drop Deal

By **Katryna Perera**

Law360 (October 14, 2022, 8:07 PM EDT) -- A California federal judge granted final approval Friday to a $14.1 million settlement between a class of investors and BofI Federal Bank and awarded the class' lawyers $3.5 million in attorney fees, ending a suit that accused the bank of making false and misleading statements about its underwriting standards, internal controls and compliance that, once revealed, led to a 47% stock drop.

U.S. District Judge Gonzalo P. Curiel issued an **order** stating the settlement achieved an excellent recovery for the class, and lead counsel "tirelessly litigated" the suit on behalf of investors.

The $3.5 million attorney fee award represents about 25% of the settlement fund, according to the order. Judge Curiel said the award is reasonable because class counsel has "exhaustively litigated this case since their appointment in January 2016."

Additionally, a lodestar cross-check confirms the award since lead counsel stated that they spent approximately 26,700 hours on the case, and there have been no objections to the award from class members, according to the order.

The judge also granted on Friday $1.2 million in litigation costs and a $15,000 service award to lead plaintiff Houston Municipal Employees Pension System.

The details of the settlement — which represents between 8.9% and 10.4% of estimated damages in the 8-year-old class action — were announced in **April** after the parties said they'd reached a proposed deal in **February**. That news came six months after a California federal judge certified an investor class in the suit.

The case had been dismissed for failing to identify a corrective disclosure of the alleged misrepresentations, but the Ninth Circuit reversed the decision after finding a related whistleblower suit could be considered a potential corrective disclosure.

In their most recent complaint from 2017, shareholders of BofI, now known as Axos Bank, claimed the bank misleadingly touted its conservative loan underwriting standards, internal controls and compliance infrastructure.

The investors claimed confidential witnesses would testify that the bank, despite what it said in financial forms and proxy statements about its internal controls, consistently overrode the concerns of internal auditors, altered reports and falsely responded to regulatory subpoenas.

The suit cited a 2015 lawsuit from a former BofI internal auditor, Charles Erhart, and articles from the financial website Seeking Alpha as corrective disclosures of the alleged misconduct.

According to the investors, between August 2015 and February 2016, the bank's share price dropped more than 47% as these misrepresentations came to bear.

The suit was **dismissed** in March 2018 after Judge Curiel said the two alleged corrective disclosures — the Erhart complaint and the Seeking Alpha articles — could not establish loss causation.

But in October 2020, the Ninth Circuit **revived the suit**, ruling a whistleblower lawsuit filed by a former mid-level auditor at the company in October 2015 alleging related wrongdoing at BofI may be considered a corrective disclosure.

Representatives for the parties did not immediately respond to requests for comment Friday.

The class is represented by Richard M. Heimann, Katherine Lubin Benson, Michael K. Sheen, Nicholas R. Hartmann, Daniel P. Chiplock, Michael J. Miarmi and Gabriel Panek of Lieff Cabraser Heimann & Bernstein LLP.

BofI is represented by John P. Stigi III, Polly Towill and Alejandro E. Moreno of Sheppard Mullin Richter & Hampton LLP.

The case is Houston Municipal Employees Pension System et al. v. BofI Holding Inc. et al., case number 3:15-cv-02324, in the U.S. District Court for the Southern District of California.

--Additional reporting by Dave Simpson. Editing by Janice Carter Brown.
