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ExamWorks' \$86.5M Settlement Fund Gets Chancery Court OK

By **Vince Sullivan**

Law360, Wilmington (September 12, 2017, 8:58 PM EDT) -- An \$86.5 million settlement received approval Tuesday in Delaware state court, resolving the class litigation pending between shareholders of medical examination provider ExamWorks Group Inc. and the company's officers, directors, financial advisors and legal counsel over its \$2.2 billion acquisition by private equity firm Leonard Green & Partners.

During a hearing in Wilmington, Delaware, class attorney Michael Hanrahan of Prickett Jones & Elliott PA told the court that the settlement was achieved after mediation with a retired federal judge just before the case was set to go to trial in Delaware's Chancery Court, a fact that supported approval of the deal.

"We wanted to try this case," Hanrahan said. "Ultimately, we settled because, from the perspective of the class, the prospects of recovering the \$86.5 million settlement ... outweighed the risks of pursuing the litigation through to trial."

The settlement is actually comprised of two deals, with defendants tied to ExamWorks, purchaser Leonard Green & Partners and financial advisers Goldman Sachs & Co. and Evercore Groups LLC contributing \$40 million in exchange for a release of claims by the class. ExamWorks' legal advisers, law firm Paul Hastings LLP, will provide \$46.5 million.

Stockholder City of Daytona Beach Police and Fire Pension Fund filed a lawsuit in June 2016 alleging the acquisition was "irreparably tainted" by what it says was ExamWorks executive chairman Richard E. Perlman's control of the process. A class of shareholders of the company who held ExamWorks stock between April and July 2016 was certified by the court in February.

Hanrahan said the settlement was the result of dogged work on behalf of the class counsel and that effort justified the payment of legal expenses off the top of the settlement fund, as well as 25 percent of the remaining fund.

"The benefit was achieved by taking this case to the brink of trial in only nine months," Hanrahan said. "Essentially it was nine months of expedited litigation."

He pointed to reams of documents in the courtroom received through the discovery process in the case, which included a waiver of attorney-client privilege by the defendants, evidence of the tremendous

amount of legwork needed to get ready for trial. The attorneys that worked on behalf of the class put in more than 12,000 hours on a contingent basis and expended more than \$500,000 in preparing the case.

"Counsel took 100 percent of the risk in advancing on \$500,000 in expenses and took 100 percent of the risk in incurring more than \$6 million in time," Hanrahan said.

Vice Chancellor J. Travis Laster approved the settlement fund, saying it fell within an acceptable range of reasonableness considering the work put in by counsel to litigate to the pretrial stage and the merits of their claims.

"That's real cash and a meaningful improvement over what the deal price was," Vice Chancellor Laster said. "It's significantly higher than what the special committee was able to negotiate."

Hanrahan said during the hearing that the settlement represented a \$2.17 per share recovery for shareholders on the original \$35.05 deal price, explaining that a special committee of ExamWorks' board was only able to negotiate a nickel increase in the deal price during merger negotiations.

The court also approved the \$575,479.21 in expenses requested by counsel as well as a 25 percent share of the settlement fund, amounting to \$21,481,130, which Vice Chancellor Laster said was right in line with what the court is usually comfortable with awarding in cases litigated to the point of trial.

"I think counsel made this very easy for me by bringing a reasonable and responsible ask," he said.

Counsel for the defendants declined to comment at the hearing.

Paul Hastings, the law firm that advised the special committee set up to vet the deal, was alleged in the complaint to have aided and abetted the ExamWorks leadership in part because it the firm had allegedly also been Perlman's go-to firm for the past 15 years, creating a potential conflict of interest.

The merger was a take-private deal that was allegedly led by ExamWorks management and resulted in the company becoming a wholly-owned subsidiary of a Leonard Green & Partners unit.

The suing shareholders claimed the company's board didn't appoint a special committee to vet the deal until its consummation was a foregone conclusion, resulting in a lower-than-fair deal price for investors.

The City of Daytona Beach Police and Fire Pension Fund is represented by Michael Hanrahan, Bruce E. Jameson, Paul A. Fioravanti Jr. and Samuel L. Closic of Prickett Jones & Elliott PA, and Lee D. Rudy, Michael C. Wagner, J. Daniel Albert and Stacey A. Greenspan of Kessler Topaz Meltzer & Check LLP.

ExamWorks and its accused executives are represented by Bradley D. Sorrels, Jessica A. Montelesse, Steven M. Schatz, David J. Berger and Katherine L. Henderson of Wilson Sonsini Goodrich & Rosati PC.

Goldman Sachs is represented by Kevin G. Abrams, Michael A. Barlow and Alexander M. Krischik of Abrams & Bayliss LLP, and William G. McGuinness, Peter L. Simmons, Samuel P. Groner and Andrew B. Cashmore Fried Frank Harris Shriver & Jacobson LLP.

Leonard Green and its accused units are represented by Raymond J. DiCamillo and Kevin M. Gallagher of Richards Layton & Finger PA and Michele D. Johnson, Kristin N. Murphy, Sarah E. Diamond and Blair Connelly of Latham & Watkins LLP.

Evercore is represented by Elena C. Norman, Kathaleen S. McCormick and Paul J. Loughman of Young Conaway Stargatt & Taylor LLP, and Joel C. Haims, James J. Beha II and Kayvan B. Sadeghi of Morrison & Foerster LLP.

Paul Hastings is represented by William M. Lafferty, Thomas W. Briggs Jr. and Thomas P. Will of Morris Nichols Arshzt & Tunnell LLP, and Paul Spagnoletti, Andrew Ditchfield and Brian M. Burnovski of Davis Polk & Wardwell LLP.

The case is The City of Daytona Beach Police and Fire Pension Fund v. ExamWorks Inc., et al., case number 12481, in the Delaware Court of Chancery.

--Additional reporting by Matt Chiappardi. Editing by Alanna Weissman.

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