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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Auto Parts Co. Inks \$3.3M Deal With Investors In IPO Suit

By **Reenat Sinay**

Law360 (November 12, 2019, 1:55 PM EST) -- Fenix Parts Inc. investors have urged an Illinois federal court to approve a \$3.3 million settlement that would resolve their securities fraud claims over the automotive parts reseller's initial public offering.

The all-cash deal would end the nearly three-year litigation over Fenix's alleged misstatements made ahead of its 2015 IPO about its inventory value, acquisition ability, goodwill value and internal controls, according to the shareholders' bid for preliminary approval filed Friday.

Fenix and its investors came to an agreement with the help of a mediator after the company's attempt to exit the suit was rejected in July 2018, and its **request for reconsideration** of that rejection was **refused in February**, the stockholders said.

"The \$3,300,000 million cash settlement amount is well-within the range of reasonableness under the circumstances to warrant preliminary approval of the settlement and the issuance of notice to the settlement class," they said. "There is no question that continued litigation would have been costly, risky, and protracted."

The investors' counsel at Glancy Prongay & Murray LLP and Levi & Korsinsky LLP plan to ask the court for attorney fees equal to 33.3% of the settlement fund, according to the motion. The attorneys will also request an undisclosed amount in litigation expenses, the shareholders said.

Under the terms of the agreement, the \$3.3 million fund represents 7% of the total estimated maximum damages of \$22 million available to shareholders had the suit gone to trial, which is far above the 2018 median settlement amount of 2.6% of estimated damages, according to the filing.

Eligible class members who bought shares during the IPO or between May 15, 2015, and June 28, 2017, will receive a pro rata cut of the fund based on their reported losses, the shareholders said. The calculation will take into account when each claimant bought or sold Fenix stock, they added.

Additionally, the shareholders asked the court to certify their class for settlement purposes only.

The investors' claims date to early 2017, when they alleged that while drumming up interest in Fenix's 2015 IPO, CEO Kent Robertson and Chief Financial Officer Scott Pettit told shareholders that the auto parts recycler would be acquiring 10 to 15 new companies over the next two years.

Robertson and Pettit entered into an agreement for a proposed \$35 million senior secured credit facility in order to finance those acquisitions, but the company's ability to withdraw funds under the facility was significantly affected by the value of its inventory, the complaint said.

Due to a lack of adequate internal controls, Fenix inaccurately valued its inventory and had to disclose an almost \$15 million loss of inventory value within a year of its registration statement even as the value of its goodwill somehow increased \$24.8 million over the same period, according to investors.

Counsel for the proposed investor class and Fenix did not immediately respond to requests for

comment.

The proposed class is represented by Nicholas I. Porritt, Adam M. Apton and Adam C. McCall of Levi & Korsinsky LLP and Robert Vincent Prongay and Ex Kano S. Sams II of Glancy Prongay & Murray LLP, and Vincent L. DiTommaso and Peter S. Lubin of DiTommaso Lubin Austermuehle PC.

Fenix is represented by Michael J. Diver, Eric T. Werlinger, Michael J. Lohnes and Zachary M. Schmitz of Katten Muchin Rosenman LLP.

The case is *Beezley v. Fenix Parts Inc. et al.*, case number 1:17-cv-07896, in the U.S. District Court for the Northern District of Illinois

--Additional reporting by Dean Seal. Editing by Kelly Duncan.

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