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Indirect Salmon Buyers Hatch \$33M Deal In Price-Fixing Suit

By **Gina Kim**

Law360 (October 6, 2022, 9:50 PM EDT) -- A proposed class of indirect salmon buyers asked a Florida federal judge Thursday to preliminarily bless a \$33 million deal to resolve antitrust claims against Norwegian salmon-farming companies, noting that reviewing documents in the case posed a great challenge considering the communications were largely in Norwegian and had to be translated.

In a 26-page unopposed **preliminary approval motion**, counsel for the proposed class of indirect purchaser plaintiffs who bought salmon from the defendants for resale told U.S. District Judge Rodney Smith that the \$33 million recovery is an "excellent result" that would help everyone avoid lengthy litigation. Counsel also told the judge they plan to seek attorney fees that won't exceed 30% of the settlement fund.

"After more than three years of litigation, plaintiffs secured a \$33 million settlement to compensate a class of indirect purchasers of salmon for defendants' alleged violations of antitrust laws," Thursday's motion states. "Although plaintiffs have engaged in substantial discovery and vigorously litigated this case, much remains to be done absent settlement. The settlement will avoid the uncertainties, risks, and costs of years of continued litigation against foreign defendants who largely conducted their business in the Norwegian language."

The deal covers roughly 400,000 businesses — including restaurants and caterers — that bought salmon for resale from April 10, 2013, to the date of preliminary approval, according to Thursday's motion.

Counsel for the indirect buyers vigorously prosecuted the claims in the litigation, handled extensive discovery issues, and had to share access to a single database containing defendants' and third-parties' documents with a proposed class of direct salmon buyers who also sued the Norwegian salmon-farming entities, the motion states.

"Document review was particularly challenging in this case, as the key documents — for example, communications among defendants — were largely in Norwegian, and thus had to be searched and reviewed in Norwegian and translated into English," the motion states. The indirect purchaser plaintiffs also had to coordinate with the direct purchaser plaintiffs, who reached their **\$85 million settlement** in May, to depose the defendants, and they jointly conducted 10 depositions.

Furthermore, responding to discovery requests from the defendants and producing thousands of documents was no easy feat either, as the indirect purchaser group consists mostly of small businesses, including one sole proprietorship, which made the "document collection burdensome," the indirect purchasers said.

"Most plaintiffs are small businesses without sophisticated recordkeeping system or extra staff to conduct review," the indirect purchasers said. "Nevertheless, these plaintiffs worked diligently to produce documents to defendants. Additionally, class counsel reviewed defendants' productions and oversaw a team of Norwegian language reviewers to do so. IPPs retained an expert to analyze damages and consider the impact of the alleged conspiracy on IPPs, as salmon purchasers downstream from the direct purchasers.

The claims in the case stem from unannounced inspections by the European Commission in February 2019 of Norwegian-owned companies that farm Atlantic salmon. The commission had suspected the

companies may have struck deals to coordinate price hikes, which also prompted a parallel antitrust probe by the U.S. Department of Justice.

The plaintiffs accused the Norwegian entities of essentially leveraging their market power to fix and hike prices of salmon by exchanging pricing and other competitive sensitive information with each other, according to Thursday's motion. The indirect buyers asserted claims under the Sherman Act, and sought damages under laws of 32 different states, the District of Columbia, and Guam.

The named plaintiffs include Portland Hunt & Alpine Club LLC, Prime Steakhouse, Rocca Kurt's Brothers Inc., Stephen T. Deangelis Inc., Amy Mehaffey, Nautical Okoboji LLC, People's Food Cooperative, Classic City Catering and Bama Seafood Inc.

Representatives for the indirect buyers and for the defendants did not immediately return inquiries for comment late Thursday.

The indirect purchasers are represented by Miller Shah LLP, Lockridge Grindal Nauen PLLP, and Zwerling Schachter & Zwerling LLP.

The Mowi ASA entities are represented by Akerman LLP, and Skadden Arps Slate Meagher & Flom LLP.

Grieg Seafood ASA is represented by Freshfields Bruckhaus Deringer LLP, and Toth Funes PA.

Ocean Quality AS is represented by Leon Cosgrove LLC.

SalMar ASA is represented by Homer Bonner Jacobs Ortiz PA, and Quinn Emanuel Urquhart & Sullivan LLP.

Cermaq is represented by Mayer Brown LLP.

The case is In re: Farm-Raised Salmon and Salmon Products Litigation, case number 1:19-cv-21551, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Craig Clough. Editing by Adam LoBelia.