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ARCP class action investors get 50 cents on the dollar: Attorneys

Investors in such large class action claims typically see pennies on the dollar

By Bruce Kelly

The \$1 billion settlement last month between investors and the real estate investment trust formerly known as American Realty Capital Properties Inc. included an unusually large recovery for the claimants of close to fifty cents on the dollar, as opposed to pennies on the dollar, which is typical for such claims.

On Friday, U.S. District Judge Alvin K. Hellerstein in New York gave preliminary approval to the settlements, according to a court filing.

The amount of the settlement was particularly noteworthy, said attorneys representing the class.

“The proposed settlement here represents a great recovery under the circumstances — approximately 50% of lead plaintiff’s estimated recoverable damages of approximately \$2.018 billion,” the attorneys noted in a separate court filing.

According to Cornerstone Research, a litigation consulting group, claimants in such large class action claims commonly see far less money in a settlement.

From 2009 to 2017, the median settlement in a claim by investors of \$1 billion or more was 2.7%, and in 2018 it was 2%. That means investors often received two to three cents on the dollar in such settlements.

Attorneys usually receive a payment of 15% to 25% of the final settlement in such class action claims.

The company, now known as Vereit Inc., has been embroiled in litigation for almost five years. In October 2014, the company, known by its former ticker symbol ARCP, admitted to an accounting error of \$23 million, which set off a selling frenzy in the company’s stock.

The high for ARCP’s stock that month — before the accounting issue was revealed — was \$12.48 per share. The low that followed was \$7.85, a swing of 37%.

Lawsuits ensued, with attorneys for investors claiming that ARCP had misstated financial metrics to inflate its financial results and fuel acquisitions.

On Monday afternoon, Vereit’s shares were trading close to \$10.

In July, Nicholas Schorsch and his firm AR Capital, which managed the REIT, agreed to pay \$60 million in penalties to settle Securities and Exchange Commission charges that he, the firm and a partner wrongfully obtained millions of dollars in connection with REIT mergers that were managed by AR Capital.

“The \$1 billion settlement is extraordinarily impressive, and it’s also a little bit of a black eye for the SEC,” said Andrew Stoltmann, a plaintiff’s attorney who was not involved in the class action lawsuit. “Given the amount of money in the class action settlement, it appears the SEC could have extracted a larger pound of flesh.”

A spokesman for the SEC, Ryan White, declined to comment.

Vereit will pay \$738.5 million of the \$1.025 billion class action settlement. American Realty Capital, led by Mr. Schorsch, will pay \$225 million, with the company’s former chief financial officer Brian Block, who was found guilty of securities fraud in 2017, paying \$12.5 million. The auditor for the firm at the time of the scandal, Grant Thornton, will pay \$49 million.