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Rite Aid Settlements Yield Millions

*Three Agreements
OK'd by Court*

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The accounting scandal that caused Rite Aid Corp.'s stock price to plummet in March 1999 has resulted in \$318 million in settlements to shareholders, now that the KPMG accounting firm has agreed to pay \$125 million.

And in a related case, a federal judge last week approved a settlement worth nearly \$68 million in a class-action ERISA suit brought by Rite Aid workers who complained that the company imprudently allowed their pension plans to invest in Rite Aid common stock when it was not a proper or suitable investment.

In the first of the three settlements, Rite Aid agreed to pay a total of \$193 million. At first, the settlement was structured so that Rite Aid would pay \$43.5 million in cash — nearly all of its available insurance — as well as at least 20 million shares of Rite Aid common stock promised to be worth at least \$149.5 million and possibly more if the stock performed well in the immediate future.

Since then, Rite Aid has pledged to pay the entire settlement in cash.

U.S. District Judge Stewart Dalzell approved the \$193 million settlement in August 2001, but several parties appealed, including KPMG.

Now KPMG has agreed to drop its appeal and to pay \$125 million to settle all claims against it.

In the suit, investors alleged that between May 1997 and March 1999, Rite Aid por-



DALZELL: SETTLEMENT IS FAIR

trayed itself as a company with “very strong” profitability and said it was in the midst of a major program to expand and modernize its operations.

In fact, the suit alleged, the modernization and expansion programs were “encountering significant problems.”

But instead of publicly disclosing the problems, the suit alleged that Rite Aid engaged in a variety of improper accounting methods designed to hide its true financial picture by both artificially inflating its earnings and deflating its expenses.

Over a three-year period, the suit alleged, Rite Aid succeeded in artificially inflating its after-tax earnings by more than \$1.6 billion.

The suit also alleged that KPMG was “aware of” and “recklessly disregarded” Rite Aid’s improper accounting practices.

In each of the three years, the suit said,

KPMG issued “unqualified auditor’s opinions” that said Rite Aid’s financial statements conformed with generally accepted accounting principles.

The public first learned of the problems in March 1999 when Rite Aid announced that its fourth-quarter earnings would be less than expected. The news caused stock prices to drop from \$37 per share to \$22.56.

Soon after, investors learned that the SEC was investigating Rite Aid’s accounting practices. The company responded by restating its financial results for the previous three years.

But the suit alleged that the true extent of Rite Aid’s problems weren’t revealed until November 1999, when a series of disclosures rocked the company and caused its stock price to plummet down to just \$5.38 per share.

In the two shareholder settlements, lead plaintiffs’ attorneys Sherrie Savett of Berger & Montague in Philadelphia and David Bershadt of Milberg Weiss Bershadt Hynes & Lerach in New York will be entitled to attorney fees equal to 25 percent of the settlement funds.

Dalzell last week issued an order granting preliminary approval of the KPMG settlement, clearing the way for lawyers to notify the class.

In a separate suit, Rite Aid workers claimed that the company breached its fiduciary duty under ERISA by allowing their pension plans to invest in Rite Aid stock during the period that the company was inflating its earnings.

Dalzell sent the lawyers in the ERISA suit to U.S. Magistrate Judge Jacob P. Hart for settlement talks.

Now Dalzell is applauding Hart for his eight months of work that resulted in a settlement that incurred almost no objections.

"The settlement of this highly-complex matter was only reached because of the patience, stamina and creativity of Judge Hart," Dalzell wrote.

Under the terms of the settlement, Rite Aid will pay about \$10.7 million in cash and promised to maintain its current formula for matching employee contributions through 2006.

Lawyers estimated that matching contributions to the 401(k) plan will exceed \$25 million per year, for a total in excess of \$125 million from 2002 through 2006. For class members who remain participants in the 401(k) plan and continue to contribute a portion of their pay to that plan, it is estimated that more than \$30 million will inure to their benefit.

Rite Aid also agreed in the settlement that if its matching contributions for any calendar year from 2003 through 2006 are less than the matching contributions paid in 2002, the

company will contribute up to \$1.75 million more to the 401(k) plan.

The settlement also calls for "structural changes" in the administration of Rite Aid's employee benefit programs, including the appointment of an institutional trustee and an administrative committee for the plans.

An economist testified that the present value of the settlement is \$67.7 million.

In an opinion handed down last week, Dalzell said he easily concluded that the settlement was fair.

"No reasonable person could come to any other conclusion than that this settlement is fair to the class. Given the extraordinarily complex and difficult problems this ERISA litigation presents, a compromise that permits very significant value to be added to the plans is highly desirable for the class," Dalzell wrote.

"A total settlement value of \$67.76 million is hardly trivial, and the non-monetary struc-

tural aspects of the settlement offer the plan's members future assurance that their benefits will be better protected," Dalzell wrote.

The plaintiffs in the ERISA suit were represented by attorneys Steven R. Fischer of Steiker & Fischer in Philadelphia; Steven J. Ross of Atlantic Beach, Fla.; and Ronald S. Kravitz, Randall J. Sunshine and Jeffrey C. Engerman of Liner Yenkelevitz Sunshine & Regenstreif in Los Angeles.

KPMG was represented by attorneys John W. Frazier and John E. Caruso of Montgomery McCracken Walker & Rhoads, along with attorneys Allison J. Ross, Rachel J. Fremmer, Tariq Mundia, Michael R. Young, John R. Oller, Richard L. Klein and Joseph J. Baio of Wilkie Farr & Gallagher in New York.

Rite Aid was represented by attorneys William A. Slaughter and Alan J. Davis of Ballard Spahr Andrews & Ingersoll. •