

Judge Initially Approves \$2M Settlement In Body Spray Suit

By **David Minsky**

Law360 (June 9, 2023, 9:31 PM EDT) -- A Connecticut federal judge has granted preliminary approval for a \$1.95 million settlement in a class action suit brought by consumers alleging that aerosol deodorants manufactured by the Henkel Corp. and Thriving Brands LLC contained high levels of benzene, a chemical linked to certain types of cancer.

In an **order** filed Thursday in the U.S. District Court for the District of Connecticut, U.S. District Judge Alvin W. Thompson gave first approval for the settlement between class representatives Jason Goldstein, Brad Davis, Maria Lazo, Mosanthony Wilson and James Corsey and the two companies that manufactured two varieties of Right Guard spray-on deodorant products which allegedly contained benzene.

"The court preliminarily finds that the class representatives and class counsel have fairly and adequately represented and protected the interests of the absent settlement class members," Judge Thompson said in the order.

Attorneys for the plaintiffs and defendants did not immediately respond to requests for comment on Friday.

The agreement provides \$3.00 for each of the covered products with a proof of purchase, or \$1.75 each without proof, for members of the settlement class, if the products were purchased between Nov. 19, 2018, and June 8, 2023, and a maximum of five covered products can be claimed per household. The covered products include Right Guard Sport and Right Guard Xtreme deodorant spray.

Each class representative receives additional compensation of up to \$1,000 for their time, effort and risks in pursuing the litigation, while class attorneys will receive \$650,000. The lawsuit is dismissed with prejudice, according to the agreement.

Judge Thompson set a final approval hearing in federal court on Dec. 13 in Hartford, Connecticut.

The class action originated in the Southern District of Florida in November 2021 with a lawsuit filed by Goldstein, followed by similar lawsuits in other states before they were moved to and consolidated in Connecticut, court records show.

Goldstein's lawsuit followed a citizen petition filed with the U.S. Food and Drug Administration by Valisure LLC in November 2021, according to the settlement agreement, which stated that Valisure had performed tests on batches of body spray made by various manufacturers, and that the tests detected levels of benzene in several of the products — including in Right Guard products.

Henkel Corp. manufactured and sold Right Guard products before Thriving Brands purchased the rights in June 2021, according to the settlement agreement.

In his complaint, Goldstein said that benzene is a component of petroleum products and cigarette smoke and has been classified as a chemical that is associated with blood cancers such as leukemia.

The companies said that the plaintiffs didn't offer any actual support that the Right Guard products they purchased actually contained benzene and only concluded that they did due to the Valisure

report, according to a motion to dismiss the class action complaint in July 2022.

"The [class action complaint] makes clear any claim regarding the presence of benzene arises solely from the Valisure petition, which at best establishes the detection of benzene in some lots of a handful of products, none of which are alleged to have been purchased by plaintiffs," the motion stated. "Even Valisure admitted the testing in the petition resulted in 'significant batch-to-batch variations' in benzene levels, with 'many batches of body spray contain[ing] no detectable benzene level' at all."

The plaintiffs are represented by Charles E. Schaffer of Levin Sedran & Berman LLP, Sarah Westcot of Bursor & Fisher PA, Nick Suciu of Milberg Coleman Bryson Phillips Grossman PLLC, Jason Sultzer of The Sultzer Law Group and Mark Reich of Levi & Korsinsky LLP.

Henkel Corp. and Thriving Brands are represented by Keith E. Smith and Toby S. Soli of Greenberg Traurig LLP.

The case is Jason Goldstein et al. v. Henkel Corp. et al., case number 3:22-cv-00164, in the U.S. District Court for the District of Connecticut.

--Editing by Dave Trumbore.