

Judge OKs \$2.4M Deal For Fla. Students In COVID Tuition Suit

By **Nathan Hale**

Law360 (September 9, 2021, 9:36 PM EDT) -- Florida's Barry University will pay \$2.4 million to end a student's class action over its refusal to refund tuition and fee payments when it closed its campus in spring 2020 due to the COVID-19 pandemic, marking the first settlement approved in a wave of similar cases, according to the court.

The agreement will pay the more than 6,000 class members approximately 60% of their projected recoverable damages in exchange for releasing all related claims against the Miami Shores-based private university. Named plaintiff Marlena Rosado sued the school in May 2020 for breach of contract and alternatively for unjust enrichment after it denied her request for a pro-rated tuition refund and full refund for fees related to on-campus services after it transitioned to remote learning.

U.S. District Judge Jose E. Martinez, who granted final approval Tuesday, praised the deal and highlighted the contingency-fee basis work by class counsel from Kopelowitz Ostrow Ferguson Weiselberg Gilbert; Pearson Simon & Warshaw LLP; and Tycko & Zavareei LLP, whom he awarded \$800,000 in attorney fees, representing one third of the settlement fund, plus about \$8,500 in costs.

"The case involved difficult factual and legal issues arising from a global pandemic. Given the evolving law on disputes arising from COVID-19, class counsel faced a significant risk of nonpayment," the judge said. "Despite the strong defenses presented by Barry, class counsel swiftly obtained an excellent result for the settlement class members."

"The court also recognizes that suing a university for adjusting to the COVID-19 pandemic to safeguard the health of its students and faculty is not the most desirable case," he added.

The court denied a request for a \$5,000 service award for Rosado as class representative, citing the Eleventh Circuit's ruling last year in *Johnson v. NPAS Solutions LLC*. Judge Martinez said he would not reserve jurisdiction to let class counsel renew the request if *Johnson* is reversed, as some courts have done, citing his concern that that could delay distribution of settlement funds.

The settlement requires Barry to pay \$2.4 million into a common fund within 15 days of the final approval, according to the order. The settlement covers a class of all students who were enrolled during the class period as well as others who were charged tuition or fees for a variety campus services — such as room and board or health care — on behalf of students.

Class members can choose to receive either cash payments, tuition credits or a credit for unpaid balances owed to Barry. Barry has the option to apply the settlement payment to any outstanding balance, and any cash payments not deposited within 90 days will revert to the university, the order said.

The court granted preliminary approval to the settlement on March 30. The settlement administrator contacted 100% of 6,077 individuals identified as settlement class members, and class counsel confirmed that there had been just one opt-out and no objections to the settlement, the court said.

"The 'great weight' the court gives 'to recommendations of counsel for the parties, given their considerable experience in this type of litigation,' and the lack of opposition to the settlement, is evidence of the fairness, reasonableness, and adequateness of the settlement," Judge Martinez said.

In further explaining his analysis of the agreement, Judge Martinez noted that it was reached after a month of settlement talks following a daylong mediation session. Prior to mediation, the parties had actively litigated the case, with the court denying Barry's motion to dismiss Rosado's amended complaint.

The judge also noted the complexity and expense of the litigation and uncertainty over the likely outcome as additional reasons for supporting a settlement.

"Although the claims asserted are not particularly unique, litigating the complex factual and legal issues presented by COVID-19 — the basis of this dispute — would have been difficult and time-consuming," he said. "This is especially true here, where recently enacted legislation called into question the viability of plaintiff's claims."

The order referenced a state law signed by Gov. Ron DeSantis in June that provides immunity for colleges and universities for taking reasonable steps to keep students, faculty and staff safe during public health emergencies like the ongoing pandemic. The applicability of the law to pending cases and its constitutionality have been **disputed in similar cases**.

Attorney Hassan A. Zavareei of Tycko & Zavareei LLP applauded the other side for coming to the table.

"We are proud of the settlement and pleased that Barry University stepped up and did the right thing for its students," he told Law360.

Counsel for Barry University said late Thursday that he had to consult his client before commenting.

Rosado is represented by Jeff Ostrow, Jonathan M. Streisfeld, Joshua R. Levine and Kristen Lake Cardoso of Kopelowitz Ostrow Ferguson Weiselberg Gilbert; Daniel L. Warshaw of Pearson Simon & Warshaw LLP; and Anna C. Haac of Tycko & Zavareei LLP.

Barry University is represented by Mendy Halberstam, Stephanie Leigh Adler-Paindiris and Allison Gluvna Fol of Jackson Lewis PC.

The case is Rosado et al. v. Barry University Inc., case number 1:20-cv-21813, in the U.S. District Court for the Southern District of Florida.

--Editing by Rich Mills.