

Sea World Agrees to Pay \$5 Million in ‘Blackfish Effect’ Case

By Mihir Zaveri

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When the 2013 film “Blackfish” highlighted the story of Tilikum, a captive orca that killed a trainer, it spurred widespread anger over the confinement of the whales by companies like SeaWorld.

There were months of news articles. Angry musicians refused to perform for SeaWorld’s parks. Attendance dipped.

It was all part of what regulators are calling “the Blackfish effect” — a spiraling crisis that threatened SeaWorld’s reputation, according to the U.S. Securities and Exchange Commission.

Privately, SeaWorld officials were deeply concerned. But in public, for months after the documentary was released, the company denied or played down “the Blackfish effect,” regulators said. The law requires publicly traded companies to inform investors of circumstances that could materially affect their business.

This week, the S.E.C. announced that SeaWorld Entertainment and its former C.E.O. have agreed to pay \$5 million in fines “to settle fraud charges for misleading investors about the impact the documentary film Blackfish had on the company’s reputation and business,” according to an agency statement.

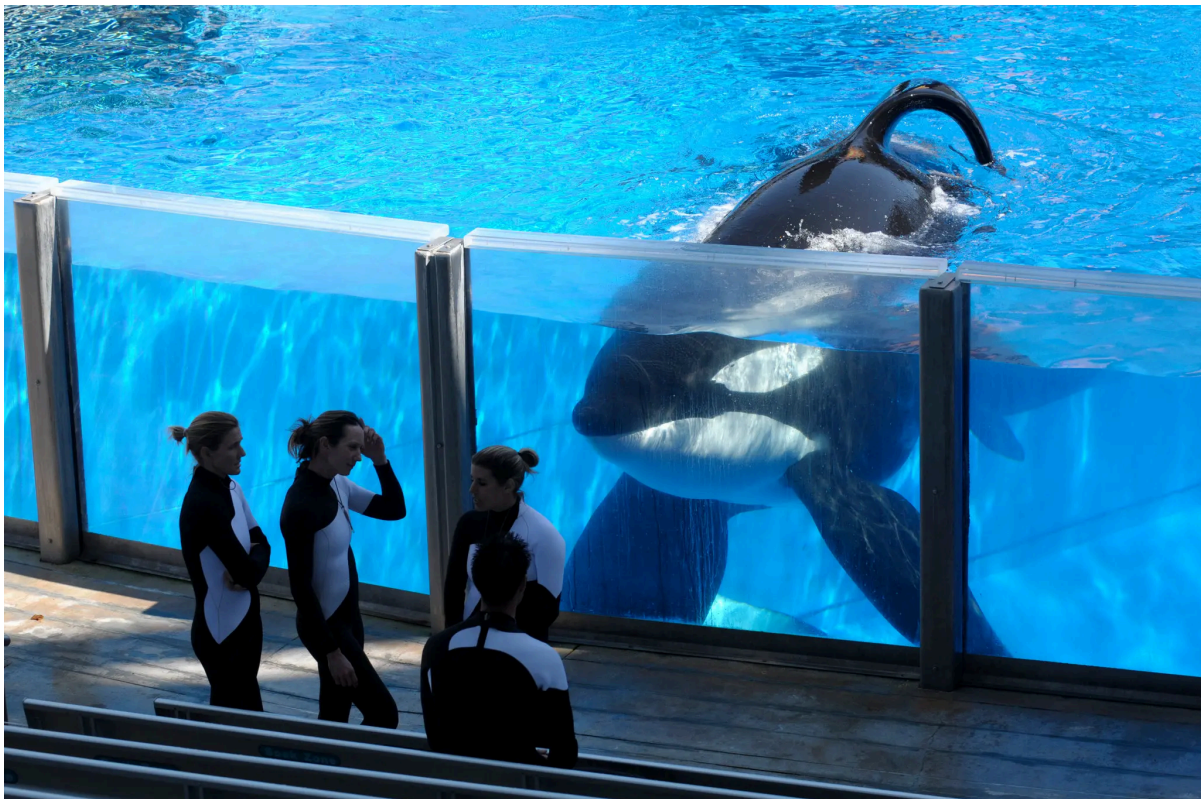
SeaWorld has neither admitted nor denied the allegations. In a statement Wednesday, the company said it was happy to have “resolved this matter and to continue to focus on delivering superior guest experiences, world-class animal care and rescuing animals in need.”

The S.E.C. declined to comment beyond the statement and its court filings. In 2017, the company revealed that the United States Justice Department was criminally investigating statements by SeaWorld and some of its executives about the impact of “Blackfish.”

The Justice Department declined to comment Wednesday. A SeaWorld spokesman did not respond to questions about that investigation.

The news of S.E.C.’s settlement, which would still need to be approved by a federal judge, comes as a debate continues about the captivity of the highly social, highly intelligent whales. Once showcase performers at marine parks, they now are a source of perpetual criticism.

“Blackfish,” directed by Gabriela Cowperthwaite, focuses on the killing of a trainer, Dawn Brancheau, by Tilikum in Orlando, Fla., in 2010. “Blackfish” looked at the mental state of whales taken from their pods in the wild and raised at marine parks.



Tilikum, the captive orca who killed a trainer at SeaWorld in Orlando, Fla., in 2010 and was the subject of “Blackfish,” died in 2017. Phelan M. Ebenhack/Associated Press

SeaWorld responded with a public-relations campaign, including a letter to movie critics that said “Blackfish” was misleading and agenda driven.

In 2016, SeaWorld said it would phase out orca performances and stop breeding the animals. Tilikum died last year. SeaWorld now has 21 whales at parks in Orlando, San Diego and San Antonio, Travis Claytor, a spokesman, said. He said the animals have lived in human care for most of their lives.

“The best place for these killer whales is to be with our dedicated and world-renowned animal care specialists, who have and will continue to provide each of them with the world’s best possible care,” Mr. Claytor said.

In its complaint against SeaWorld, the S.E.C. said the company was already concerned about the impact “Blackfish” would have on its business even before the documentary was released. After it was released, attendance dropped, but SeaWorld told reporters that it could “attribute no attendance impact at all to the movie,” according to the complaint.

SeaWorld stock prices dipped with negative publicity, the S.E.C. said.

A study of SeaWorld’s reputation showed that 32 percent of people who were aware of “Blackfish” had lower opinions of SeaWorld, even if they had not seen the movie, the S.E.C. said.

But at a strategy meeting about SeaWorld’s reputation, the company excluded the results of the study, the regulators said.

“As a result, SeaWorld’s then chairman of the board never saw the study and was not aware of its results,” the S.E.C.’s complaint said.

After “Blackfish” aired on TV at the end of 2013, a member of SeaWorld’s communications department called the company’s reputation “positively radioactive.”

SeaWorld also found attendance down 13 percent at the beginning of 2014 from the year before. One executive called the situation “grave.” But the company did not attribute that decline to the movie until August of that year.

In private, James Atchison, the former C.E.O., said the negative trend around the company's orca program "will not diminish anytime soon, as the film will likely gain an Oscar nomination when they are announced in mid-January," according to the S.E.C.

But in speaking to news reporters, Mr. Atchison said he could not connect the attention "Blackfish" was getting to any negative impact on the business.

As it turned out, Blackfish did not gain an Oscar nomination, to the delight of SeaWorld investors.

When the company finally acknowledged the "Blackfish effect" months later in a filing, the company's stock price fell nearly 33 percent, from \$28.15 to \$18.90 per share. SeaWorld Entertainment closed Wednesday at \$30.59 per share.

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