

Burbige v. ATI Physical Therapy, Inc. f/k/a Fortress Value Acquisition Corp. II

COURT: United States District Court for the Northern District of Illinois
CASE NUMBER: 1:21-cv-04349
CLASS PERIOD: 02/22/2021 - 10/19/2021
CASE LEADERS: Hannah Ross, Avi Josefson, Jeremy P. Robinson, Scott R. Foglietta

This is a securities class action brought on behalf of investors who purchased or otherwise acquired ATI Physical Therapy, Inc. ("ATI" or the "Company") common stock or Fortress Value Acquisition Corp. II ("FVAC") common stock (collectively, "ATI Securities") between February 22, 2021 and October 19, 2021, both dates inclusive, and/or beneficially owned and/or held FVAC common stock as of May 24, 2021 and were eligible to vote at FVAC's June 15, 2021 special meeting to vote on the business combination between Wilco Holdco, Inc., the private company predecessor to ATI, and FVAC, which closed on June 17, 2021 (the "Business Combination").

Lead Plaintiffs Phoenix Insurance Company Ltd. and The Phoenix Pension & Provident Funds ("Lead Plaintiffs") and Consolidated Plaintiff City of Melbourne Firefighters' Retirement System (together with Lead Plaintiffs, the "Securities Plaintiffs"), as well as plaintiffs in certain related actions, on behalf of themselves and the Settlement Class, have reached a settlement of the putative class (direct) claims in the following Actions (i) *Burbige, et al. v. ATI Physical Therapy, Inc., f/k/a Fortress Value Acquisition Corp. II, et al.*, No. 1:21-cv-04349 (the "Securities Action"); (ii) *In re ATI Physical Therapy, Inc. S'holder Deriv. Litig.*, Case No. 1-21-cv-06415 (EEC) (N.D. Ill.); (iii) *Robinson v. Fortress Acquisition Sponsor II, LLC*, No. 2023- 0142-NAC (Del. Ch.); and (iv) *Goldstein v. Fortress Acquisition Sponsor II, LLC*, No. 2023-0582-NAC (Del. Ch.) for **\$24,900,000.00** in cash that resolves all of the direct claims in the Action (the "Settlement").

On September 24, 2024, the Court held a hearing to consider final approval of the Settlement and other matters. The same day, the Court entered a Final Judgment and Order of Dismissal with Prejudice, which approved the Settlement, the Plan of Allocation, and Lead Counsel's motion for attorney's fees and litigation expenses.

If you are a member of the Settlement Class, your rights will be affected and you may be eligible for a payment from the Settlement. The Settlement Class consists of:

all persons or entities who (a) purchased or otherwise acquired ATI or FVAC common stock between February 22, 2021 and October 19, 2021, both dates inclusive, and/or beneficially owned and/or held FVAC common stock as of May 24, 2021 and were eligible to vote at FVAC's June 15, 2021 special meeting to vote on the Business Combination (the "Securities Subclass"); and/or (b) beneficially owned and/or held FVAC Class A common stock as of the June 11, 2021 Redemption Date who were entitled to, but did not elect to, redeem their shares (the "Multiplan Subclass").

Certain persons and entities are excluded from the Settlement Class by definition (see paragraph 32 of the Notice) or if they requested exclusion pursuant to the instructions set forth in the Notice.

Please read the Notice to fully understand your rights and options. Copies of the Notice and Claim Form can be found in the Case Documents list on the right of this page.

The deadline for submission of a Claim Form to participate in the Settlement was October 18, 2024. The claims administration concluded in April 2025. On April 25, 2025, Plaintiffs filed a Motion for Approval of Distribution Plan seeking the Court's permission to distribute the net settlement fund to eligible claimants. The distribution will occur approximately 4 to 6 weeks after the Court approves that motion.

Background

The Securities Action was initiated on August 16, 2021 by Plaintiffs Kevin Burbige and Ziyang Nie.

On October 7, 2021, Bernstein Litowitz Berger & Grossmann LLP filed a class action lawsuit for violations of the federal securities laws in the U.S. District Court for the Northern District of Illinois against ATI Physical Therapy, Inc. ("ATI" or the "Company") f/k/a Fortress Value Acquisition Corp. II ("FVAC") and certain of the Company's current and former senior executives and the former directors of FVAC. The complaint expanded the class period that was asserted in a previously-filed related securities class action pending against ATI captioned *Burbige v. ATI Physical Therapy, Inc. f/k/a Fortress Value Acquisition Corp. II*, No. 1:21-cv-04349 (N.D. Ill.).

ATI's Alleged Fraud

Headquartered in Bolingbrook, Illinois, ATI is a physical therapy provider, specializing in outpatient rehabilitation and adjacent healthcare services, and operates nearly 900 physical therapy clinics across 24 states. As a provider of rehabilitation services, the Company's ability to recruit and retain enough physical therapists to meet patient demand is vital to the success and growth of ATI's business. On June 17, 2021, ATI became a publicly traded company through the completion of a merger with FVAC (the "Merger"), a special purpose acquisition company, and began trading on the New York State Exchange.

The complaint alleges that, throughout the Class Period, ATI falsely touted the Company's high rate of retention of its physical therapists and adequate clinical staffing levels, and repeatedly affirmed its earnings guidance for 2021. ATI also assured investors that it was poised for growth and expected to open at least 90 new clinics in 2021. The Company also represented that it faced purported risks with regard to increased competition for clinicians in the labor market and its ability to recruit and retain physical therapists. In reality, however, the Company knew that it was experiencing severe attrition among its physical therapists and facing increasing competition for clinicians in the labor market. As a result, ATI could not retain enough physical therapists to serve patient demand and incurred increased labor costs, which negatively impacted its business and limited its ability to open new clinics. As a result of Defendants' misrepresentations, ATI securities traded at artificially inflated prices during the Class Period.

The complaint alleges that the truth was disclosed on July 26, 2021, less than two months after the Merger closed, when ATI drastically reduced its full-year earnings guidance and revealed that it could only open between 55 and 65 new clinics in 2021. The Company attributed its guidance cut to significant attrition among its physical therapists that prevented it from meeting patient demand, and a competitive hiring market which significantly increased its labor costs. The complaint alleges that as a result of these disclosures, the price of ATI securities declined precipitously.

History of the Litigation

On November 18, 2021, the Court consolidated *City of Melbourne Firefighters' Retirement System v. ATI Physical Therapy Inc.*, No. 1:21-cv-05345 (N.D. Ill.), into the Securities Action. The Court further appointed Phoenix Insurance

Company Ltd. and The Phoenix Pension & Provident Funds as Lead Plaintiffs. The Lead Plaintiffs and consolidated plaintiff City of Melbourne Firefighters' Retirement System are the "Securities Plaintiffs."

On February 8, 2022, the Securities Plaintiffs filed the operative complaint (the "Securities Complaint"). The Securities Complaint asserts claims against ATI, Labeed Diab, Joseph Jordan, Andrew A. McKnight, Joshua A. Pack, Marc Furstein, Leslee Cowen, Aaron F. Hood, Carmen A. Policy, Rakefet Russak-Aminoach, and Sunil Gulati (the "Securities Defendants") under Sections 10(b), 14(a), and 20(a) of the Exchange Act and U.S. Securities and Exchange Commission ("SEC") Rules 10b-5 and 14a-9 promulgated thereunder.

The Securities Complaint alleges, among other things, that during the period February 22, 2021 through October 19, 2021, both dates inclusive, the Securities Defendants made materially false and/or misleading statements, as well as failed to disclose material adverse facts about ATI, and the Company's business, operations, and prospects. Specifically, the Securities Complaint alleged that the Securities Defendants allegedly failed to disclose to investors: (1) that ATI was experiencing attrition among its physical therapists; (2) that ATI faced increasing competition for clinicians in the labor market; (3) that, as a result of the foregoing, the Company faced difficulties retaining therapists and incurred increased labor costs; (4) that, as a result of the labor shortage, the Company would open fewer new clinics; and (5) that, as a result of the foregoing, the Securities Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis. The Securities Complaint also alleges that, as a result of the Securities Defendants' alleged misrepresentations, the Securities Plaintiffs acquired ATI Securities at artificially inflated prices during the period February 22, 2021 through October 19, 2021, both dates inclusive, and/or beneficially owned and/or held shares of FVAC Class A common stock as of May 24, 2021, the Record Date for shareholders to be eligible to vote on the Business Combination, and suffered damages when the truth regarding the alleged misrepresentations was allegedly revealed.

The Securities Defendants denied all of the allegations, and on April 11, 2022, filed two motions to dismiss the Securities Complaint in its entirety. On September 6, 2023, the Court granted in part and denied in part the Securities Defendants' motions to dismiss. The Securities Defendants answered the Securities Complaint on October 19, 2023.

Thereafter, the Parties to the Securities Action engaged in fact discovery, including the production of more than 350,000 pages of documents in response to document requests, and responding to written discovery, including interrogatories.

On December 18, 2023, the Securities Parties participated in an in-person private mediation conducted before a highly experienced mediator, former U.S. District Judge Layn Phillips, but were unable to reach a resolution at that time. The Securities Parties' continued negotiations over the subsequent weeks and, on January 19, 2024, reached an agreement in principle to settle the claims against the Securities Defendants.

Following the Securities Parties' agreement in principle to resolve the Securities Action, the Securities Defendants, who are also parties to the related Multiplan Actions pending in the same court and the Delaware Court of Chancery, began discussions with the plaintiffs in the Multiplan Actions in an effort to also resolve those actions.

On March 7, 2024, the Parties participated in a second in-person mediation session with Judge Phillips, and Defendants continued to negotiate a global resolution of the Securities Action and the Multiplan Actions. On April 22, 2024, the Parties reached settlement agreements in principle to resolve the Actions, including an agreement in principle to resolve all putative class (direct) claims in the Actions (the “Settlement”). The settlement agreement in principle was formalized in the Stipulation and Agreement of Settlement, which was signed on May 13, 2024.

On May 21, 2024, the Court preliminarily approved the Settlement and scheduled a hearing on final approval of the Settlement and related matters for September 24, 2024.

At the final Settlement Hearing on September 24, 2024, the Court approved the Settlement and related motions. The same day, the Court entered a Final Judgment and Order of Dismissal with Prejudice, which approved the Settlement, the Plan of Allocation, and Lead Counsel’s motion for attorney’s fees and litigation expenses.

Case Documents

- Notice of (I) Pendency of Class Actions, Certification of Settlement Class, and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (“Notice”)
- Proof of Claim and Release (“Claim Form”)
- April 25, 2025 - Plaintiffs’ Motion for Approval of Distribution Plan
- April 25, 2025 - Memorandum of Law in Support of Plaintiffs’ Motion for Approval of Distribution Plan
- April 25, 2025 - Declaration of Josephine Bravata Concerning the Results of the Claims Administration Process
- September 24, 2024 - Final Judgment and Order of Dismissal with Prejudice
- August 20, 2024 - Notice of Motion and Motion for Final Approval of Settlement and Plan of Allocation, and Final Certification of Settlement Class
- August 20, 2024 - Memorandum in Support of Motion for Final Approval of Settlement and Plan of Allocation, and Final Certification of Settlement Class
- August 20, 2024 - Notice of Motion and Motion for Award of Attorneys Fees and Expenses and PSLRA Awards to Plaintiffs
- August 20, 2024 - Memorandum in Support of Motion for Award of Attorneys’ Fees and Expenses and PSLRA Awards to Plaintiffs
- August 20, 2024 - Declaration of Austin P. Van in Support of (1) Motion for Final Approval of Settlement and Plan of Allocation and (2) Motion for Attorneys’ Fees and Expenses
- May 21, 2024 - Order Preliminarily Approving Settlement and Providing for Notice
- May 13, 2024 - Stipulation and Agreement of Settlement
- February 8, 2022 - Consolidated Amended Complaint

- October 7, 2021 - Initial Complaint
- October 7, 2021 - PSLRA Notice