

In re HeartWare International, Inc. Securities Litigation

COURT: United States District Court for the Southern District of New York
CASE NUMBER: No. 16-cv-520
CLASS PERIOD: 06/10/2014 - 01/11/2016
CASE LEADERS: John Rizio-Hamilton, Michael D. Blatchley, James A. Harrod
CASE TEAM: Jared Hoffman

This is a securities class action against HeartWare International, Inc. (“HeartWare” or the “Company”) (NASDAQ: HTWR) and its former Chief Executive Officer Douglas E. Godshall (collectively, “Defendants”). The action asserts claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”) on behalf of investors in HeartWare common stock between June 10, 2014 and January 11, 2016, inclusive (the “Class Period”).

Lead Plaintiff Has Settled the Action for \$54.5 Million

In November 2018, the Court-appointed Lead Plaintiff St. Paul Teachers’ Retirement Fund Association reached a settlement of this action for \$54.5 million in cash that resolves all claims in the action.

On April 12, 2019, after a hearing, the Court entered a Judgment approving the Settlement and entered orders approving the Plan of Allocation for the proceeds of the Settlement and Lead Counsel’s motion for attorneys’ fees and expenses.

The Class consists of:

all persons and entities who purchased HeartWare common stock from June 10, 2014 through January 11, 2016, inclusive, and who were damaged thereby, except for certain persons and entities who are excluded from the Class by definition (see paragraph 24 of the Notice).

Please read the Notice to fully understand your rights and options. A copy of the Notice can be found on the **Case Documents** page.

Background

HeartWare is a medical device company that develops and manufactures miniaturized implantable heart pumps. The Complaint alleges that during the Class Period, HeartWare and certain of its senior executives violated provisions of the Exchange Act by making numerous false and misleading statements and omissions of material fact, including in press releases and in statements during conferences and conference calls with analysts and investors. Specifically, the Complaint alleges that after the U.S. Food and Drug Administration (“FDA”) issued a Warning Letter identifying numerous manufacturing and other regulatory failures at the Company’s sole manufacturing facility, Defendants falsely assured investors that the Company had addressed those problems, and that they therefore posed no risk to the clinical trials or timely approval of MVAD, a pump that HeartWare is presently developing.

The truth concerning the Company’s failure to remediate the regulatory failures identified by the FDA and its impact on the viability of MVAD was revealed through a series of disclosures. On September 1, 2015, HeartWare announced a highly dilutive acquisition of Valtech Cardio, Ltd., a manufacturer of medical devices used to treat

heart disease. The Complaint alleges that this disclosure revealed significant obstacles to the timely approval of MVAD. On September 9, 2015, HeartWare disclosed that it was halting enrollment in the MVAD trial because of a manufacturing problem with the device. On October 12, 2015, HeartWare disclosed that patients in the MVAD trial had suffered adverse events, and that the trial would be further delayed. And on January 11, 2016, the Company revealed that problems with MVAD had resulted in serious adverse events in nearly half of the patients so far implanted with the device, and that the trial would be delayed indefinitely. In response to each of these disclosures, the price of HeartWare's common stock declined significantly. In total, HeartWare's common stock fell 72% from its Class Period high to close at \$26.50 per share on January 12, 2016.

History of the Litigation

On January 22, 2016, Lead Plaintiff filed a class action complaint in the United States District Court for the Southern District of New York. On April 11, 2016, the Court ordered that the case be recaptioned as *In re HeartWare International, Inc. Securities Litigation*, Master File No. 1:16-cv-00520 (the "Action") and appointed St. Paul Teachers' Retirement Fund Association as Lead Plaintiff for the Action; and approved Lead Plaintiff's selection of Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel for the class.

On June 29, 2016, Lead Plaintiff filed and served its Amended Class Action Complaint (the "Complaint") asserting claims against both Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, and against Defendant Godshall under Section 20(a) of the Exchange Act. The Complaint alleges that, during the Class Period, Defendants made materially false and misleading statements about; (i) the safety and commercial viability of the MVAD, and (ii) the progress of HeartWare's remediation of deficiencies identified in the FDA's warning letter. The Complaint further alleges that the price of HeartWare common stock was artificially inflated as a result of Defendants' allegedly false and misleading statements, and declined when the truth was revealed.

On August 30, 2016, Defendants filed and served a motion to dismiss the Complaint. On October 28, 2016, Lead Plaintiff served its memorandum of law in opposition to this motion and, on December 9, 2016, Defendants served their reply papers. On December 12, 2016, the Action was reassigned to the Honorable Ronnie Abrams for all further proceedings.

The Court held oral argument on Defendants' motion to dismiss on March 16, 2018. Following the argument, the Court issued its decision from the bench denying Defendants' motion to dismiss the Complaint. That same day, the Court entered an Order reflecting that decision. On May 16, 2018, Defendants filed and served their Answer to the Complaint.

Discovery in the Action commenced in April 2018. Lead Plaintiff prepared and served initial disclosures, requests for production of documents, and interrogatories on Defendants, exchanged numerous letters with Defendants concerning discovery issues, and served 27 document subpoenas on third parties, including the FDA. As part of its extensive efforts to conduct third-party discovery, Lead Plaintiff successfully applied for letters rogatory to obtain evidence from the United Kingdom clinical research organization that HeartWare had hired to assist with aspects of the clinical trial of MVAD. Defendants and third parties produced a total of approximately 450,000 pages of documents to Lead Plaintiff, and Lead Plaintiff produced over 7,500 pages of documents to Defendants in response to their requests.

On June 22, 2018, Lead Plaintiff filed its motion for class certification, which was accompanied by a report from Lead Plaintiff's expert on market efficiency and common damages methodologies. On August 17, 2018, Defendants filed a Notice of Non-Opposition to the class certification motion and, on August 27, 2018, the Court granted the motion, certifying the proposed Class, appointing Lead Plaintiff as Class Representative and appointing Bernstein Litowitz Berger & Grossmann LLP as Class Counsel.

While discovery continued, the Parties discussed the possibility of resolving the litigation through settlement and agreed to mediation before Jed D. Melnick, Esq. of JAMS. An in-person mediation session with Mr. Melnick was scheduled for September 12, 2018. In advance of the mediation, the Parties exchanged detailed mediation statements addressing liability and damages issues with numerous exhibits. At the September 12, 2018 mediation session, the Parties engaged in vigorous settlement negotiations with the assistance of Mr. Melnick but were not able to reach an agreement. The Parties continued their negotiations and scheduled a second mediation with Mr. Melnick for October 3, 2018. Following that session, the Parties agreed to settle the Action in return for a cash payment by or on behalf of Defendants of \$54,500,000 for the benefit of the Class.

On November 13, 2018, the Parties entered into the Stipulation and Agreement of Settlement (the "Stipulation"), which sets forth the terms and conditions of the Settlement. On November 16, 2018, Lead Plaintiff filed its motion for preliminary approval of the Settlement with the Court. On December 12, 2018, the Court entered its Order Preliminarily Approving Settlement and Authorizing Dissemination of Settlement Notice, which scheduled a hearing for April 12, 2019 to consider final approval of the Settlement and related matters.

On April 12, 2019, after the hearing, the Court approved the Settlement and the Plan of Allocation and approved Lead Counsel's motion for attorneys' fees and expenses.

The claims administration was completed in March 2020. On November 4, 2020, the Motion for Approval of Distribution Plan was filed. On February 18, 2021, the Court entered the Order Approving the Distribution Plan. The first distribution of the net settlement fund occurred in April 2021. The second distribution occurred in September 2022. The third distribution occurred in February 2024.

The claims administration process has concluded and the net settlement fund has been fully disbursed. This matter is considered closed.

Case Documents

- Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Notice")
- February 18, 2021 - Order Approving Distribution Plan
- November 4, 2020 - Notice of Lead Plaintiff's Renewed Motion for Approval of Distribution Plan
- November 4, 2020 - Memorandum in Support of Lead Plaintiff's Renewed Motion for Approval of Distribution
- November 4, 2020 - Declaration of Richard Simmons in Support of Lead Plaintiff's Renewed Motion for Approval of Distribution Plan
- November 4, 2020 - [Proposed] Order Approving Distribution Plan

- April 12, 2019– Judgment Approving Class Action Settlement
- April 12, 2019 – Order Approving Plan of Allocation of Net Settlement Fund
- April 12, 2019 – Order Awarding Attorneys’ Fees and Litigation Expenses
- April 5, 2019 – Reply Memorandum of Law in Further Support of (I) Lead Plaintiff’s Motion for Final Approval of Settlement and Plan of Allocation; and (II) Lead Counsel’s Motion for an Award of Attorneys’ Fees and Litigation Expenses
- April 5, 2019 – Supplemental Declaration of Michelle Kopperud Regarding (A) Mailing of Notice and Claim Form and (B) Report on Requests for Exclusion Received
- March 8, 2019 – Notice of Lead Plaintiff’s Motion for Final Approval of Settlement and Plan of Allocation
- March 8, 2019 – Memorandum of Law in Support of Lead Plaintiff’s Motion for Final Approval of Settlement and Plan of Allocation
- March 8, 2019 – Notice of Lead Counsel’s Motion for an Award of Attorneys’ Fees and Litigation Expenses
- March 8, 2019 – Memorandum of Law in Support of Lead Counsel’s Motion for an Award of Attorneys’ Fees and Litigation Expenses
- March 8, 2019 – Declaration of John Rizio-Hamilton in Support of (I) Lead Plaintiff’s Motion for Final Approval of Settlement and Plan of Allocation, and (II) Lead Counsel’s Motion for an Award of Attorneys’ Fees and Litigation Expenses
- December 12, 2018 - Order Preliminarily Approving Settlement and Authorizing Dissemination of Settlement Notice
- November 13, 2018 - Stipulation and Agreement of Settlement
- August 27, 2018 – Order Granting Class Certification Motion
- March 16, 2018 – Order Denying Motion to Dismiss
- June 29, 2016 - Amended Class Action Complaint