

In re Salix Pharmaceuticals, Ltd. Securities Litigation

COURT: United States District Court for the Southern District of New York
CASE NUMBER: 14 CV 8925
CLASS PERIOD: 11/08/2013 - 11/06/2014
CASE LEADERS: Salvatore J. Graziano, John Rizio-Hamilton, Katherine M. Sinderson, Michael D. Blatchley
CASE TEAM: Catherine E. van Kampen

This is a securities fraud class action filed on behalf of a class of persons and entities who purchased or otherwise acquired publicly traded common stock of Salix Pharmaceuticals, Ltd. (“Salix”) or publicly traded call options on Salix common stock, or sold publicly traded put options on Salix common stock, during the period from November 8, 2013 through November 6, 2014, inclusive (the “Class Period”).

Lead Plaintiff Settles the Action for \$210 Million

Lead Plaintiff, the Pentwater Funds, on behalf of itself and the other members of the Settlement Class (defined below), has reached a settlement of the Action for \$210,000,000 in cash resolving all claims in the Action.

Following a hearing on July 28, 2017, the Court approved the Settlement as fair, reasonable and adequate, and entered orders approving the Plan of Allocation for the proceeds of the Settlement, and approving Lead Counsel’s motion for attorneys’ fees and reimbursement of expenses.

Background

On March 23, 2015, the Honorable Kimba M. Wood appointed BLB&G client the Pentwater Funds as Lead Plaintiff and BLB&G as Lead Counsel for the Class.

Salix is a pharmaceutical company that focuses on treatments for digestive system diseases and disorders. Its principal drug is XIFAXAN® (“Xifaxan”), an antibiotic that is currently approved to treat a condition referred to as “traveler’s diarrhea” and a liver disorder that impairs brain function. Salix primarily sells its products through wholesalers, which then resell and distribute the Company’s products through pharmacies. Its wholesaler inventory levels, which represent the number of weeks’ worth of inventory that Salix’s wholesaler customers kept on hand to fill orders placed by pharmacies, served as the primary indicator of the strength of Salix’s present and future revenue stream and investors looked to this metric to assess Salix’s value.

The complaint alleges that throughout the Class Period, Defendants made a series of material misrepresentations concerning the wholesaler inventory levels of several of Salix’s most successful products, including Xifaxan. Defendants repeatedly represented during the Class Period that wholesalers maintained 10 to 12 weeks of inventory for Xifaxan and other key products. Defendants also assured the market that they closely monitored Salix’s wholesaler inventory levels that were ultimately reported to investors. These misrepresentations caused Salix’s stock price to be artificially inflated throughout the Class Period.

Plaintiffs allege that, in reality, Defendants were engaged in a scheme to “stuff the channel” for Salix’s key drugs in order to make Salix’s growth prospects and financial performance appear far better than they were to spark the interest of a potential acquirer. On November 6, 2014, Salix revealed a sharp increase in wholesale inventory levels for many of its drugs, including its premier drug, Xifaxan. Specifically, Salix disclosed that the wholesalers who sell

Xifaxan to pharmacies had a nine-month supply of the drug, significantly longer than the supply of two months of the drug that the Company claimed it maintained. The Company also disclosed that the threefold growth in inventories had prompted the audit committee of its board of directors to engage outside counsel to conduct a review of issues related to management's prior characterizations of wholesaler inventory levels. Salix further announced that it had replaced its Chief Financial Officer, Adam C. Derbyshire, who had abruptly resigned after fourteen years with the Company. Following these disclosures, Salix's stock price declined \$47.08 per share, or 34%, representing a market value loss of nearly \$3 billion.

Lead Plaintiff filed a consolidated class action complaint on May 8, 2015, and the Court sustained the complaint in its entirety on March 31, 2016. On October 10, 2016, Plaintiffs filed their motion for class certification, and the parties completed briefing on the motion on February 17, 2017. In March 2017, while the motion was pending, the parties reached an agreement to settle the case for \$210 million. Following a final approval hearing on July 28, 2017, the Court approved the Settlement, approved the proposed Plan of Allocation for the proceeds of the Settlement, and approved Lead Counsel's motion for attorneys' fees and reimbursement of expenses.

The claims administration was completed in May 2018. On May 24, 2018, the Motion for Approval of Distribution Plan was filed. On July 2, 2018, the Court entered the Order Approving the Distribution Plan. The first distribution of the net settlement fund occurred in August 2018. The second distribution occurred in June 2019. The third distribution occurred in December 2019. The fourth distribution occurred in December 2020. The claims administration process has concluded. The net settlement fund has been fully disbursed. This matter is 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
- July 2, 2018 - Order Approving Distribution Plan
- July 28, 2017 - Judgment Approving Class Action Settlement
- July 28, 2017 - Order Approving Plan of Allocation of Net Settlement Fund
- July 28, 2017 - Order Awarding Attorneys' Fees and Reimbursement of Litigation Expenses
- April 5, 2017 - Order Preliminarily Approving Settlement and Providing for Notice
- March 24, 2017 - Stipulation and Agreement of Settlement
- April 22, 2016 - Opinion & Order Denying Defendants' Motions to Dismiss
- May 8, 2015 - Consolidated Class Action Complaint