

In re Valeant Pharmaceuticals Int'l Inc. Third-Party Payor Litigation

COURT: United States District Court for the District of New Jersey
CASE NUMBER: 16-3087
CLASS PERIOD: 01/02/2013 - 11/09/2015
CASE LEADERS: James A. Harrod
CASE TEAM: Jai K. Chandrasekhar, Ryan McCurdy, Megan Taggart

This is a class action lawsuit brought on behalf of health insurance companies, health maintenance organizations, self-funded health and welfare benefit plans, and other Third-Party Payors ("TPPs") who paid or incurred costs for Valeant-branded drugs from January 2, 2013 through November 9, 2015 (the "Class Period"), that were purchased through Philidor Rx Services, LLC ("Philidor") or any pharmacy in which Philidor had a direct or indirect ownership interest.

Plaintiffs in the lawsuit allege that Valeant Pharmaceuticals International, Inc. ("Valeant"), Philidor, and other Defendants violated the Racketeer Influenced and Corrupt Organizations Act by causing Third-Party Payors to pay artificially inflated prices for Valeant drugs as a result of a fraudulent scheme in which Valeant secretly controlled a captive pharmacy network through Philidor.

Plaintiffs Have Reached Two Settlements that Have Resolved the Action for \$23.125 Million

Plaintiffs have entered into two settlements with Defendants that resolve the Action in its entirety in exchange for a total cash payment of \$23.125 million: a settlement with Valeant for \$23 million (the "Valeant Settlement") and a settlement with Philidor, Andrew Davenport, and the Estate of Matthew S. Davenport for \$125,000 (the Philidor Defendants Settlement" and with the Valeant Settlement, the "Settlements").

The combined Settlement Amounts, plus interest earned, are known as the "Settlement Funds." The Net Settlement Funds (i.e., the Settlement Funds less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses and service awards for Plaintiffs awarded by the Court; (iv) any attorneys' fees awarded by the Court; and (v) any other costs or fees approved by the Court) will be distributed to eligible claimants in accordance with the Plan of Allocation approved by the Court.

A Settlement Hearing to consider final approval of the Settlements, the Plan of Allocation, and Lead Counsel's motion for attorneys' fees and expenses was held on December 2, 2021. On December 6, 2021, the Court-appointed Special Master, the Honorable Dennis M. Cavanaugh (Ret.), entered a Report and Recommendation which recommended granting final approval to the Settlements and approving the motion for attorneys' fees and expenses. On February 22, 2022, the Court (Judge Shipp) entered a Memorandum Opinion and an accompanying Order that adopted the Special Master's Report and Recommendation, granted final approval to both Settlements and the Plan of Allocation, and approved the motion for attorneys' fees and 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 Settlements. The Settlement Class includes

all health insurance companies, health maintenance organizations, self-funded health and welfare benefit plans, other Third-Party Payors, and any other health benefit provider in the United States of America or its territories that paid or incurred costs for Valeant's branded drug products in connection with a claim submitted by Philidor, a claim submitted by any pharmacy in which Philidor had a direct or indirect ownership interest, or a claim by any pharmacy for which the amount sought for reimbursement was alleged to be inflated as a result of Defendants' allegedly fraudulent scheme, from January 2, 2013 through November 9, 2015, and allegedly suffered damages thereby.

Excluded from the Settlement Class are Pharmacy Benefit Managers, Defendants, Defendants' successors and assigns, and any entity in which any Defendant has or had a controlling interest. Also excluded from the Settlement Class are any entities that properly submitted a Request for Exclusion.

Please read the Notice to fully understand your rights. Copies of the Notice and Claim Form can be found in the Case Documents bar on the right of this page. You may also visit the settlement website, www.ValeantTPPSettlement.com, for more information about the Settlements.

The deadline for submission of a Claim Form to be potentially eligible to receive a payment from the Settlements was January 6, 2022. Payments to eligible claimants will be made only after the completion of all claims processing. Please be patient, as this process will take some time to complete.

Background

This Action asserts fraud and conspiracy claims under the Racketeer Influenced and Corrupt Organizations Act on behalf of Plaintiffs and a class of other third-party payors ("TPPs") that paid for their beneficiaries' prescriptions for drugs manufactured by Valeant and distributed by Philidor (or one of the pharmacies it controlled) during the Class Period. Davenport was the founder and CEO of Philidor, a now-defunct pharmacy.

The Action arises from Defendants' alleged fraudulent conspiracy to dispense Valeant's branded medications through Philidor and its network of pharmacies. Plaintiffs further alleged that Philidor and its network pharmacies were secretly controlled by Valeant. By concealing the relationships between Valeant, Philidor, and the other pharmacies, Defendants allegedly prevented TPPs and their pharmacy benefit managers ("PBMs") from realizing that numerous prescriptions for expensive Valeant drugs were all coming from pharmacies controlled directly or indirectly by Valeant. Plaintiffs alleged that many of the Valeant drugs had less expensive generic equivalents or near equivalents, so if the TPPs and PBMs had realized that the prescriptions were all coming from one Valeant-controlled pharmacy network, they would have refused to pay for the branded drugs and would have insisted on substitution of the less expensive generics or other substitutes. When the relationships between Valeant, Philidor, and the network of other pharmacies were publicly revealed in late 2015, major national PBMs immediately stopped doing business with Philidor; Philidor ceased operations; and numerous Congressional and regulatory investigations, as well as private lawsuits, followed.

This action was first filed in May 2016, with the Consolidated Class Action Complaint and Demand for Jury Trial (the "Complaint") subsequently filed in December 2016. Defendants moved to dismiss the Complaint in February 2017, but before the motion was decided, the Philidor Defendants moved in March 2017 to stay the Action pending the resolution of criminal charges against Davenport, who had been charged with federal offenses for paying a kickback to a Valeant executive and his co-defendant, Gary Tanner. Over Plaintiffs' opposition, the Court granted the Philidor Defendants' motion to stay in August 2017.

Following Davenport's criminal conviction in May 2018, the stay was lifted in April 2019. Plaintiffs filed the Amended Complaint in July 2019, incorporating evidence from the criminal trial that supported Plaintiffs' claims. The Parties then engaged in a second round of motion-to-dismiss briefing, including Plaintiffs' omnibus opposition to three motions to dismiss, with the motions fully briefed in October 2019.

In August 2020, Special Master Hon. Dennis M. Cavanaugh issued a Report & Recommendation granting in part and denying in part Defendants' motions to dismiss. Valeant filed a timely objection to the Special Master's Report & Recommendation, which Plaintiffs opposed.

The Parties conducted discovery beginning in late 2019, and over the course of the litigation Plaintiffs received over 8.6 million pages of documents from Defendants and third parties, participated in 39 depositions, and engaged a damages expert to assist with preparations for class certification.

In August 2021, Plaintiffs reached agreements to settle the action with Defendants for a total of \$23.125 million. The Court preliminarily approved the Settlements on August 17, 2021 and held a settlement hearing to consider final approval of the Settlements and related matters on December 2, 2021. On December 6, 2021, the Court-appointed Special Master, the Honorable Dennis M. Cavanaugh (Ret.), entered a Report and Recommendation which recommended granting final approval to the Settlements and approving the motion for attorneys' fees and expenses.

On February 22, 2022, Judge Shipp entered a Memorandum Opinion and an Order that adopted the Special Master's Report and Recommendation, granted final approval to both Settlements and the Plan of Allocation, and approved the motion for attorneys' fees and expenses.

Case Documents

- Notice of (I) Pendency of Class Action and Proposed Settlements; (II) Settlement Hearing; and (III) Motion for an Award of Attorneys' Fees and Litigation Expenses
- Claim Form
- February 22, 2022 - Memorandum Opinion Finally Approving Settlements
- February 22, 2022 - Order Finally Approving Settlements
- December 6, 2021 - Report and Recommendation Granting Final Approval of the Settlements and Motion for Attorneys' Fees and Expenses, and Certifying Settlement Class
- November 24, 2021 - Reply Memorandum in Support of (I) Plaintiffs' Motion for Final Approval of Settlements and (II) Lead Counsel's Motion for Attorneys' Fees
- November 22, 2021 - Amendment to Stipulation and Agreement of Settlement with Valeant Pharmaceuticals Inc.
- October 28, 2021 - Notice of Plaintiffs' Motion for Final Approval of Settlements and Approval of Plan of Allocation
- October 28, 2021 - Memorandum of Law In Support of Plaintiffs' Motion for Final Approval of Settlements and Approval of Plan of Allocation

- October 28, 2021 - Notice of Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses
- October 28, 2021 - Memorandum of Law in Support of Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses
- October 28, 2021 - Joint Declaration of James A. Harrod and James E. Cecchi in Support of Final Approval of Settlements and Attorneys' Fees & Expenses
- August 17, 2021 - Order Preliminarily Approving Settlement and Providing for Notice - Valeant
- August 17, 2021 - Order Preliminarily Approving Settlement and Providing for Notice - Philidor
- August 5, 2021 - Stipulation and Agreement of Settlement with Valeant Pharmaceuticals International, Inc.
- August 5, 2021 - Stipulation and Agreement of Settlement with the Philidor Defendants
- July 30, 2019 - Amended Consolidated Class Action Complaint