

In re Baxter International, Inc. Securities Litigation

COURT: United States District Court for the Northern District of Illinois
CASE NUMBER: 19-cv-7786
CLASS PERIOD: 02/21/2019 - 10/23/2019
CASE LEADERS: James A. Harrod

This is a securities fraud class action on behalf of a class of persons and entities who purchased common stock of Baxter International, Inc. (“Baxter” or the “Company”) from February 21, 2019 through October 23, 2019, inclusive.

Lead Plaintiffs Have Settled the Action for \$16 Million

The Court-appointed Lead Plaintiffs, Louisiana Municipal Police Employees’ Retirement System and Varma Mutual Pension Insurance Company (“Lead Plaintiffs”), on behalf of themselves and the Settlement Class, have reached a settlement of the Action for \$16,000,000 in cash that resolves the Action (the “Settlement”).

On August 10, 2021, the Court held a hearing to consider final approval of the Settlement and related matters. On August 13, 2021, the Court entered a final Judgment approving the Settlement, an Order approving the Plan of Allocation for the proceeds of the Settlement, and an Order awarding attorney’s fees and litigation expenses to Lead Counsel.

The claims administration was completed in July 2022. We filed the distribution motion on July 7, 2022. On August 5, 2023, the Court entered the Order Approving the Distribution Plan. The initial distribution occurred on September 7, 2022. The second distribution occurred in June 2024. Subsequent distributions will occur on a rolling basis, provided that net settlement funds are available. You may visit the case website, www.baxtersecuritieslitigation.com for more information about the Settlement.

The Litigation

On January 31, 2020, the Honorable Sara L. Ellis appointed Louisiana Municipal Police Employees Retirement System as co-Lead Plaintiff and BLB&G as co-Lead Counsel for the Class. Lead Plaintiffs filed a Class Action Complaint on June 25, 2020. Defendants moved to dismiss the Class Action Complaint on August 24, 2020, and Lead Plaintiffs submitted an Opposition to this motion on October 8, 2020. On January 12, 2021, Judge Ellis granted Defendants’ motion to dismiss and granted leave to file an amended Class Action Complaint to cure the pleading deficiencies. The deadline for Lead Plaintiffs to file the amendment was set by the Court for February 26, 2021.

Both before and after the Court’s order dismissing the Complaint, the parties discussed mediating the action. On February 17, 2021, the parties held a mediation session before Greg Lindstrom of Phillips ADR. The mediation was successful, and at the conclusion of the mediation session, the parties agreed to settle the claims alleged in this action for \$16,000,000. The parties further agreed that Defendants would produce certain relevant documents for Lead Plaintiffs to review, and produce a witness with knowledge of the underlying facts giving rise to the action for Lead Plaintiffs to interview, in order to confirm the fairness of the settlement. On April 1, 2021, the parties executed a stipulation of settlement, and Lead Plaintiffs filed a motion for preliminary approval of the settlement and to send notice of the settlement to members of the settlement class. On April 20, 2021, the Court entered a Minute Order approving Lead Plaintiffs’ motion for preliminary approval of the Settlement and scheduling a final Settlement Hearing for August 10, 2021.

Following the final approval hearing, on August 13, 2021, the Court entered a final Judgment approving the Settlement, an Order approving the Plan of Allocation for the proceeds of the Settlement, and an Order awarding attorney's fees and litigation expenses to Lead Counsel.

Background

Baxter, a Delaware corporation headquartered in Deerfield, Illinois, provides a broad portfolio of essential healthcare products, including acute and chronic dialysis therapies, sterile intravenous (IV) solutions, infusion systems and devices, parenteral nutrition therapies, inhaled anesthetics, generic injectable pharmaceuticals, and surgical hemostat and sealant products. The Complaint alleges that throughout the Class Period, Defendants made materially false and/or misleading statements, as well as failed to disclose material adverse facts, about the Company's business and operations.

Specifically Lead Plaintiffs allege that, Defendants misrepresented and/or failed to disclose that: (1) the Company entered certain intra-Company transactions solely for the purpose of generating foreign exchange gains or avoiding foreign exchange losses after the related exchange rates were already known; (2) the Company used a foreign exchange rate convention for the measurement and subsequent remeasurement of foreign exchange transactions and foreign currency denominated money assets that was not in accordance with U.S. Generally Accepted Accounting Principles; (3) the Company lacked effective internal control over financial reporting; (4) as a result, the Company's financial statements were misstated and would likely require correction or amendment; (5) due to the Company's internal investigation, Baxter would not be able to file its quarterly report for the period ending September 30, 2019, with the SEC on Form 10-Q in a timely manner; and (6) as a result of the foregoing, Defendants' statements about the Company's business and operations lacked a reasonable basis.

Investors began to learn the truth of Baxter's alleged misleading statements about its accounting of foreign exchange transactions on October 24, 2019 when the Company disclosed that it was commencing an internal investigation into "certain intra-Company transactions undertaken for the purpose of generating foreign exchange gains or losses." The Company also notified investors that it would not be filing its Form 10-Q for the quarter ending September 30, 2019 on time. On the same day as this announcement, the market price of Baxter common stock fell sharply by over 10%.

On February 13, 2020, Baxter filed a Form 8-K with the SEC apprising the market of the results of its internal investigation into its accounting practices. As a result of the investigation, Baxter admitted, "[t]he Company previously had applied a longstanding convention for the initial measurement of foreign exchange transactions and the subsequent remeasurement of foreign currency denominated monetary assets and liabilities that was not consistent with U.S. Generally Accepted Accounting Principles ("U.S. GAAP"). Beginning years after the adoption of that convention, certain intra-Company transactions were undertaken, after the related exchange rates were already known, solely for the purpose of generating non-operating foreign exchange gains or avoiding foreign exchange losses."

Further, in the February 13, 2020 Form 8-K, Baxter disclosed that in consultation with its independent auditor, PricewaterhouseCoopers LLP, the Company determined that the Company's consolidated financial statements should not be relied upon "because of misstatements to the Company's previously reported foreign exchange gains and losses" for the statements as of December 31, 2018 and 2017, for the years ended December 31, 2018, 2017

and 2016, as of and for the interim periods within the years ended December 31, 2018 and 2017 and the interim periods ended June 30 and March 31, 2019.

On March 17, 2020, Baxter filed an amended Form 10-Q for the period ending September 30, 2019 and an amended Form 10-K for the fiscal year ending December 31, 2019 which restated its previously issued consolidated financial statements. In these filings, Baxter disclosed “[u]nder our historical exchange rate convention, all foreign currency transactions in a given month were initially measured using exchange rates from a specified date near the middle of the previous month. Additionally, all foreign currency denominated monetary assets and liabilities were subsequently remeasured at the end of each month using exchange rates from a specified date near the middle of the then current month.” As Baxter acknowledged, this convention did not comply with U.S. GAAP. The Company reiterated its finding that “[b]eginning years after the adoption of our historical exchange rate convention, certain intra-company transactions were undertaken, after the related exchange rates were already known, solely for the purpose of generating non-operating foreign exchange gains or avoiding foreign exchange losses.” The amended Form 10-K also disclosed that, as a result of the wrongful practices, income was “overstated by \$59 million and \$113 million, respectively, for the years ended December 31, 2018 and 2017.”

Case Documents

- Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for Attorneys’ Fees and Litigation Expenses (“Notice”)
- August 5, 2022 - Dkt 80 Order Approving Distribution Plan
- July 19 2022 - Court Grants Plaintiffs’ Unopposed Motion For Approval of Distribution fo Funds
- July 7, 2022 - Motion By Plaintiffs Louisiana Municipal Police Employees Retirement System
- July 7, 2022 - Notice Of Motion By James A Harrod For Presentment Of Motion For Disbursement Of Funds
- July 7, 2022 - Memorandum ISO Unopposed Motion for Distribution Plan
- July 7, 2022 - Declaration Of Alexander P. Villanova
- August 13, 2021 – Judgment Approving Class Action Settlement
- August 13, 2021 – Order Approving Plan of Allocation of Net Settlement Fund
- August 13, 2021 – Order Awarding Attorneys’ Fees and Litigation Expenses
- August 8, 2021 – Reply Memorandum of Law in Further Support of (A) Lead Plaintiffs’ Motion for Final Approval of Settlement and Plan of Allocation and (B) Lead Counsel’s Motion for Attorneys’ Fees and Litigation Expenses, with exhibits
- July 6, 2021 – Lead Plaintiffs’ Motion for Final Approval of Settlement and Plan of Allocation
- July 6, 2021 – Notice of Presentment of Lead Plaintiffs’ Motion for Final Approval of Settlement and Plan of Allocation
- July 6, 2021 – Memorandum of Law in Support of Lead Plaintiffs’ Motion for Final Approval of Settlement and Plan of Allocation

- July 6, 2021 – Lead Counsel’s Motion For Attorneys’ Fees and Litigation Expenses
- July 6, 2021 – Notice of Presentment of Lead Counsel’s Motion For Attorneys’ Fees and Litigation Expenses
- July 6, 2021 – Memorandum of Law in Support of Lead Counsel’s Motion For Attorneys’ Fees and Litigation Expenses
- July 6, 2021 – Joint Declaration of James A. Harrod and Sharan Nirmul in Support of (I) Lead Plaintiffs’ Motion for Final Approval of Settlement and Plan of Allocation and (II) Lead Counsel’s Motion For Attorneys’ Fees and Litigation Expenses
- May 12, 2021 - Order Preliminary Approving Settlement and Providing for Notice
- April 20, 2021 - Minute Entry Approving Motion for Preliminary Approval of Settlement
- April 1, 2021 - Stipulation and Agreement of Settlement
- January 12, 2021 - Opinion and Order on Defendants’ Motion to Dismiss
- June 25, 2020 - Class Action Complaint and Demand for Jury Trial
- November 25, 2019 - Initial Complaint