

## *In re BioScrip, Inc. Securities Litigation*

**COURT:** United States District Court for the Southern District of New York  
**CASE NUMBER:** 13-cv-6922-AJN  
**CLASS PERIOD:** November 9, 2012 - November 6, 2013  
**CASE LEADERS:** Hannah Ross

This is a securities fraud class action filed on behalf of a class of persons and entities who purchased or acquired the publicly traded common stock of BioScrip, Inc. ("BioScrip" or the "Company"), a home-healthcare and pharmaceuticals company, between November 9, 2012 and November 6, 2013, inclusive (the "Class Period").

### **Lead Plaintiff Reaches a Settlement of the Action for \$10.9 Million**

On June 16, 2016, the Court granted final approval of the settlement of this Action reached by the Court-appointed Lead Plaintiff Fresno County Employees' Retirement Association, on behalf of itself and the Settlement Class, with the Defendants (the "Settlement"). The Settlement provides for a payment of \$10,900,000 in cash, and resolves all claims asserted in the Action.

The Settlement Class consists of:

all persons and entities who purchased the common stock of BioScrip, Inc. during the period from November 9, 2012 through November 6, 2013, inclusive, and who were damaged thereby, except for certain persons and entities who are excluded from the Settlement Class by definition (see paragraph 23 of the Notice) or pursuant to request.

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

### **Background**

On December 19, 2013, the Honorable Alison J. Nathan appointed BLB&G client the Fresno County Employees' Retirement Association as Lead Plaintiff and BLB&G as Lead Counsel for the Class.

Plaintiffs allege that BioScrip violated the federal securities laws by simultaneously perpetrating two deceptive schemes on its investors. Pursuant to the first – the "Exjade Scheme" – Defendants allegedly made materially false and misleading statements and failed to disclose material facts about the government's investigation into, and BioScrip's alleged participation in, a kickback scheme relating to a drug called Exjade. Exjade was one of BioScrip's main sources of revenue, and the Company's participation in the scheme may have violated state and federal laws and jeopardized its ability to participate in Medicare, Medicaid and other government-funded programs. These programs accounted for one-quarter to one-third of BioScrip's annual revenue.

In the second scheme – the "PBM Scheme" – the Company allegedly concealed the fact that its pharmacy benefit management ("PBM") business segment, which accounted for nearly 20% of its revenue, was collapsing throughout 2013. Plaintiffs allege that both the government investigation and the dying business segment put the Company at risk, but the Company refused to disclose the existence of either issue to investors until it was absolutely necessary. When the truth was eventually revealed, the price of BioScrip's common stock declined precipitously, damaging investors who had purchased the stock at artificially inflated prices.

On March 31, 2015, the Court issued a Memorandum and Order that largely denied the Defendants' motions to dismiss.

The parties then began pre-trial discovery in the action. In October 2015, the parties reached an agreement in principle to settle the action for \$10.9 million. We filed the settlement with the Court in December 2015. In June 2016, the Court issued Orders granting final approval of the settlement and the plan of allocation. The claims administrator is now administering the settlement-claims process.

One class member objected only to Lead Plaintiff's request for attorney's fees, and appealed the District Court's approval of that request. After briefing and oral argument of the appeal, the U.S. Court of Appeals for the Second Circuit affirmed the District Court's approval of the attorney's fees in May 2019. The objector filed a petition for a writ of certiorari (i.e., a request that the United States Supreme Court grant leave for him to appeal to that Court) in August 2019. The Supreme Court denied the objector's petition in October 2019.

## Case Documents

- June 16, 2016 – Order Approving Plan of Allocation of Net Settlement Fund
- June 16, 2016 – Judgment Approving Class Action Settlement
- May 9, 2016 - Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses
- May 9, 2016 - Memorandum of Law in Support of Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan Allocation
- May 9, 2016 - Notice of Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation
- May 9, 2016 - Notice of Lead Counsel's Motion for an Award on Attorneys' Fees and Reimbursement of Litigation Expenses
- May 9, 2016 - Declaration of Hannah G. Ross In Support of (I) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (II) Lead Counsel's Motion For an Award of Attorneys' Fees and Reimbursement of Litigation Expe
- February 11, 2016 - Order Preliminarily Approving Settlement and Providing for Notice
- December 18, 2015 - Stipulation and Agreement of Settlement
- February 19, 2014 - Consolidated Class Action Complaint
- Notice of (I) Pendency of Class Action, 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