

Waterford Township Police & Fire Retirement System v. CVS Health Corporation

COURT: The United States District Court District of Rhode Island
CASE NUMBER: 1:19-cv-00434-MSM-LDA
JUDGE: Hon. Mary McElroy
CLASS PERIOD: 11/28/2018
CASE CONTACTS: John Rizio-Hamilton, Adam Hollander, Lauren M. Cruz, Matthew Traylor

Securities fraud class action filed on behalf of a class of all Aetna, Inc. shareholders who acquired shares of CVS Health Corporation (“CVS” or the “Company”) (NYSE:CVS) in connection with CVS’s acquisition of Aetna on November 28, 2018.

The action alleges violations of the Securities Act of 1933 by CVS and certain of CVS’s and Aetna’s officers and directors (the “Defendants”).

Background on the alleged fraud:

CVS provides retail pharmacy and pharmacy benefit manager services nationwide. On May 20, 2015, CVS Pharmacy, Inc., a wholly owned subsidiary of CVS, entered into a merger agreement to acquire Omnicare, Inc., a provider of pharmaceuticals and related pharmacy services to long-term care (“LTC”) facilities (e.g., assisted living, skilled nursing, and senior centers) and a provider of specialty pharmacy and commercialization services for the bio-pharmaceutical industry.

In connection with CVS’s subsequent acquisition of Aetna (the “Acquisition”), Defendants filed with the SEC a Registration Statement on Form S-4, which was declared effective on February 9, 2018, and a joint proxy statement/prospectus on Form 424B3 (collectively the “Offering Documents”). The complaint alleges that the Offering Documents contained materially false and/or misleading statements about CVS’s compliance with Generally Accepted Accounting Principles (“GAAP”). In particular, CVS falsely represented in the Offering Documents that it had properly accounted for a \$6+ billion goodwill asset, or the company’s anticipated value of the LTC unit above its strict on-the-book value due to certain expected integration synergies, largely associated with CVS’s 2015 acquisition of LTC pharmacies of Omnicare.

In March 2018, CVS raised \$40 billion in debt securities to help fund the cash payment to Aetna shareholders, per the merger agreement. The remaining consideration due to Aetna shareholders would be paid in shares of CVS stock. On March 13, 2018, Aetna shareholders approved the Acquisition. The complaint alleges that Aetna shareholders approved the Acquisition unaware that CVS’s goodwill asset reporting was not GAAP-compliant, that the LTC goodwill was in fact materially impaired due to the issues stemming from the Omnicare acquisition, and that the price of CVS shares was materially inflated.

After the Aetna shareholders had approved the Acquisition, in August 2018, CVS disclosed it was “clearly disappointed with [the] performance in the Omnicare business” and that, since the third quarter of 2017, CVS had been “closely monitoring the performance of the [Omnicare] business for potential indicators of impairment.” As a result, CVS announced a goodwill impairment charge of \$3.9 billion to be recognized in the second quarter of 2018.

On November 28, 2018, the defendants announced that the Acquisition was formally closed, with Aetna shareholders receiving CVS stock valued at \$80 per share.

In late February 2019, CVS announced a second multi-billion-dollar impairment charge to its Omnicare-related goodwill, this time a \$2.2 billion impairment to be recognized in the fourth quarter of 2018. CVS cited “operational challenges” as a basis for this second massive charge. On this news, the price of CVS shares fell to the mid-\$50 range. Currently CVS stock is trading below \$59 per share, representing a more than 27% decline from the approximately \$80 per share the stock was trading at when exchanged for Aetna shares in the Acquisition.

Plaintiff seeks to recover damages on behalf of any former Aetna shareholders who acquired CVS shares in exchange for their Aetna shares in connection with the Acquisition (the “Class”).