

Nos. 21-1218, 21-1324, & 21-1390

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA;
CITY OF TUCSON, Together with and on Behalf of the TUCSON
SUPPLEMENTAL RETIREMENT SYSTEM; IBEW LOCAL UNION 481
DEFINED CONTRIBUTION PLAN AND TRUST, Individually and on Behalf of
All Other Persons Similarly Situated,

Plaintiffs - Appellees,

v.

VALEANT PHARMACEUTICALS INTERNATIONAL, INC.; J. MICHAEL
PEARSON; HOWARD B. SCHILLER; ROBERT L. ROSIELLO; DEBORAH
JORN; ARI S. KELLEN; TANYA CARRO; ROBERT A. INGRAM; RONALD
H. FARMER; COLLEEN GOGGINS; ANDERS LONNER; THEO
MELASKYRIAZI; ROBERT N. POWER; NORMA PROVENCIO; KATHERINE
B. STEVENSON; JEFFREY W. UBBEN; VALUEACT CAPITAL
MANAGEMENT L.P.; VALUEACT CAPITAL MASTER FUND, L.P.;
VALUEACT CO-INVEST MASTER FUND, L.P.; VA PARTNERS I, LLC;
VALUEACT HOLDINGS, L.P.; PRICEWATERHOUSECOOPERS, LLP;
DEUTSCHE BANK SECURITIES INC.; HSBC SECURITIES (USA) INC.;
MITSUBISHI UFJ SECURITIES (USA) INC.; DNB MARKETS INC.;
BARCLAYS CAPITAL, INC.; MORGAN STANLEY & CO. LLC; RBC
CAPITAL MARKETS; SUNTRUST ROBINSON HUMPHREY, INC.;
GOLDMAN SACHS; JP MORGAN SECURITIES LLC; MERRILL LYNCH,
PIERCE, FENNER & SMITH INC.; CIBC WORLD MARKETS INC.;
CITIGROUP GLOBAL MARKETS INC.; DBS BANK LTD.; TD SECURITIES
(USA) LLC; BMO CAPITAL MARKETS CORP.; AND SMBC NIKKO
SECURITIES AMERICA, INC.,

Defendants,

Defendants – Appellees

CATHY LOCHRIDGE,

Appellant.

Appeal from The United States District Court
for the District of New Jersey
No. 15-7658 (MAS)(LHG)
The Honorable Michael A. Shipp

**APPELLANT CATHY LOCHRIDGE'S RESPONSE TO STIPULATION OF
DISMISSAL PURSUANT TO F.R.A.P. 42(B)**

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Counsel for Cathy Lochridge

This Court consolidated Appellant Cathy Lochridge's appeal (Number 21-1390) with the appeals of another objector, Timber Hill LLC, (Numbers 21-1218 and 21-1324) on March 3, 2021. After referring the jurisdictional issue to the merits panel, this Court issued a briefing notice to both appellants on October 6, 2021.

On October 14, 2021, class counsel and counsel for Timber Hill filed a stipulation requesting dismissal of Timber Hill's appeals. As noted therein, Timber Hill appealed from the District Court's Order and Final Judgment approving class action settlement and plan of allocation, dated February 5, 2021, ECF 664. The joint stipulation indicates that "Timber Hill has determined that its appeal has been rendered moot" based on information provided by class counsel from the claims administrator. The stipulation does not, however, indicate whether any payment or other consideration is being provided in connection with the proposed dismissal of the appeal.

Federal Rule of Civil Procedure 23(e)(5)(B) expressly provides for district court approval of any such payment or consideration before dismissal of the appeal:

(B) Court Approval Required for Payment in Connection with an Objection. Unless approved by the court after a hearing, no payment or other consideration¹ may be provided in connection with:

¹ According to Rule 23's comments, "[t]he term "consideration" should be broadly interpreted, particularly when the withdrawal includes some arrangements beneficial to objector counsel."

(i) forgoing or withdrawing an objection, or

(ii) forgoing, dismissing, or abandoning an appeal from a judgment approving the proposal.

The rule further indicates that “the procedures of Rule 62.1 appl[y] while the appeal remains pending.” *Id.* Federal Rule of Civil Procedure 62.1, in turn, provides for a motion for indicative relief to be filed with the district court. If that motion is granted, the parties may then move to remand the appeal for formal approval of the payment or consideration by the district court. Only then would dismissal of the appeal be appropriate.

If the proposed dismissal does not involve “payment or other consideration,” then Appellant Lochridge does not oppose the requested dismissal. However, the parties should be required to state on the record that there has been no payment or promise of payment or other consideration in connection with the requested dismissal. This is particularly important given the judiciary’s fiduciary obligations on behalf of the absentee class members. *See e.g., In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 187 (d Cir. 2005) (in class action settlements, “the court acts as almost as a fiduciary for the class”). To the extent there has been an undisclosed payment or promise of payment or other consideration by class counsel, class counsel are bound by Rule 23(e)(5)(B) and the motion to dismiss should be denied.

Conclusion

This Court should require class counsel and counsel for Timber Hill to clarify whether there has been payment or promise of payment or other consideration in connection with the requested dismissal. If there has, then the Court should deny the motion to dismiss. To the extent the parties state on the record that no such payment or promise of payment or other consideration has been made in connection with the requested dismissal, then Lochridge does not oppose dismissal.

Dated: October 19, 2021 Respectfully submitted,

By: /s/ Robert W. Clore

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Counsel for Cathy Lochridge

Certificate of Service

The undersigned certifies that today he filed the foregoing supplemental memorandum on ECF which will send electronic notification to all attorneys registered for ECF-filing.

DATED: October 19, 2021

/s/ Robert W. Clore
Robert W. Clore