

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

IN RE VALEANT PHARMACEUTICALS  
INTERNATIONAL, INC. SECURITIES  
LITIGATION

Case No. 3:15-cv-07658

Judge Michael A. Shipp

Magistrate Judge Lois H. Goodman

Judge Dennis Cavanaugh, Ret.  
Special Master

This Document Relates To:  
  
3:15-cv-07658-MAS-LHG

**REPORT AND RECOMMENDATION  
GRANTING ALLOCATION OF  
ATTORNEYS' FEES PURSUANT TO  
RULES 23(e)(5)(B) and 23(h)**

This matter comes before the Special Master upon the motion of Entwistle & Cappucci LLP, counsel for Plaintiff and Class Member Timber Hill LLC, for an award of attorneys' fees (ECF 879). Opposition papers were filed by Cathy Lochridge (ECF 883), and replies were filed by Class Plaintiffs (ECF 885) and Entwistle & Cappucci LLP (ECF 890). After considering the submissions of the parties and based upon the following, it is the opinion of the Special Master that Entwistle & Cappucci LLP's motion for an award of attorneys' fees is **GRANTED**.

**DISCUSSION**

The Court has previously summarized many of the factual allegations at issue in this matter and the Court assumes the parties familiarity with the procedural history of this case.

On February 1, 2021, Judge Shipp adopted the Special Master's Report and Recommendation approving the Class Action Settlement and Plan of Allocation and an Award of Attorneys' Fees and Expenses to Lead Counsel. (ECF 659). Entwistle & Cappucci LLP now

requests an award of attorneys' fees in the amount of \$75,000 to be paid out of the attorneys' fees previously awarded to Lead Counsel. Lead Counsel does not object to Entwistle & Cappucci LLP's request and the award will have no effect on the recovery of Settlement Class Members.

The sole oppositions to Entwistle & Cappucci LLP's request for an award of attorneys' fees is from Cathy Lochridge. Cathy Lochridge argues that pursuant to Rule 23(e)(5)(B) and 23(h) the Court lacks jurisdiction to rule on the motion. Class Plaintiffs' filed a response to Entwistle & Cappucci LLP's fee request so they could reply to arguments made in Cathy Lochridge's opposition. Class Plaintiffs argue that fees for Timber Hill's counsel are not part of Timber Hill's appeal of its objections to the Plan of Allocation and that this Court has jurisdiction to decide the fee motion. Entwistle & Cappucci LLP filed a reply in further support of their request for an award of attorneys' fees. Their reply argues that the fee request is reasonable, no consideration was promised in connection with Timber Hill's dismissal of its appeal, and that the Court has jurisdiction to grant the application.

The Special Master finds that the Court has jurisdiction to decide Entwistle & Cappucci LLP's fee application as the application is not part of Timber Hill's appeal of its objection to the Plan of Allocation. "A district court, during the pendency of an appeal is not divested of jurisdiction to determine an application for attorney's fees." *Venen v. Sweet*, 758 F.2d 117, 120 n.2 (3d Cir. 1985); *see also Shah v. Horizon Blue Cross Blue Shield*, No. 16-cv-2528 (NLH/KMW), 2018 WL 6061342, at \*1 (D.N.J. Nov. 2, 2018) (quoting

*Venen* and holding that district court had jurisdiction to decide motion for attorneys' fees after notice of appeal was filed).

The Special Master reiterates that the requested fees are to come out of the attorneys' fees previously awarded to Lead Counsel and that the Special Master issued an extensive Report & Recommendation related to the Class Action Settlement and Award of Attorneys' Fees and Expenses, which was adopted by Judge Shipp. (ECF 659). The Special Master will not reiterate the points raised in the Report & Recommendation as they relate to the Award of Attorneys' Fees and Expenses to Lead Counsel. With the understanding that the total amount of attorneys' fees and expenses has already been extensively discussed, the Special Master limits his discussion to the \$75,000 fees sought by Entwistle & Cappucci LLP, from those fees awarded to Lead Counsel.

As to the reasonableness of the fee request, Entwistle & Cappucci LLP has submitted the Declaration of Andrew J. Entwistle indicating that the firm has expended over two thousand hours litigating this action on behalf of investors in Valeant derivative securities and that the firm's lodestar exceeds one million dollars. Mr. Entwistle's Declaration further indicates that Entwistle & Cappucci LLP has incurred in excess of \$50,000 in litigation expenses in connection with the prosecution of this action. The Special Master finds that Entwistle & Cappucci LLP devoted substantial time and resources to this litigation and that counsel's advocacy in this case has been substantial and of high quality. The Special Master finds Entwistle & Cappucci LLP's request for an award of attorneys'

fees in the amount of \$75,000 to be fair and reasonable under either the “percentage-of-recovery” or lodestar method.

In making this award of attorneys’ fees and costs, the Court has considered the factors enumerated in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000) and *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 339 (3d Cir. 1998). The size of the fund created and the number of persons benefited support the requested fee. The absence of substantial objections to the fee request and the support of Lead Counsel supports the fee request. The complexity and duration of the litigation, and the risk of non-payment also weigh in favor of the requested fee. The skill and efficiency of Entwistle & Cappucci LLP as well as the significant time devoted to this litigation by Entwistle & Cappucci LLP further supports the requested fee. The fee awards in similar cases also support the fee request in this case. In addition, the lodestar exceeds one million dollars and incurred expenses are in excess of \$50,000. Accordingly, the \$75,000 fee request is fair and reasonable.

The Special Master further notes that Timber Hill objected to the Plan of Allocation using a cap on the aggregate recovery for options claims of five percent of the Net Settlement Fund. The Claims administrator subsequently informed counsel that the aggregate recognized losses on options claims were not expected to exceed the five percent cap set by the Plan of Allocation thus rendering the disputed term of the Settlement inoperative for practical purposes. Accordingly, the dismissal of Timber Hill’s appeal was based on mootness, not any paid or promised consideration in the form of attorneys’ fees.

For the reasons set forth in this Report and Recommendation, the Special Master hereby awards Entwistle & Cappucci LLP \$75,000 in attorneys' fees, to be distributed among said counsel at the sole discretion of Entwistle & Cappucci LLP. This award is to be paid out of the attorneys' fees previously awarded to Lead Counsel and shall be paid within seven days after the adoption of this Report and Recommendation or upon agreement reached between Lead Counsel and Entwistle & Cappucci LLP.

Date: December 6, 2021

*s/Dennis M. Cavanaugh*  
DENNIS M. CAVANAUGH  
Special Master