

CLASS ACTION ATTORNEY FEE DIGEST

THOROUGH. RELIABLE. OBJECTIVE.

SAMPLE SECURITIES CASE ABSTRACT

In re Vicuron Pharmaceuticals, Inc.

Securities Litigation

No. 04-2627 (E.D. Pa. May 31, 2007)

JUDGE: Harvey Bartle, III

SUBSTANTIVE TOPIC: Securities

PLAINTIFFS' COMPLAINT: Plaintiffs allege that Defendants (Vicuron and several officers and directors) made misrepresentations about the efficacy of a drug in development, anidulafungin, which resulted in the artificial inflation of the value of Vicuron's common stock to a high of \$23.90 per share. Plaintiffs contend that this artificial increase allowed Vicuron to: (1) complete a merger with Biosearch Italia in March 2003 by using 21.4 million shares of Vicuron stock to support the transaction; and (2) complete a secondary offering of six million shares in July 2003 for net proceeds of \$83 million. On May 24, 2004 Vicuron issued a press release acknowledging that the FDA had concerns about anidulafungin. Upon the issuance of the press release, the value of Vicuron's stock dropped sharply to \$13.04 per share, a loss of more than 40% from the previous day. The stock subsequently dropped below \$10.00 per share.

SETTLEMENT BENEFITS: \$12,750,000

ATTORNEY FEES: \$3,187,500 (the amount requested).

FEE AS % OF RECOVERY: 25%

EXPENSES: \$203,609

HOURS: 3,352

MULTIPLIER: 2.23

COURT'S REASONING: The institutional lead plaintiffs, Massachusetts State Guaranteed Annuity Fund, Massachusetts State Carpenters' Pension Fund, and the Greater Pennsylvania Carpenters' Pension Fund, negotiated a fee agreement of 25% of the recovery with lead counsel after evaluating the result achieved and the effort required to obtain it. According to Judge Bartle, the Third Circuit, in *In re Cendant Corp. Litig.*, 264 F.3d 201, 282-83 (3d Cir. 2001), "explained that in a case like this one, a fee is presumptively reasonable if it has been fixed in an agreement between a properly selected class representative and properly appointed class counsel. ... This presumption may be rebutted if the awarded fee is shown to be *prima facie* 'clearly excessive.'"

In evaluating a fee request, Judge Bartle instructed, a court applies the factors established by the Third Circuit in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190 (3d Cir. 2000).

The court then may, but is not required to, conduct a lodestar cross-check.

GUNTER FACTORS— The Court found that "the facts and circumstances of this case in addition to the efforts of counsel evaluated pursuant to the Court of Appeals' command in *Gunter* weigh in favor of approving the counsel fee agreement between Class Counsel and the class representatives."

Results Obtained— The Court found that the \$12.75 million settlement was obtained on behalf of a class of about 26,000 stockholders. Although the precise recovery per class member cannot be determined at this time, "the size of the settlement is substantial considering the defendants denied, and continue to deny, liability and litigated this case before the court for two years before they settled."

Number of Objections— There were no objections to the settlement or fee request, after settlement notice was mailed to more than 26,000 potential class members and summary notice was published in financial resources.

Skill and Efficiency of Counsel/Complexity & Duration of the Litigation— The Court found that the class counsel, alone, conducted the investigation, filed suit, prosecuted the case, and negotiated the settlement, without the aid of any governmental agency such as the SEC. Class counsel prevailed on Defendants' motion to dismiss, engaged in extensive discovery, and obtained class certification.

Risk of Nonpayment— Class counsel participated in the case for two years on a contingent basis.

Amount of Time Expended by Plaintiffs' Counsel— At the settlement hearing, the Court requested that class counsel submit a detailed breakdown of its hours by category of service. Class counsel did so, the Court reviewed the information, and the Court found that the number of hours expended by class counsel on this case (3,352) was reasonable.

Awards in Similar Cases— The requested fee (25%) "is less than the average fee in the low 30% range that is customary in this circuit", and the Third Circuit "has approved ... fees that range from 19% to 45%."

LODESTAR CROSS-CHECK— The resulting multiplier of 2.23 "is lower than in numerous other cases where multipliers between 2.5 and 4 have been approved. Th[is] ... confirms our conclusion that the fee agreement is reasonable under *Gunter*."

EDITOR'S NOTES: The Court previously: (1) denied Defendants' motion to dismiss the amended complaint; and (2) granted class certification over Defendants' opposition.

In addition to other tasks class counsel: (1) successfully opposed Defendant's Motion to Dismiss the Amended Complaint; (2) obtained class certification over Defendants' opposition, which involved extensive briefing and substantial discovery including several depositions; (3) conducted significant discovery, including: (a) reviewing and analyzing some 411,800 pages of documents produced by Defendants and third parties; (b) propounding a document request and interrogatories on Defendants; (c) subpoenaing approximately 15 third parties seeking documents and/or depositions; and (d) responding to discovery propounded by Defendants, producing hundreds of pages of documents on behalf of Plaintiffs, and defending depositions of lead plaintiffs and a representative of the money manager for two of the lead plaintiffs; (4) briefed a discovery motion; (5) consulted with experts in the fields of medicine, FDA approval processes, materiality, loss causation, and damages; and (6) prepared for and attended a day-long mediation session with the Honorable Daniel Weinstein (Ret.), a former California Superior Court Judge.

Plaintiffs estimate that the average recovery per share will be approximately \$0.40 per share (before the deduction of attorney fees and expenses).

Lerach Coughlin (lead counsel) expended 3,318 hours for a total lodestar of \$1,408,380, at hourly rates of \$505-\$600 for partners, \$265-\$420 for associates, \$245 for contract attorneys, and \$190-\$270 for paralegals. The Law Offices of Marc S. Henzel (liaison counsel) expended 34 hours for a total lodestar of \$15,300 at a partner hourly rate of \$450.

Objections/Opt-outs— There were no objections to the settlement or fee request, and only two requests for exclusion, after: (1) settlement notice was mailed to more than 26,000 potential class members; (2) summary notice was published in INVESTOR'S BUSINESS DAILY; and (3) notice and other relevant documents were posted on the settlement administrator, Gilardi & Co.'s website.

DATE CASE FILED: June 15, 2004

DATE FEE AWARDED: May 31, 2007

PLAINTIFFS' COUNSEL: William S. Lerach, Laura M. Andracchio, Ellen Gusikoff Stewart (Lerach Coughlin Stoia Geller Rudman & Robbins) (San Diego, Cal.). Samuel H. Rudman, Robert M. Rothman, David A. Rosenfeld (Lerach Coughlin Stoia Geller Rudman & Robbins) (Melville, N.Y.). Marc S. Henzel (Law Offices of Marc S. Henzel) (Bala Cynwyd, Pa.). James F. Grosso (O'Reilly Grosso & Gross) (Framingham, Mass.).

DEFENDANTS' COUNSEL: Gregory Markel, Stacey A. Lara (Cadwalader Wickersham & Taft) (New York, N.Y.). Seth Aronson, David I. Hurwitz, Anastasia Smith, Marc S. Williams, Tristan Sorah-Reyes (O'Melveny & Myers) (Los Angeles, Cal.). Jeffrey W. Kilduff (O'Melveny & Myers) (Washington, D.C.). Brian J. Slipakoff, Robyn D. Levitan (Wolf Block Schorr & Solis-Cohen) (Philadelphia, Pa.). Jay A. Dubow (Pepper Hamilton) (Philadelphia, Pa.). Ω

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