

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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IN RE: CIGNA CORP	:	CIVIL ACTION
SECURITIES LITIGATION	:	NO. 02-8088
	:	

MEMORANDUM REGARDING CLASS CERTIFICATION

Baylson, J.

August 18, 2006

I. Introduction and Background

This case was first filed on October 25, 2002, after Defendant CIGNA’s stock price dropped following its announcement of revised earnings projections on October 24, 2002. Seven complaints were originally filed; however, after apparent discussions among Plaintiffs’ counsel, all parties agreed that the Pennsylvania State Employees Retirement System (“SERS”) would be designated as the Lead Plaintiff under the PSRLA. During the ensuing motion practice concerning the appropriateness of allegations in the Complaint, there were certain delays in the case due to the ill health of Judge Newcomer (to whom this case was assigned until it was transferred to the undersigned on September 13, 2005). The pleading issues were finally resolved by the filing of a revised amended Complaint on January 9, 2006, in which SERS alleged that it was an appropriate representative of a class under Fed. R. Civ. P. 23.

As a result of CIGNA’s contention that SERS could not demonstrate loss causation and/or economic loss, two other entities came forward as alternative proposed class representatives – Public Employees Retirement System of Mississippi (“MPERS”) and Miami General Employees Sanitation Employees Retirement Trust (“Miami Employees”). These two

entities filed a motion to certify the class on May 30, 2006; SERS concurrently withdrew its previous request to become a class representative. Presently before the Court, therefore, is the Motion for Class Certification by MPERS and Miami Employees (Doc. No. 195). For the reasons that follow, the Court will grant the motion.

II. Relevant Law

Under Fed. R. Civ. P. 23, the Court must determine whether the claim can be maintained as a class action. The Third Circuit has stated that – particularly in “fraud-on-the-market” cases premised upon misrepresentations in publicly issued statements (which obviously would affect all investors) – a class action is a “particularly appropriate and desirable means to resolve claims based on the securities laws, since the effectiveness of [those] laws may depend in large measure on the application of the class action device.” Yang v. Odom, 392 F.3d 97, 109 (3rd Cir. 2004).

Under Rule 23, the requirements of both sub-parts (a) and (b) must be satisfied. Wetzel v. Liberty Mut. Ins. Co., 508 F.2d, 239, 259 (3d Cir. 1975). Rule 23(a) sets forth four prerequisites to class certification:

- (1) The class is so numerous that joinder of all members is impracticable;
- (2) There are questions of law or fact common to the class;
- (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) The representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). “These four requirements are referred to in the short-hand as (1) numerosity, (2), commonality, (3) typicality, and (4) adequacy of representation.” In re Corel Corp. Sec. Litig., 206 F.R.D. 533, 539 (E.D. Pa. 2002).

If the four prerequisites of Rule 23(a) are met, the plaintiffs must also demonstrate that

the action qualifies for class action treatment under one of three criteria set forth in Rule 23(b). Here, the proposed class representatives move for class certification under Rule 23(b)(3), which requires that “questions of law or fact common to members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3).

III. Discussion

As discussed below, the Court finds that the proposed class representatives have met their burden of showing that the prerequisites of Rule 23(a) and the requirements of Rule 23(b)(3) are satisfied.

A. Numerosity

Rule 23(a)(1) requires that the class be so numerous that joinder of all class members be “impracticable.” In re Prudential Ins. Co. of Am. Sales Practices Litig., 148 F.3d 282, 309 (3d Cir. 1998). For the purposes of Rule 23(a)(1), “impracticability” does not mean “impossibility,” but only the difficulty or inconvenience of joining all members of the class. Id. at 309; Harris v. Palm Springs Alpine Estates, Inc., 329 F.2d 909, 914-915 (9th Cir. 1964). Moreover, courts have recognized a presumption that “the numerosity requirement is satisfied when a class action involves a nationally traded security” such as CIGNA common stock. See, e.g., Sinay et al. V. Lepore & Assocs. et al., Civ. No. 99-2231, slip op. At 8 (D.N.J. Feb. 14, 2001).

The members of the proposed class are defined as “persons who purchased Cigna Corporation common stock from November, 2001 through October 24, 2002, inclusive . . . and were thereby damaged.” CIGNA is a large insurance company with a particular specialty in health care insurance. Plaintiffs’ brief delineates that approximately one hundred and forty million shares of CIGNA common stock were outstanding during the class period, and the stock

was actively traded on the New York Stock Exchange. The Court agrees with Plaintiffs that it is therefore reasonable to assume that there are thousands of members of the putative class. The threshold for a presumption of impracticality of joinder is certainly exceeded. See Stewart v. Abraham, 275 F.3d 220, 226-27 (3d Cir. 2001) (holding that “generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met”); In re Tel-Save Sec. Litig., 2000 WL 1005087, at * 4 (E.D. Pa. July 19, 2000) (“[W]here the plaintiffs allege that hundreds of investors have been defrauded . . . the numerosity requirement is met.”).

Accordingly, the Court finds that the class is so numerous that joinder of all members is impractical, and that the proposed class representatives therefore satisfy the numerosity requirement of Rule 23(a)(1).

B. Commonality

Rule 23(a)(2) is satisfied where the proposed class representatives share at least one question of fact or law with the claims of the prospective class. In re Warfarin Sodium Antitrust Litig., 391 F.3d 516, 527 (3d Cir. 2004); In re Prudential, 148 F.3d at 310. Because a single common issue may satisfy this requirement, “it is easily met.” Cullen v. Whitman Med. Corp., 188 F.R.D. 226, 230 (E.D. Pa. 1999).

In this case, the Plaintiffs’ theory of liability is based on allegedly fraudulent statements made by CIGNA executives during the class period. The Court agrees with Plaintiffs that the existence, nature and significance of CIGNA’s alleged misrepresentations are therefore issues common to all class members, and the class is bound by a common interest in determining whether CIGNA’s conduct is actionable. Accord, In re Vicuron Pharm. Sec. Litig., 233 F.R.D. 421 (E.D. Pa. 2006) (where plaintiffs argued they were injured by a common course of fraudulent

conduct perpetrated by defendant that artificially inflated the value of defendant's stock, the class members shared "a number of common question of law and fact"); see also, e.g. Moskowitz v. Lopp, 128 F.R.D. 624 (E.D. Pa. 1989) ("Plaintiffs' allegations that [a company] and its management omitted material information from its public disclosures thereby inflating the price of . . . stock is the paradigmatic common question of law or fact in a securities fraud action.").

Accordingly, the Court finds that the class shares multiple common question of law and/or fact, and that the proposed class representatives therefore satisfy the commonality requirement of Rule 23(a)(2).

C. Typicality

Rule 23(a)(3) is satisfied where the litigation of the named plaintiffs' claims can reasonably be expected to advance the interests of absent class members. In re Centocor Sec. Litig., 1999 WL 54530, at *2 (E.D. Pa. Jan. 27, 1999). Courts have held that "[a]ll purchasers of stock during a class period share a common interest in showing that the stock was unlawfully inflated." Fox v. Equimark, 1994 WL 560994, at *4 (W.D. Pa. July 18, 1994). "[E]ven significant factual differences will not preclude a finding of typicality where there is a strong similarity of legal theories." Cullen, 188 F.R.D. at 230; see also Baby Neal v. Casey, 43 F.3d 48, 58 (3d Cir. 1994) (typicality requirement is satisfied despite the existence of pronounced factual distinctions between the claims of the named plaintiffs and the claims of the proposed class).

Here, it is obvious from the briefing of the parties that the claims of the proposed class representatives are typical of the claims of the class; they assert that they purchased CIGNA common stock at an inflated price caused by allegedly fraudulent public statements of CIGNA executives, and suffered losses as a result. There is no significant distinction between the claims

of the proposed class representatives and the members of the putative class. To the contrary, the proposed class representatives' claims are typical of the claims of the class within the meaning of Rule 23(a)(3).

Accordingly, the Court finds that the proposed class representatives satisfy the typicality requirement of Rule 23(a)(3).

D. Adequacy of Representation

Rule 23(a)(4) requires that the proposed class representatives (1) not have any conflict that might prevent them from representing the interests of the class and (2) are competent to conduct a class action. In re Community Bank of Northern Virginia, 418 F.3d 277, 303 (3d Cir. 2005); In re Warafin, 391 F.3d at 516.¹

Here, there is no real dispute that the first prong of the test is satisfied. Defendants have not identified any conflict of interest between the proposed class representatives and the other members of the putative class. To the contrary, as discussed supra, all plaintiffs were allegedly damaged as a result of CIGNA's fraudulent conduct, and all plaintiffs will have to establish the false or misleading nature of CIGNA's public disclosures to establish Defendants' liability.

There is a dispute, however, as to the second prong of the test. In short, Defendants argue, with some support from the depositions of MPERS and Miami Employees officials, that the proposed class representatives have basically turned over the prosecution of this case to their counsel, and are insufficiently involved in the case to be adequate class representatives. The Court has carefully reviewed the briefs and the deposition transcripts appended thereto, and the

¹ This requirement serve the purposes of ensuring that absentee class members' interests are fully pursued by the class representatives actually before the court. In re Centocor, 1999 WL 54530 at *3.

Court finds that, to the contrary, the representatives of MPERS and Miami Employees have sufficient knowledge and interest in this litigation to satisfy the adequacy of representation requirement. It is true that MPERS and Miami Employees have turned over the mechanics of litigation (e.g., the conduct of discovery) to their outside counsel. However, in relying on this fact, Defendants' briefs cite only to isolated excerpts from depositions. A full consideration of the record reveals that the individual managers of MPERS and Miami Employees have knowledge of the underlying facts of the case and of the relevant investments made by their respective organizations, as well as a full understanding of the aims of this case. Moreover, the attorneys who the proposed class representatives have retained are well-qualified, experienced, and able to conduct the mechanics of this litigation of behalf of the proposed class.²

For a class representative to adequately represent the class, it is not necessary that the class representative be so involved in the day-to-day management of the case that it can effectively respond, on its own, to questions about depositions and other incidents of discovery. Rather, it is common that, once the class representative has charged outside counsel with representation for the purposes of the litigation, it is counsel, substantially on its own, and not the client, who gathers the facts and conducts discovery and other pretrial matters. There are certainly some clients who become more intimately involved than others in the day-to-day conduct of securities litigation, but a substantial amount of client activity is not a prerequisite for

² Bernstein Liebhard & Lifshitz, LLP, Berger & Montague, P.C., and Bernstein Litowitz Berger & Grossmann, LLP, are well-respected and very experienced in litigating complex securities class actions. The Court cannot agree with Defendants' contention that these firms "will act for their own benefit rather than in the interests of the named plaintiffs or the purported class." Def. Br. at 2. To the contrary, the Court finds no reason to doubt that these firms are able to competently conduct this litigation.

adequacy of representation in the securities fraud/class action context in which this case takes place. The fact that Plaintiffs' outside counsel are experts in securities litigation indicates that they are highly capable of conducting discovery, and that the placement of a high degree of responsibility and confidence in counsel by their clients is not unreasonable.

Accordingly, the Court finds that the proposed class representatives have satisfied the adequacy of representation requirements of Rule 23(a)(4).

E. Rule 23(b)(3)

Rule 23(b)(3) requires that (1) common issues predominate over issues that are particular to a proposed class representative and (2) a class action be the superior method for resolving the issues raised in the case.

Concerning the predominance requirement, “[a]lthough Rule 23(b)(3) requires that common issues of law and fact predominate, it does not require that there be an absence of any individual issues.” Smith v. Dominion Bridge Corp., 1998 WL 98998, at *5 (E.D. Pa. Mar. 6, 1998). Indeed, “[t]o allow various secondary issues of plaintiffs’ claims to preclude certification of a class would render the rule an impotent tool for private enforcement of the securities laws.” Dura-Bilt Corp. v. Chase Manhattan Corp., 89 F.R.D. 87, 99 (S.D.N.Y. 1981). The Supreme Court has noted that “[p]redominance is a test readily met in certain cases alleging . . . securities fraud. . . .” Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 625 (1997).

Here, the Court does not find any real dispute over whether the questions of fact that are common to the members of the class predominate over any questions affecting only individual members. Indeed, the Court is confident that common questions will predominate over any individual issues that might theoretically exist. This is because in a securities action such as the

case sub judice, “[e]videntiary issues as to misrepresentations and materiality will be substantially identical for all class members.” Neuberger v. Shapiro, 1998 WL 826980, at *4 (E.D. Pa. Nov. 25, 1998).

Specifically, as discussed supra, the issues in dispute in this case focus on whether the public statements made by CIGNA managers were fraudulent. This is a clear, overriding issue that will determine liability. Although certain questions of fact relating to individual class members could impact damage calculations, the experience of courts in securities fraud cases has shown that if, as, and when liability is established, damages can often be determined by a formula or other means that allows a fair apportionment of damages to members of the class. The mere fact that individual members of the class may be entitled to different amounts of money damages does not mean that individual questions predominate. See, e.g., In re Vicuron, 233 F.R.D. at 428 (“The determination of damages owed to each class member will involve a comparatively simple mathematical calculation once the class-wide questions regarding liability are resolved.”).

Concerning the superiority requirement, the Court must “balance, in terms of fairness and efficacy, the merits of a class action against those of alternative available methods of adjudication.” In re Warfarin, 391 F.3d at 553-54. It is clear to the Court that a class action is the superior method to resolve the issues presented in this case. This is so for multiple reasons set forth by the proposed class representatives, including the burden of litigating potentially thousands of individual lawsuits, all of which would arise out of the same set of operative facts. The need for efficient use of judicial resources dictates the propriety and desirability of resolving common issues in one action. Finally, the prohibitive expense of maintaining individual actions

would likely prevent many individuals from asserting their claims against the Defendants – a clear departure from the underlying rationale and operation of the federal securities laws. See Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 809 (1985); In re Vicuron, 233 F.R.D. at 428-29.

Accordingly, the Court finds that the proposed class representatives have satisfied the predominance requirement of Rule 23(b)(3). The Court further finds that a class action is the superior method of litigating the claims alleged in this action.

IV. Conclusion

For the foregoing reasons and after careful consideration, the Court finds that the proposed class representatives have satisfied all the requirements of Rule 23. The Court will therefore certify the Class as defined by the Plaintiffs; certify this action as a class action on behalf of the Class; certify MPERS and Miami Employees as Class Representatives; and (4) appoint Plaintiffs' outside counsel as Class Counsel and Of Counsel to the Class.

An appropriate Order follows.

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ORDER

AND NOW, this 18th day of August, 2005, after careful review of arguments presented to the Court by both parties in detailed pleadings, it is hereby ORDERED as follows:

1. MPERS and Miami Employees have met the requirement of Fed. R. Civ. P. 23(a) and 23(b)(3).
2. MPERS and Miami Employees have therefore sustained their burden of satisfying the elements required for class certification and are hereby certified as Class Representatives.
3. Co-Lead Counsel Bernstein Liebhard & Lifshitz, LLP and Berger & Montage, P.C. are qualified to represent the class and are appointed Class Counsel pursuant to Fed. R. Civ. P. 23(g)(1). Bernstein Litiwitz Berger & Grossmann, LLP, are appointed Of Counsel pursuant to the same Rule.
4. The following Class is certified:

All persons who purchased the common stock of CIGNA Corp. during the period November 2, 2001 through October 24, 2002, inclusive, and were damaged thereby.

5. Excluded from the Class are the Defendants, members of the immediate families of the individual Defendants, any parent, subsidiary, affiliate, officer or director of defendant CIGNA Corp., any entity in which any excluded person has a controlling interest, and the legal representatives, heirs, successors and assigns of any excluded person.

BY THE COURT:

/s M M BAYLSON

Michael M. Baylson, U.S.D.J.