

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ROBERT E. LIFSON,

Plaintiff,

v.

ASSISTED LIVING CONCEPTS, INC.
and LAURIE A. BEBO,

Defendants.

Case No. 12-CV-884-JPS

ORDER

Plaintiff Robert Lifson filed this action on August 29, 2012, alleging that Defendants Assisted Living Concepts, Inc. (“ALC”), and Laurie Bebo, the president and CEO of ALC during the period in question, violated federal securities laws. (Docket #1). Mr. Lifson filed his complaint on behalf of an alleged class of ALC stockholders. (Compl. ¶¶ 22–27).

Then, on October 29, 2012, both Mr. Lifson and movant Pension Trust Fund for Operating Engineers (“Pension Trust”) filed competing motions for appointment as lead plaintiff for that alleged class. (Docket #5, #10). Mr. Lifson has since moved to withdraw his motion (Docket #15),¹ therefore, the Court will appoint Pension Trust and its counsel to be lead plaintiff and lead counsel in this matter.

The Court begins its appointment analysis by noting that, given Mr. Lifson’s motion to withdraw his request to be approved as lead plaintiff (which the Court will grant), Pension Trust remains as the only party with an

¹For the sake of clarity, the Court notes that Mr. Lifson moved for the appointment of Steve Pasek as lead plaintiff. (Docket #5). He now also moves to withdraw that prior motion. (Docket #15).

outstanding motion to be appointed as lead plaintiff. (Docket #10, #15). Furthermore, under 15 U.S.C. § 78u-4(a)(3)(B), the sixty-day window in which other individuals could have moved to be appointed as lead plaintiff has closed. Accordingly, Pension Trust is currently the only viable option to be appointed as lead plaintiff in this class.

However, the Court should not appoint Pension Trust as lead plaintiff unless it determines that Pension Trust is the “most adequate plaintiff” and will otherwise meet the requirements of Rule 23 of the Federal Rules of Civil Procedure. 15 U.S.C. § 78u-4(a)(3)(B); *Maiden v. Merge Tech., Inc.*, 2006 WL 3404777, at *2 (E.D. Wis. Nov. 21, 2006). The plaintiff with the largest financial interest in the relief sought by the class is presumed to be the most adequate plaintiff. 15 U.S.C. § 78u-4(a)(3)(B); *Maiden*, 2006 WL 3404777, at *2. Furthermore, under Rule 23, Pension Trust must also establish that its claims are typical of the class it will represent and that it will fairly and adequately protect the interests of that class. F. R. Civ. P. 23.

Pension Trust satisfies all of those requirements. To begin, Pension Trust suffered a loss of approximately \$173,000.00 as a result of ALC’s alleged securities violations; that amount far exceeds the loss suffered by Mr. Lifson and is the largest loss known at this early stage of the litigation. (Docket #12, Ex. A & Ex. B). Accordingly, Pension Trust has the largest financial interest in the relief sought and is the most adequate plaintiff.

Pension Trust’s claims are also typical of the class, as they are practically identical to the legal claims of all other potential classmembers. Pension Trust purchased stock in ALC during the period in question at a value inflated by ALC’s alleged violations, and suffered as a result thereof. As such, Pension Trust’s claims are typical of the class it seeks to represent.

Finally, Pension Trust will adequately protect the interest of the class. The adequacy requirement is satisfied where an individual's claims: "(1) his claims are not antagonistic or in conflict with those of the class; (2) he has sufficient interest in the outcome of the case to ensure vigorous advocacy; and (3) he is represented by competent, experienced counsel who [will] be able to prosecute the litigation vigorously." *Johnson v. Tellabs, Inc.*, 214 F.R.D. 225, 228–29 (N.D. Ill. 2002) (citing *Mayo v. Apropos Technology, Inc.*, 2002 WL 193393, at *4 (N.D. Ill. Feb. 7, 2002); *Fischler v. AmSouth Bancorporation*, 1997 WL 118429, at *3 (M.D. Fla. Feb. 6, 1997)). Here, Pension Trust's claims align with those of other class members—all will benefit from Pension Trust's successful prosecution of the case. Moreover, Pension Trust has a sufficient (indeed, significant) interest in the outcome of this case, by virtue of its high loss amount. And, finally, Pension Trust's selected counsel, Bernstein Litowitz Berger & Grossmann, LLP, is very qualified in the area of securities class action litigation, and will undoubtedly be able to prosecute this case vigorously. Therefore, all three factors having been satisfied, the Court must conclude that Pension Trust will adequately protect the interests of the class.

For the above reasons, the Court is obliged to grant Pension Trust's Motion to be Appointed as Lead Plaintiff (Docket #10).

Accordingly,

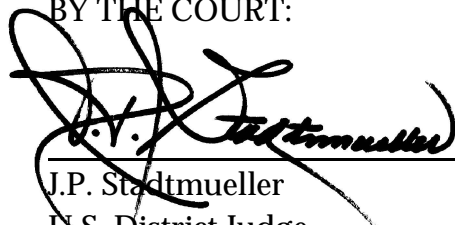
IT IS ORDERED that Plaintiff Robert Lifson's Motion to Withdraw (Docket #15) be and the same is hereby GRANTED;

IT IS FURTHER ORDERED that, the Court having granted Plaintiff Robert Lifson's Motion to Withdraw (Docket #15), Plaintiff Robert Lifson's Motion to Appoint (Docket #5) be and the same is hereby DENIED as moot; and

IT IS FURTHER ORDERED that Plaintiff Pension Trust Fund for Operating Engineers's Motion to Appoint (Docket #10) be and the same is hereby GRANTED, and accordingly Plaintiff Pension Trust Fund for Operating Engineers be and the same is hereby APPOINTED as lead plaintiff and counsel Bernstein Litowitz Berger & Grossmann, LLP, be and the same is hereby APPOINTED as lead counsel.

Dated at Milwaukee, Wisconsin, this 14th day of November, 2012.

BY THE COURT:



J.P. Stadtmueller
U.S. District Judge