

**Highland Crusader Offshore Partners, L.P. v Celtic
Pharma Phinco B.V.**

2019 NY Slip Op 33458(U)

November 20, 2019

Supreme Court, New York County

Docket Number: 652056/2013

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOEL M. COHEN PART IAS MOTION 3EFM

Justice

INDEX NO. 652056/2013
MOTION DATE N/A
MOTION SEQ. NO. 014
HIGHLAND CRUSADER OFFSHORE PARTNERS, L.P.,
HIGHLAND CREDIT OPPORTUNITIES CDO, LTD.,
HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P.,
HIGHLAND RESTORATION CAPITAL PARTNERS
MASTER, L.P., NEXPOINT CREDIT STRATEGIES FUND,

Plaintiff,

- v -

CELTIC PHARMA PHINCO B.V., TARGETED DELIVERY
TECHNOLOGIES HOLDINGS, LTD., TARGETED DELIVERY
TECHNOLOGIES, LTD., XENOVA GROUP, LTD., TDT 044
LTD., TDT 054 LTD., TDT 077 LTD., CELTIC
PHARMACEUTICAL HOLDINGS L.P., CELTIC PHARMA
SERVICES BERMUDA, LTD., AUVEN THERAPEUTICS
MANAGEMENT LLLP F/K/A CELTIC THERAPEUTICS
MANAGEMENT LLLP, AS SUCCESSOR-IN-INTEREST TO
CELTIC PHARMA MANAGEMENT, L.P., CELTIC PHARMA
MANAGEMENT, L.P., CELTIC PHARMA MANAGEMENT
COMPANY, LTD., CELTIC PHARMA FIX, LTD., CELTIC
PHARMA FIX VENTURE, LTD., STEPHEN EVANS-FREKE,
JOHN MAYO

DECISION + ORDER ON MOTION

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 014) 324, 325
were read on this motion to RELIEVE ATTORNEY

Upon the foregoing documents

This action was commenced on June 10, 2013 alleging breach of contract. Defendants
Answers were filed on May 20, 2019.

Now before the Court is the law firm of Wiggin and Dana LLP, brought by Order to
Show Cause, to be relieved as counsel on behalf of Defendants Targeted Delivery Technologies
Holdings, LTD., Targeted Delivery Technologies, LTD., Celtic Pharma Management Company,
LTD., Celtic Pharma Fix, LTD., Celtic Pharma Fix Venture, LTD. and John Mayo

(“Defendants”). Wiggin and Dana LLP offers the affidavit of Steven B. Malech, Esq. who cites Defendants’ failure to remit payment for legal services rendered and an unwillingness or inability to comply with the Court’s discovery orders as the reasons for being unable to continue to work with Defendants. *Malech Aff.*, ¶3-4 (NYSCEF 325). The Order to Show Cause was signed on November 13, 2019 and directed opposition, if any, to this requested relief be filed by November 19, 2019 and further provided that a copy of the Order to Show Cause and the supporting papers upon which it is based shall be served upon all parties by overnight and electronic delivery. Counsel filed affidavits of service attesting that copies were served on all parties. No opposition was filed to this motion.

New York Rules of Professional Conduct Rule 1.16(b)(5) permits withdrawal of a lawyer when “...(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled. New York Rules of Professional Conduct Rule 1.16(b)(6) also permits withdrawal of a lawyer when “the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client”. The Court concludes that Wiggin and Dana LLP has made a sufficient showing of entitlement to withdraw as counsel for Defendants and its motion is Granted.

Accordingly, it is therefore:

ORDERED that the motion of Wiggin and Dana LLP. to be relieved as attorney for Defendants in this action is granted, subject to the following conditions; it is further

ORDERED that Wiggin and Dana LLP is to comply with its obligation under Rule 1.16(d) of the Rules of Professional Conduct, as applicable to the facts presented, to “take steps, to the extent reasonably practicable, to avoid foreseeable prejudice to the rights of the clients,

including giving reasonable notice to the clients, allowing time for employment of other counsel, delivering to the clients all papers and property to which the clients are entitled, promptly refunding any part of a fee paid in advance that has not been earned and complying with applicable laws and rules.”; it is further

ORDERED that, within 5 days from entry, Wiggin and Dana LLP shall serve a copy of this order with notice of entry upon Defendants by email and by hard copy at their last known address by certified mail, return receipt requested, and upon the attorneys for all other parties appearing herein by posting to the New York State Courts Electronic Filing System; it is further

ORDERED that, together with the copy of this order with notice of entry served upon Defendants, moving counsel shall forward a notice directing the Defendants to appoint a substitute attorney on or before December 31, 2019 (see CPLR §321(a)). Individually named Defendant John Mayo is not required to retain new counsel, however, he must advise the Court by December 31, 2019 if he intends to proceed *pro se*; it is further

ORDERED that any new attorney retained by Defendants shall file a notice of appearance with the Clerk of the General Clerk’s Office (60 Centre Street, Room 119) and the Clerk of the Part within 30 days from the date the notice to retain new counsel is mailed; it is further

ORDERED that no further proceedings may be taken against any of these Defendants without leave of this court until December 31, 2019; it is further

ORDERED that the departing attorney shall, within 5 days from entry, serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (Room 119); it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office, the filing of a notice of appearance as provided herein, and the filing of papers as aforesaid shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk*

Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that all parties are to appear for a Status Conference in this matter on February 4, 2020 at 10:00 a.m. at which time the parties will enter a revised discovery schedule to address any remaining discovery.

11/20/2019
DATE


JOEL M. COHEN, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE