

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

2020 NY Slip Op 32156(U)

July 2, 2020

Supreme Court, New York County

Docket Number: 652056/2013

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official
publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 3EFM

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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,

INDEX NO. 652056/2013
MOTION DATE N/A
MOTION SEQ. NO. 019

Plaintiffs,

- v -

**DECISION + ORDER ON
MOTION**

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,

Defendants.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 019) 424, 425, 426, 427,
428, 429

were read on this motion to WITHDRAW AS COUNSEL.

On this motion, the law firm Wiggin and Dana LLP (the “Firm”) moves, by Order to
Show Cause, to withdraw as counsel for Defendant Celtic Pharma Services Bermuda, Ltd.
 (“CPDSB”), and to stay these proceedings pending CPDSB’s engagement of new counsel.

The motion to withdraw, which is unopposed, is granted subject to the conditions set out
below. An attorney is permitted to withdraw when “the client’s conduct . . . made it
unreasonably difficult” for counsel to represent the client effectively (*Bok v Werner*, 9 AD3d 318

[1st Dept 2004] [citing 22 NYCRR 1200.15 [c] [1] [iv]; *Tartaglione v Tiffany*, 280 AD2d 543 [2d Dept 2001]; *Bankers Trust Co. v Hogan*, 187 AD2d 305 [1st Dept 1992]). In addition, “deliberately disregard[ing] an agreement or obligation to the lawyer as to expenses or fees” is another permissible basis for granting withdrawal (NYCRR 1.16 [c] [5]); *see Weiss v Spitzer*, 26 AD3d 675 [1st Dept 2007] [permitting attorney to withdraw where client was almost \$4,000 in arrears]; *Winters v Winters*, 25 AD3d 601, 601 [2d Dept 2006] [holding attorney may withdraw where client “refuses to pay reasonable legal fees”]).

Here, the Firm has made an un rebutted showing that CPDSB is unwilling or unable to comply with the Court’s discovery orders, and that CPDSB has failed to abide by the terms of the Firm’s engagement, including payment for services rendered (NYSCEF 425 ¶ 7 [Aff. in Support of Motion]). Therefore, the Court concludes that the Firm’s withdrawal is warranted.

As part of its motion, the Firm also requests that the Court “provide CPDSB a reasonable opportunity, perhaps 45 days, to consult with and obtain substitute trial court counsel of its choosing, if it so desires” (*id.* ¶ 10). By letter to the Court dated June 23, 2020, Plaintiffs object to the length of that proposed stay, arguing that CPDSB is not expected to retain replacement counsel given that CPDSB’s alleged principal and related entities, who are also Defendants in this case, failed to do so when the Firm ceased representing them (NYSCEF 429). The Court finds that a 21-day stay is appropriate here.

The Firm is directed to communicate to CPDSB that a corporate entity must retain counsel to continue this litigation (*see* CPLR 321 [a]), and is also directed to comply with its obligation under Rule 1.16(e) of the Rules of Professional Conduct, as stated below. Moreover, if CPDSB fails to obtain substitute counsel by the end of the 21-day stay, the Firm is directed to provide Plaintiffs’ counsel with either a physical address in the United States or an email address

for service of any additional discovery papers or motions, including Plaintiffs' contemplated motion for default judgment against CPDSB.

Accordingly, it is

ORDERED that the Firm's motion to be relieved as counsel is **Granted**, subject to the following conditions; it is further

ORDERED that the Firm 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 of this Order, the Firm shall serve a copy of this Order with notice of entry upon CPDSB by email and, to the extent practicable, 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 CPDSB, the Firm shall forward a notice directing CPDSB to appoint a substitute attorney within 21 days of such notice (*see* CPLR § 321); it is further

ORDERED that any new attorney retained by CPDSB shall file a notice of appearance within 21 days from the date the notice to retain new counsel is sent; it is further

ORDERED that no further proceedings may be taken against CPDSB without leave of this court until 21 days from the date of notice; it is further

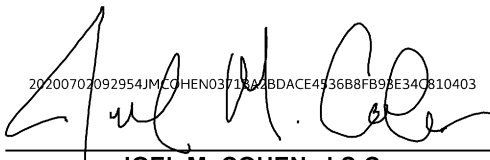
ORDERED that the departing attorney shall, within 5 days from entry, serve a copy of this Order with notice of entry on the Clerk of the General Clerk’s Office (Room 119); it is further

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 on **August 4, 2020 at 11:00 a.m.**

This Constitutes the Decision and Order of the Court.

7/2/2020
DATE


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JOEL M. COHEN, J.S.C.

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