



IN THE COURT OF CHANCERY FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

VALEANT PHARMACEUTICALS)	
INTERNATIONAL,)	
)	
Plaintiff,)	
)	Civil Action No. 19947
v.)	
)	
MILAN PANIC and ADAM JERNEY,)	
)	
Defendants.)	

SECOND AMENDED COMPLAINT

Plaintiff, by its attorneys, submits this Second Amended Complaint against the defendants named herein.

SUMMARY OF THE ACTION

1. Plaintiff Valeant Pharmaceuticals International ("Valeant" or the "Company"), formerly known as ICN Pharmaceuticals, Inc. ("ICN"), brings this action against certain persons who served as officers and members of its Board of Directors to obtain rescission, disgorgement and restitution with respect to cash bonuses they paid to themselves from the proceeds of an initial public offering of a minority stake in ICN's Ribapharm, Inc. ("Ribapharm") subsidiary (the "IPO"). The Defendants are responsible for the payment to ICN directors, officers and employees, including themselves, of \$47.8 million in unearned cash bonuses in connection with the IPO. The bonuses included over \$33 million paid to ICN's then-chairman and CEO defendant Milan Panic ("Panic") and \$3 million to defendant Adam Jerney, ICN's then president and Chief Operating Officer. Each of ICN's non-employee directors received \$330,500, and another employee director received \$500,000.

2. The Defendants attempted to justify the bonuses based on a complete spin-off of Ribapharm that had not occurred and, in fact, never did occur. They also claim to have relied on a letter from a compensation consultant, but that consultant (i) was not retained to and did not render advice on cash bonuses, (ii) in considering a grant of options, assumed a value for Ribapharm greatly in excess of the value indicated by the IPO; and (iii) based its comments concerning options not on the IPO but on the occurrence of a complete spin-off of Ribapharm. Moreover, purported advice from an advisor already retained by management cannot validate the self-dealing and wasteful bonuses.

3. The Defendants breached their duties of loyalty and good faith, unjustly enriched themselves, violated 8 Del. C. §144 and wasted the Company's assets by granting and paying themselves and other directors and executives these cash bonuses. In addition to disgorgement, Valeant also seeks to recover all damages and expenses resulting from Defendants' wrongful conduct.

PARTIES

4. Plaintiff Valeant is a Delaware corporation with its principal executive offices located at 3300 Hyland Avenue, Costa Mesa, California 92626. Valeant is a research-based pharmaceutical company that develops, manufactures, distributes and sells pharmaceutical, research, and diagnostic products.

5. Defendant Panic is the founder of the Company and served as Chairman of the Board of ICN and as Chief Executive Officer ("CEO") of the Company from its inception in 1960 until his resignation as Chairman and CEO in June 2002. Panic was paid handsomely by ICN including, among other things, tens of millions of dollars in salary, cash bonuses, stock options, loans and loan guarantees, and settlements and indemnification of legal expenses

incurred in numerous civil and criminal actions brought against him. In FY2001 alone, Panic received \$1,911,058 in salary and cash bonuses, 300,000 options to purchase ICN common stock, \$172,167 in loan guarantee payments and reimbursement of legal expenses, and a non-recourse loan of \$2,731,519 to exercise stock options (the "Stock Option Loan"). Panic served as a director of ICN until he did not stand for reelection at the 2003 annual meeting. Panic received an unearned cash bonus of \$33,050,000 from the IPO.

6. Defendant Adam Jerney ("Jerney") served as a director of ICN from 1962 to May 2002. He also served as Chief Operating Officer and President of the Company. In each of 2000 and 2001 he received over \$700,000 from ICN in compensation for his services. Jerney received an unearned cash bonus of \$3,000,000 from the IPO.

THE RIBAPHARM IPO

7. On June 15, 2000, ICN announced that its Board had approved a restructuring plan to divide the Company into three separate publicly-traded companies. The Board proposed, among other things, to sell a minority stake in Ribapharm in an IPO. It was contemplated that at some point after the IPO, ICN might spin-off the remainder of Ribapharm ownership by distributing its Ribapharm shares to the ICN stockholders.

8. On June 15, 2000, ICN filed an initial Registration Statement for the Ribapharm IPO. ICN filed a first amendment to the Registration Statement on August 23, 2000. The second amendment to the Registration Statement was filed on May 14, 2001, a third amendment was filed on January 3, 2002, and a fourth amendment was filed on February 7, 2002. These filings did not indicate that large option grants or other extraordinary bonuses would be paid to ICN's directors and officers in connection with the IPO. Each of the S-1 amendments indicated the public offering price was expected to range from \$13 to \$15 per share. Significantly, at these

prices, an IPO in which approximately 20% of Ribapharm was sold to the public and which resulted in a total of 150 million Ribapharm common shares outstanding after the IPO would have resulted in an estimated market capitalization for Ribapharm of \$1.95 to \$2.25 billion.

THE PLANNED GRANT OF RIBAPHARM OPTIONS

9. In the March 21, 2002 filing of Amendment No. 5 to the Ribapharm S-1, it was disclosed that in connection with the Ribapharm IPO, ICN's directors, including Defendants, and certain ICN executives would receive bonuses in the form of generous grants of options for up to an aggregate of 7,900,000 shares of Ribapharm common stock at the IPO price. The Board planned to grant Panic options to acquire 5,000,000 shares of Ribapharm common stock and to grant each of ICN's non-management directors, (including Barker, Bayh, Guillemin, Kurz, Moses, and Tomich) options to acquire 50,000 shares of Ribapharm common stock.

STOCKHOLDER OUTRAGE AT THE PLANNED OPTION BONUSES

10. The plan to grant ICN's directors and officers Ribapharm stock options in connection with the IPO immediately drew harsh criticism from ICN's shareholders. On March 25, 2002, Iridian Asset Management, LLC ("Iridian") and Franklin Mutual Advisors, LLC ("Franklin") who collectively owned approximately 10.2% of the Company's outstanding common stock, filed with the SEC an Amended Schedule 13D which stated:

The Reporting Persons believe that the intended grant of options to this group of persons, for services which they have a duty to provide in the course of their employment by the Issuer and for which they are already well-compensated, would be highly unusual and an ill-advised transfer of shareholder wealth. The Reporting Persons further believe that the intended grants are, in any event, excessive in amount and wasteful of corporate assets. The Reporting Persons intend to raise this matter with the directors and management of the Issuer and/or Ribapharm and other interested parties and to urge that these intended option grants not be carried out.

11. At approximately this same time, another institutional shareholder, Monarch Capital Holdings, wrote to the Board to express its outrage at the Board's proposed option grant:

I am an investor unaffiliated with and unknown by the dissident shareholders... Extremely well compensated over the years with annual salary and cash bonus payments worth millions and further compensation of millions in restricted stock, options and non-recourse loans, Panic has taken avarice to new lows with his push to receive \$34 million worth of Ribapharm options...

Other stockholders also informed members of the ICN Board that the option bonuses were an outrageous attempt to transfer wealth from ICN's shareholders to ICN's directors and officers. In short, the Defendants were well aware that ICN's stockholders regarded bonuses for ICN's directors and officers in connection with the IPO as an improper transfer of shareholder value and as wasteful and excessive.

12. At a March 28, 2002 Board meeting, the ICN Board of Directors was informed by UBS Warburg LLC, the lead underwriter of the IPO, that the option bonuses posed a threat to the success of the IPO. The Board referred consideration of the Ribapharm option bonuses to the Compensation Committee, which consisted of three directors who were to be recipients of the bonuses. The Compensation Committee was directed to engage Towers Perrin "to advise on the Ribapharm options." However, Panic remained involved in the consideration of bonuses and met with Towers Perrin to convey his views on the bonuses.

THE APRIL 10, 2002 BOARD MINUTES

13. The Defendants' response to the stockholders' criticism of the Board's plan to grant ICN's directors and executives bonuses of Ribapharm stock options in connection with the IPO was not to abandon or even scale back their bonus plan. Instead, the ICN Board unanimously voted at an April 10, 2002 Board meeting to give \$50 million in cash bonuses to

themselves and certain ICN officers from the proceeds of the IPO. No representative of Towers Perrin was present at that board meeting.

14. The minutes of the April 10, 2002 ICN Board meeting described the Board's consideration of the bonuses as follows:

The next order of business was a report from the Compensation Committee (the "Committee"). It was presented by Mr. Moses, a member of the Committee who was present in person. The report was prepared in response to the Board's request made at the meeting of the Board on March 28, 2002 to consider the proposed grant of options (the "Ribapharm Option Grant") to purchase common stock of Ribapharm Inc., a subsidiary of the Company ("Ribapharm"), to employees and directors of the Company, in connection with Ribapharm's IPO as a reward for years spent in building the company with (sic) for considerable effort in taking it public. A copy of the Compensation Committee report and the Towers Perrin report were distributed to the Board and are attached hereto as Exhibit A. Mr. Moses described the Committee's procedure in satisfying the Board's charge, including the engagement of Towers Perrin to advise the Committee with respect to the Ribapharm Option Grant. A copy of the proposed Ribapharm Option Grant is attached hereto as Exhibit B. Mr. Moses then reported that the Committee was advised by Towers Perrin that the overall allocation of such options was appropriate, should be regarded as a success fee in connection with the IPO, the specific grants were a matter of internal compensation policies of the Company, and a grant of over 50% to the Company's Chairman of the Board was reasonable. Based on the foregoing, Mr. Moses stated that the Committee was prepared to recommend no change in the Ribapharm Option Grant as presently described in the most recent IPO prospectus. Due to stockholder interest and other events, Mr. Moses reported that the Committee also considered a suggestion of converting the Ribapharm Option Grant into a cash bonus pool in the range of \$50-55 Million and that it recommends such alternative to the Board.

The directors then discussed the report by the Committee and the recommendations of the Committee and Towers Perrin. After discussion, Mr. Moses then made a motion to modify the award from the Ribapharm Option Grant to a \$55 million aggregate cash bonus and the motion was seconded by Mr. Charles. Mr. Burkhardt then said he felt that a \$55 million cash bonus was too

high and preferred a \$10 million bonus. Each director then expressed his or her views to the Board. The Committee then amended its recommendation to a \$50 million cash bonus based on the discussion. After the discussion, upon a motion duly made by Mr. Moses and seconded by Mr. Lee, the Board unanimously approved a cash bonus pool of \$50 million to be paid to ICN officers, directors, and employees who are not going with Ribapharm, with the actual amounts to be determined by the Compensation Committee and allocated in proportion to the proposed options for current ICN employees and directors, payable upon completion of the pending IPO. The matter was then referred to the Committee for implementation. (Emphasis added).

THE APRIL 10, 2002 COMPENSATION COMMITTEE REPORT

15. The ICN Compensation Committee met on April 10, 2002 prior to the ICN board meeting. No representative of Towers Perrin was present at that meeting. The April 10, 2002 Compensation Committee report, which was purportedly provided to the ICN directors and attached to the April 10 board minutes, stated:

At the instruction of the Board of Directors of ICN Pharmaceuticals, Inc. ("ICN"), at its meeting held on March 28, 2002, the Compensation and Benefits Committee (the "Committee") has considered the proposed grant of options to purchase the Common Stock of our subsidiary, Ribapharm, Inc. ("Ribapharm"). The options will be granted at the completion of the initial public offering of Ribapharm. That offering is expected to close April 17, 2002.

A total of 22,500,000 shares (or 15% of the total 150,000,000 outstanding Ribapharm shares after the offering) are reserved for grant under Ribapharm's 2002 Stock Option and Award Plan. Of the total, 11,425,000 options are to be granted at the close of the offering. The grant price will equal the initial public offering price. Of the 11,425,000 total options granted, 450,000 options are to be granted to ICN's non-management directors, 7,900,000 options are to be granted to officers and employees of ICN, 75,000 options are to be granted to Ribapharm's non-management directors, and the balance of 3,000,000 options are to be granted to Ribapharm officers and employees.

In connection with our evaluation of these option grants, we engaged Towers Perrin, experts in executive compensation design and implementation. A copy of the report of Towers Perrin is attached as Exhibit A to this report. (Emphasis added).

16. The Compensation Committee report then mischaracterized the Towers Perrin letter by claiming it contained the following "critical points:"

- Total grant of 22.5 million options is reasonable;
- A success fee in the range of \$50-60 million would be reasonable and expected for a transaction of this type;
- A total grant of 7.9 million options to officers and directors is supported by this analysis; and
- The grant of options to individuals is an internal decision, utilizing the normal approval processes.

17. The Compensation Committee next described the proposed option grant to Panic:

A total of 5,000,000 options (representing 3.33% of Ribapharm's outstanding shares after the offering) are proposed to be granted to ICN's founder, Chairman, and CEO, Milan Panic. As the Towers Perrin report indicates, this grant is in recognition, in part, of Mr. Panic's past services to ICN and his role as founder of the Company. It is, therefore, relevant to this committee's deliberations that we consider Mr. Panic's accomplishments since he founded the Company. (Emphasis added).

The report then proceeded to describe Panic's supposed contributions to ICN over a 40 year period. Of course, the report made no mention of ICN settling various sexual harassment and other claims against Panic for millions of dollars. Nor did it mention the handsome compensation Panic had already received for his past services, including prior cash bonuses.

18. The Compensation Committee report then stated:

The Committee has met several times to deliberate on the matter of granting stock options to the management team at ICN and specifically to Mr. Panic. We note that the Committee has historically granted the CEO special one-time bonuses based upon special contributions made to the Company, and that this policy has been publicly disclosed in this Committee's Reports to Stockholders contained in the Company's annual proxy statements.

Based on the foregoing policy, the advice of Towers Perrin, and the facts and circumstances recited above, the Committee believes that the ICN management team, including Mr. Panic, are entitled to a special bonus as a result of the successful IPO of Ribapharm and that the awarding of such bonus in the form of Ribapharm options would, as noted in the Towers Perrin report, be a more favorable method of payment from the standpoint of ICN and its stockholders. However, in light of stockholders comments and to avoid any possible effect on the offering, a more traditional cash bonus of \$55 million, which is the midpoint of the range recommended by Towers Perrin. The \$55 million will be allocated in the same proportion as the option shares being deleted from the Ribapharm offering. (Emphasis added).

THE TOWERS PERRIN LETTER

19. The April 9, 2002 Towers Perrin letter distributed to the ICN Board on April 10, 2002 and attached to the Compensation Committee report and the April 10, 2002 Board minutes stated:

Per your request, this letter summarized Towers Perrin's advice relative to the proposed Ribapharm stock option grants to ICN Pharmaceuticals, Inc. ("ICN") employees and directors.

Our advice is based on our experience working with companies on similar projects including mergers and acquisitions, divestitures, and spin-offs. Towers Perrin had three meetings with ICN's Compensation Committee and senior management as part of this process. Our position reflects a reasoned assessment of the economics of the proposed grants. It is the sole responsibility of the Compensation Committee and the Board to assess any shareholder concerns and the potential issues that may arise from shareholder actions. (Emphasis added).

20. The Towers Perrin letter then summarized the Ribapharm transaction and the proposed option grant as follows:

ICN has announced that it intends to offer shares of wholly owned biotechnology subsidiary Ribapharm to the public in a public offering of approximately 20% of the company. This strategy is intended to "release" the high potential value of Ribapharm by

allowing investors to invest directly in the biotechnology subsidiary. At some point following the public offering, it is expected that ICN will spin-off the remaining shares of Ribapharm to ICN shareholders in a tax-free transaction. The Company has announced that it intends to grant an aggregate of 7.9 million Ribapharm options to directors and employees of ICN who are not directors and employees of Ribapharm. Of those, the Company intends to grant 5 million options to ICN's Chairman & CEO, Milan Panic, and 50,000 to each of ICN's non-management directors. (Emphasis added).

21. The Towers Perrin letter next offered the following comments on the proposed option grant:

It is also proposed that 7.9 million Ribapharm options (from the 22.5 million overall share reserve) will be granted to ICN employees and directors at the completion of the offering. These options will be treated for accounting purposes as a dividend to the parent company. According to a valuation provided by ICN's accounting firm, assuming a \$14 per share stock price, the expected value of 7.9 million options is \$53.7 million. Although it is difficult to use an option pricing model such as the Black-Scholes model to value the options in a company without a trading history, it is often necessary to estimate certain variables of the model to generate the required accounting value. While the actual value of the stock options may be higher or lower than \$53.7 million, Towers Perrin believes that the accounting value as calculated is a reasonable estimate for these purposes.

Given the unique structure of the Ribapharm spin-off, in that there will be very little overlap in management or board responsibilities and Ribapharm's value relative to the parent company, we are unable to find comparable grant data for non-employees. Therefore, we evaluated the direct grants as a management "success fee." That is, in many "incubator" situations the management team that is responsible for the development of a particular business or asset that is subsequently sold or spun-off is often paid a percentage of the gain to the company. In our experience, this success fee can be 2% of the gain. In the case of Ribapharm, the value of the spin-off is approximately \$2.5 to \$3.0 billion, generating a comparable fee of approximately \$50 million to \$60 million.

The success fee described above is often paid in cash or in the stock of the *parent* company. In this case, ICN is proposing that the award be made in the form of stock options in the *spun entity*. Therefore, for the success fee recipients to realize the value of the award, shareholders must see their Ribapharm shares appreciate well above the offering price. This should be viewed by shareholders as a positive alternative to cash awards. In addition, the form of the award is favorable from a company cash flow and profit and loss perspective.

As emphasized above, the allocation of such awards and the determination of individual's roles and responsibility for the gains are the duties of the Compensation Committee. (Emphasis added).

22. The Towers Perrin letter also discussed the proposed grant to Panic:

It has been proposed that ICN's Chairman & CEO, Mr. Milan Panic, upon completion of the offering, would receive options to purchase 5 million shares of Ribapharm stock. This represents approximately 63% of the 7.9 million direct grants available to the Compensation Committee and management for distribution. Given the history of the development of Ribapharm assets, it would not be unreasonable for the Committee to reach the conclusion that Mr. Panic should receive more than 50% of the direct grant shares.

We believe that the Compensation Committee, at its discretion, could grant Mr. Panic up to 5 million options in Ribapharm depending on its assessment of his direct role in developing Ribapharm to an estimated value of \$3 billion.

These special options should not be viewed as "regular" compensation for Mr. Panic. This is a special award recognizing a value releasing event that is over and above his annual compensation. (Emphasis added).

THE APRIL 10, 2002 PRESS RELEASE

23. On April 10, 2002, the Defendants caused ICN to issue a press release which offered the following explanation of the bonuses:

ICN Pharmaceuticals (NYSE: ICN) announced today that its board of directors voted to drop the granting of Ribapharm stock options to ICN directors and management. A cash bonus pool payable upon completion of the pending IPO was approved unanimously

by the board of directors, including the shareholder representatives on the Board.

ICN management and directors had been slated to receive options of Ribapharm on the grounds that ICN leadership deserved a reward for years spent in building the company. The board's compensation committee chaired by former First Interstate Bank chairman Norman Barker, reviewed this option package after consultation with compensation consultants Towers-Perrin and recommended a cash bonus instead. After looking at all the facts and receiving the advice of Towers-Perrin, the committee recommended that the bonus pool be set at \$50 million and the committee's recommendation was unanimously approved by the board of directors.

"This IPO has come about as a result of the diligence and perseverance of ICN's leaders, management and board," said ICN spokesman Alan Charles, "and yet these same individuals will have no future association with the spin-off they created. The board of directors unanimously decided that their dedication should be recognized and rewarded."

The ICN directors and management who are not going with Ribapharm will be entitled to cash bonuses from the bonus pool in the same proportion as the proposed Ribapharm options. . . . (Emphasis added).

PAYMENT OF THE CASH BONUSES

24. Subsequent to the April 10, 2002 board meeting, Panic determined the allocation of the bonus pool. He determined that certain ICN officers and employees who were to participate in the proposed Ribapharm option grant would receive no cash bonus or a lesser amount. In contrast, he increased his own bonus beyond his proportionate allocation of 63% of the proposed option grant.

25. On April 12, 2002, Ribapharm issued its prospectus for the IPO at an offering price of \$10 per share. Ribapharm completed its IPO on April 17, 2002. ICN paid \$47.8 million in cash bonuses that same day. After paying underwriting and other expenses, ICN realized net

cash proceeds of just \$276,611,000 from the IPO. This resulted in ICN recognizing a \$262,949,000 gain on the sale of Ribapharm stock in the IPO. Thus, the \$47.8 million in “bonuses” the ICN directors, including Defendants, paid themselves and other ICN insiders represented approximately 17.4% of ICN's net proceeds and approximately 18.3% of ICN's gain from the IPO. Moreover, ICN had to pay taxes on its \$262,949,000 gain from the IPO. After taxes, ICN's gain on the IPO was only \$163 million. Therefore the \$47.8 million in bonuses represented nearly 30% of the after-tax gain ICN realized from the IPO. Thus, a material portion of the cash value of the IPO was siphoned off to ICN directors and officers.

26. On April 29, 2002, the Defendants caused ICN to file with the SEC an Amended Form 10-K for FY2001, which disclosed:

On April 10, 2002, after considering the recommendation of the Compensation and Benefits Committee (which recommendation took into account a report prepared by Towers-Perrin), the Board of Directors approved the payment of cash bonuses aggregating \$50,000,000 to ICN directors, officers and employees upon completion of the Ribapharm Offering. The Board had previously considered paying bonuses in the form of options to acquire Ribapharm common stock upon completion of the Ribapharm Offering. However after taking various factors into consideration, including adverse reactions from various stockholders that included the Dissident Stockholders, the Board decided to pay these bonuses in the form of cash. These bonuses were paid to recognize and reward the diligence and perseverance of ICN's officers, directors and employees in developing the business that became Ribapharm as well as facilitating the completion of the Ribapharm Offering. Bonuses totaling approximately \$47.8 million were paid on April 17, 2002. The Named Executive Officers received the following bonuses: Milan Panic \$33,050,000; Adam Jerney \$3,000,000; Bill MacDonald \$2,000,000 and David C. Watt \$1,000,000. In addition, each of the nine non-executive directors who were in office at the time bonuses were granted received a bonus of \$330,500. (Emphasis added).

THE FALSE JUSTIFICATIONS FOR THE BONUSES

27. The purported justifications for the cash bonuses are patently incorrect for several reasons. First, the bonuses cannot be justified based on the premise that the recipients would have “no future association with the spin-off they created.” Two directors (Barker and Moses) were not seeking reelection, and another two (Bayh and Tomich) were about to be voted off the Board by ICN's stockholders. These directors would have had no future association with Ribapharm's business even if there was no spin-off. One director (Guillemin) in fact had a future association with Ribapharm because he resigned as an ICN director on April 17, 2002 to become a director of Ribapharm. Finally, the directors such as Panic and Jerney, who continued to serve on the ICN Board, continued to have an association with Ribapharm as directors of its 80% majority stockholder.

28. Second, the bonuses were not and could not be based on the spin-off. The bonuses were payable upon the closing of the IPO and were not related to or dependent on the spin-off of Ribapharm. In a January 3, 2002 letter to the Securities and Exchange Commission, Ribapharm's counsel, Fried, Frank, Harris, Shriver & Jacobson, represented to the SEC:

ICN is not presently legally committed to effectuate the spin-off. The Registration Statement makes clear that there are several conditions to consummation of the spin-off. In addition, ICN reserves the right not to consummate the spin-off and to pursue alternative transactions (although ICN currently is not considering any such alternative transactions).

The Prospectus for the Ribapharm IPO noted that ICN would continue to control Ribapharm after the IPO, the spin-off might not occur and that the ICN Board of Directors might not proceed with the spin-off if (as occurred) three dissident nominees were elected directors at

ICN's 2002 annual meeting. ICN's Form 10-Q filed with the SEC on August 14, 2002 stated that:

The Company has no legal commitment to complete the Spin-Off and there can be no assurance that the Spin-Off will be completed.

ICN subsequently abandoned the spin-off.

29. Third, the \$50 million in cash bonuses could not be justified based on Towers Perrin's advice. As the Board minutes, Compensation Committee report and Towers Perrin's letter confirm, Towers Perrin was retained and provided advice only with respect to the option package, not the \$50 million of cash bonuses. The Towers Perrin Letter only evaluates ICN's announced proposal of a grant of an aggregate of 7.9 million Ribapharm options to ICN directors and employees who were not Ribapharm directors and employees, including a grant of up to 5 million options to Panic. Indeed the letter stated that it was "intended for the sole purpose of the Compensation Committee's evaluation of the proposed equity grants in Ribapharm." Indeed, Towers Perrin's May 9, 2002 letter agreement reflecting numerous assignments undertaken at the request of ICN between January 1, 2002 and May 8, 2002, states only that its services included:

A discussion document and letter conveying information about a proposed equity grant of Ribapharm stock options to ICN employees.

30. Fourth, the payment of the \$330,500 bonus to directors such as Tomich, who only joined the Board in 2001, nearly a year after the IPO was first proposed, cannot be justified as a reward "for years spent in building the company" or "to recognize and reward the diligence and perseverance . . . in developing the business that became Ribapharm." Moreover, the ICN Board met only 9 times in 2001, and some of those meetings occurred before these defendants joined the Board. Tomich was only appointed to the Board in February 2001, and left the Board in May

2002, when she was defeated in a proxy contest. Yet, she was paid more than \$360,000 for less than 16 months' service as a director.

31. Fifth, the award of a \$33.1 million "bonus" to Panic, more than 20% of ICN's after-tax proceeds from the IPO, demonstrates that the bonuses were not justifiable rewards for excellent performance in connection with the IPO, but rather unjustified giveaways of the Company's assets. Similarly, the bonuses to officers such as Bill McDonald (\$2 million), David C. Watt (\$1 million), James McCoy (\$500,000), John Giordani (\$2 million), Gregory Keever (\$1,322,000) and others were not warranted. Their job descriptions do not suggest a significant role in the IPO.

32. The Defendants did not and could not properly rely on Towers Perrin to justify their self-interested cash bonuses. First, reliance on an expert cannot validate: (a) an interested director transaction under 8 Del. C. §144, (b) a self-interested transaction in breach of the directors' duties of loyalty and good faith, or (c) a waste of corporate assets.

33. Second, Towers Perrin was not selected with reasonable care, and the faulty selection process was attributable to the ICN directors. Towers Perrin had already been retained by Panic and ICN to perform numerous other tasks for ICN management. The Compensation Committee was directed by the self-interested board, including Panic, to consult Towers Perrin. There was no independent expert selected by a disinterested and independent committee. The Compensation Committee members were to be participants in the proposed bonus. Accordingly, Towers Perrin was not selected with reasonable care by disinterested and independent directors.

34. Third, the Defendants could not and did not rely in good faith on Towers Perrin. Neither the board nor the Compensation Committee asked Towers Perrin to evaluate a \$50 million cash bonus. Rather, as the April 10 minutes, Compensation Committee report, and the

Towers Perrin letters all indicate, Towers Perrin was only asked to evaluate a grant of Ribapharm options as a bonus. Towers Perrin did not give any advice with respect to the appropriateness of a \$50 million cash bonus. Accordingly, the Towers Perrin letter was not pertinent to the matter on which the ICN board acted. Given the Defendants' knowledge of the task Towers Perrin was retained to perform and the Towers Perrin letter, which was distributed to the board in connection with the April 10, 2002 board meeting, the directors could not rely in good faith on Towers Perrin with respect to the appropriateness of a \$50 million cash bonus.

35. Fourth, material information was reasonably available to the ICN directors which made the inappropriateness of relying upon Towers Perrin to justify a \$50 million cash bonus pool so obvious that the Defendants' failure to recognize the inappropriateness of the self-interested bonuses under the circumstances constituted a breach of fiduciary duty. On April 10, 2002, ICN's directors had available the Compensation Committee's report, the Towers Perrin letter, the final amended S-1 for the Ribapharm IPO, and representatives from UBS Warburg. From these materials, the Defendants should have known the Towers Perrin letter could not be relied upon to justify the bonuses.

36. The Towers Perrin letter based its assessment of the option bonuses on an analogy to a 2% success fee for a spin-off with a value of "approximately \$2.5 to \$3.0 billion." The ICN directors, particularly Panic and Jerney, knew, and certainly should have known, that the IPO price would not indicate a market value of Ribapharm anywhere near the \$2.5 billion to \$3 billion value cited in the Towers Perrin letter. Indeed, the amendments to the S-1 had for a lengthy period reflected that the offering price in the IPO was expected to be \$13 to \$15 per share. Based on the expectation that there would be 150 million shares of Ribapharm outstanding after the IPO, even at those levels, the value of Ribapharm would be an estimated

\$1.95 billion to \$2.25 billion. In fact, the IPO was priced at \$10 per share, resulting in an estimated value for Ribapharm of only \$1.5 billion. Even assuming the Towers Perrin letter had any relevance to a \$50 million cash bonus (and it did not), the Defendants had plainly available information that demonstrated that the Towers Perrin analysis was based on an erroneous valuation of Ribapharm. Similarly, Towers Perrin's discussion of an option bonus for Panic was based on the assumption that Ribapharm had "an estimated value of \$3 billion."

37. The Towers Perrin letter also plainly did not rest on a sound basis because its assessment of the option bonuses assumed the bonuses were to be based on the spin-off of the entirety of Ribapharm, not on the IPO. The letter indicated Towers Perrin's advice was based on experience with similar spin-offs. The \$50 to \$60 million "success fee" mentioned in the Towers Perrin letter reflects two percent (2%) of a spin-off with a value of approximately \$2.5 to \$3.0 billion. Towers Perrin never suggested that a \$50 to \$60 million success fee was appropriate for an IPO that raised less than \$300 million. Significantly, two percent of the net proceeds of \$276 million that ICN realized from the IPO would be only approximately \$5.5 million, not \$50 to \$60 million. Thus, even assuming (contrary to fact) that Towers Perrin's success fee analysis had any application to cash bonuses, that analysis shows that the \$50 million in bonuses the ICN Board approved was over nine times the amount that would equal two percent of the IPO.

38. In evaluating the option bonuses, Towers Perrin observed that in order for the recipients to realize value from the options, "shareholders must see their Ribapharm shares appreciate well above the offering price." Thus, Towers Perrin recognized that the calculation of a theoretical value of options does not represent an actual value because the options' worth would have been dependent on Ribapharm's achieving a market value well above the IPO price, an event which has not occurred. In contrast, the \$50 million of cash bonuses approved by the ICN

Board were a certainty and were not in any way dependent on the future value of Ribapharm's stock.

FURTHER HARM TO ICN FROM THE BONUSES

39. The Defendants' decision to grant themselves and other insiders \$47.8 million in cash bonuses from the IPO proceeds drew harsh criticism from shareholders and compensation experts. On April 30, 2002, the *Los Angeles Times* reported:

Panic, 72-year-old chairman and chief executive of the Costa Mesa company, was awarded a \$33.1-million bonus earlier this month for his role in the recent spin-off of Ribapharm Inc., which makes the hepatitis drug Ribavirin... ICN's board awarded the cash bonus to Panic along with bonuses totaling about \$17 million to 12 other executives and directors, according to a Securities and Exchange Commission filing. The bonus to Panic, which follows a salary and bonus of about \$1.9 million for 2001, was criticized by some observers and shareholders who have complained about Panic's leadership and excesses. "We think this award was egregious and a blatant transfer of shareholder wealth to executives," said Tim Rankin, assistant portfolio manager at Franklin Mutual Advisers.

...

Alan Charles, ICN's executive vice president of corporate relations, defended the bonus, saying it was a reward for Panic's key role in the development of the spin-off. Charles said the bonuses were in lieu of stock or options in the new company and that the amount--which was determined after consultation with compensation specialist Towers Perrin--was not out of line with the practices of corporate America... But some compensation specialists questioned the amount and the validity of the large one-time bonus. "The act of splitting off a company into two pieces is not an act worthy of a bonus at all," said Graef Crystal, a compensation expert in Las Vegas and a onetime executive at Towers Perrin. (Emphasis added).

40. In a May 24, 2002 report regarding ICN, Institutional Shareholder Services also questioned the legitimacy of the bonuses:

We believe that the board's role in the IPO process should fall under the normal course of a director's duty and therefore does not call for the payment of a rather rich bonus.

41. In a May 28, 2002 *Bloomberg* article, compensation expert Graef Crystal wrote:

Milan Panic, the embattled chief executive officer of ICN Pharmaceuticals, Inc., is no great shakes as a performer. But he will go down in history as a true pay pioneer. Panic's award-winning move: receiving a \$33.1 million cash bonus for arranging an initial public offering of a 19.9% stake in Ribapharm, Inc., a unit that produces the hepatitis drug ribavirin.

Panic's \$33.1 million bonus was paid "to recognize and reward the diligence and perseverance in developing the business that became Ribapharm," the proxy said. But that "diligence and perseverance" presumably was already reflected in Panic's earlier bonuses and option grants. Why did he need to be rewarded again? Then again, the dissidents should have known better. After watching his other antics, what did they think he would do? Back off and give himself nothing?

COUNT I

THE BONUSSES ARE VOID PURSUANT TO DGCL § 144

42. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if set forth fully herein.

43. Pursuant to Delaware General Corporation Law § 144, 8 Del. C. §144, a transaction between a corporation and one or more of its directors or officers in which one or more of the directors or officers have a financial interest is void or voidable unless the transaction is: (i) approved by a majority of the disinterested directors; (ii) approved by vote of the shareholders; or (iii) is fair to the corporation.

44. Pursuant to DGCL §144, the payment of unearned cash bonuses in connection with the IPO is void because the transactions were: (i) not approved by any disinterested

directors; (ii) not approved by a shareholder vote; and (iii) not fair to ICN and its shareholders. The Court should declare that the April 10, 2002 decision of the ICN Board to award cash bonuses was void. The Court should also require disgorgement of improper bonuses. The Defendants should also reimburse Valeant for the improper bonuses they caused to be paid to other ICN insiders and pay all damages and expenses caused by their invalid actions, including damages and expenses caused by the claims asserted against the Company as a result of Panic's reallocation of bonuses.

COUNT II

FOR BREACH OF FIDUCIARY DUTIES IN CONNECTION WITH THE IMPROPER CASH BONUSES

45. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if set forth fully herein.

46. The Defendants owed to the Company the duties of loyalty and good faith which required that they, *inter alia*, refrain from benefiting themselves at the expense of the Company and its shareholders.

47. The Defendants breached their fiduciary duties of loyalty and good faith by improperly granting themselves unearned cash bonuses in connection with the IPO.

48. The Defendants breached their duty of loyalty by granting themselves retroactive compensation for services already rendered and for which they had already been compensated. Moreover, the Defendants have not demonstrated that their past services were of such an extraordinary and unusual character or resulted in such extraordinary and unusual benefits to the Company such that almost \$50 million of stockholders' money should be directed to them and

other ICN insiders. Furthermore, the Defendants failed to consider obviously material facts and failed to obtain a proper, complete and independent analysis of whether the bonuses were fair.

49. The Defendants also breached their fiduciary duties of loyalty and good faith by approving and participating in a transaction from which they each received an improper personal benefit. The Defendants did not act in good faith and made illegal bonus payments to themselves. The Court should require disgorgement of improper bonuses received by the defendants and reimbursement of amounts they caused the Company to pay others.

50. As a direct and proximate result of the Defendants' foregoing breaches of fiduciary duties, the Company has suffered tens of millions of dollars of damages, including the unearned cash bonuses paid to the Defendants and other ICN insiders and other damages and expenses inflicted on the Company, including claims by persons asserting they were entitled to bonuses.

COUNT III

FOR WASTE OF CORPORATE ASSETS IN CONNECTION WITH THE IMPROPER CASH BONUSSES

51. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if set forth fully herein.

52. The Company received no consideration in exchange for the payment to the Defendants and other insiders of cash bonuses in connection with the IPO, and these payments served no corporate purpose. As officers and directors of ICN, the Defendants owed a fiduciary duty to act in the best interests of the Company and its shareholders without paying themselves an extraordinary bonus for services for which they had already been compensated. Moreover, the amounts paid were so excessive that no reasonable director would find that the payments

were justified by the disproportionately minimal services rendered with respect to the IPO, especially in light of the compensation already paid for such services.

53. The Defendants affirmatively approved the granting of the unearned cash bonuses for no consideration to the Company, which constituted a waste of corporate assets.

54. As a direct and proximate result of the Defendants' waste of corporate assets, the Company has sustained damages, as alleged herein.

COUNT IV

FOR UNJUST ENRICHMENT

55. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if set forth herein.

56. The bonuses received by Panic and Jerney constitute unjust enrichment. The April 10, 2002 Compensation Committee Report and board minutes claim that those bonuses are based on the Towers Perrin Letter. Significantly, no representative of Towers Perrin attended the April 10 meetings of the Compensation Committee and ICN board where the determinations to recommend and approve cash bonuses were made.

57. The Towers Perrin Letter assumed that the Ribapharm IPO would be followed by a spin-off of the remaining shares of Ribapharm to ICN's shareholders. Panic and Jerney knew that the spin-off had not occurred and might not occur. The Towers Perrin Letter assumed a "value of the spin-off" of "approximately \$2.5 to \$3.0 billion." Thus, that letter assumed the consummation of the spin-off, an event that did not occur. The IPO involved the sale of only 20% of Ribapharm for \$276 million, not the spin-off of the entire company. Any bonuses should have been based on the value of the IPO, not the value of the spin-off. Panic and Jerney were unjustly enriched as to the portion of their bonuses that was based on the assumption of the spin-

off that never occurred. At a minimum, any bonuses should have been based solely on the gain to ICN from the IPO.

58. The Towers Perrin Letter noted that ICN was proposing that Milan Panic receive 5 million Ribapharm options, representing approximately 63% of the 7.9 million Ribapharm options proposed to be granted to ICN directors and employees. Based on representations of ICN management concerning the history of the development of the Ribapharm assets, the Towers Perrin Letter stated that “it would not be unreasonable for the Compensation Committee to grant Panic up to 5 million options based on an assessment of his direct role in developing Ribapharm to an estimated value of \$3 billion.” Thus, the letter assumed a \$3 billion value for Ribapharm.

59. The assumed value of \$2.5 to \$3 billion is incorrect, even if consideration of all of Ribapharm was appropriate. At the projected IPO price of \$13 to \$15 per share discussed in ICN’s public filings, the 150 million shares of Ribapharm would be worth only an estimated \$1.95 billion to \$2.25 billion. The Towers Perrin Letter assumed a \$14 per share price for Ribapharm’s stock. The actual IPO price was only \$10 per share. At that price, the 150 million shares of Ribapharm would have an estimated value of only \$1.5 billion. Even if that entire amount represented “gain” to ICN, 2% of that gain would be \$30 million, not \$50 million.

60. The Towers Perrin Letter indicated that any success fee was to be based on 2% of the gain to the Company. However, the IPO proceeds were not “gain” to the Company because the Company had obviously invested funds and resources to generate the business. Moreover, the Company had to pay taxes on the transaction.

61. Towers Perrin only considered a proposal for Panic to receive 63% of the Ribapharm options (5 million of 7.9 million options). Even if the ICN board had acted validly in

approving cash bonuses, it directed that the \$50 million in cash bonuses be “allocated in proportion to the proposed options for current ICN employees and directors.” Even assuming Panic was entitled to a cash bonus, 63% of the \$50 million bonus pool would yield a bonus of \$31.5 million, not the \$33,050,000 Panic received based on his reallocation of the bonus pool. Thus, even assuming Panic could properly receive 63% of a \$50 million bonus pool, he was still unjustly enriched by \$1,550,000.

62. Permitting Panic and Jerney to retain the bonuses ICN paid to them would allow unjust retention of a benefit obtained at the expense of ICN. The amounts paid were the result of a breach of fiduciary duty. The amounts were also based on mistaken assumptions, inflated values and incorrect premises. Even if Panic and Jerney were legitimately entitled to bonuses, they received overpayments as a result of the inaccuracy of those assumptions, values and premises. At a minimum, it would be contrary to fundamental principles of justice or equity to permit Panic and Jerney to retain the portion of such bonuses that was based on those inaccuracies. As ICN’s two most senior officers, Panic and Jerney had superior access to information and had a duty to ensure the accuracy of the financial assumptions, valuations and premises upon which the bonuses were based. They were unjustly enriched when ICN paid them bonuses based on faulty financial assumptions, inflated estimated values and erroneous premises that were inflated and incorrect.

63. Even if Panic and Jerney could legitimately have been paid some cash bonus to prevent unjust enrichment, it is necessary that at a minimum they be required to pay back with interest the portions of their bonuses that were based on:

- (a) an assumed value for Ribapharm of \$2.5 to \$3 billion;
- (b) a spin-off that never occurred;

- (c) an assumed IPO price of \$13, \$14 or \$15 per share, rather than the actual IPO price of \$10 per share;
- (d) a value that is beyond the net gain to ICN from the IPO;
- (e) the inclusion of debt as part of the value of Ribapharm;
- (f) Panic's reallocation of the bonuses.

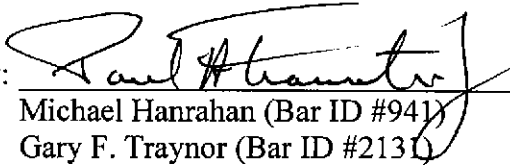
64. Plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff demands judgment as follows:

- A. Declaring the award of cash bonuses void;
- B. Against Defendants and in favor of the Company for unjust enrichment, restitution and disgorgement of all amounts improperly or unjustly received by them;
- C. Ordering rescission of and imposing a constructive trust on the Defendants' payments of unearned cash bonuses to themselves in connection with the IPO;
- D. Against the Defendants for damages sustained by the Company as a result of the Defendants' invalid action, breach of fiduciary duties and waste of corporate assets, including the amounts paid by the Company to others at the direction of the Defendants and the costs relating to claims for bonuses;
- E. Requiring Defendants to repay to the Company all amounts it has advanced to them for attorneys fees and expenses in defending claims related to the cash bonuses, including those asserted in this action;
- F. Awarding pre-judgment interest on the Defendants' wrongful bonuses and on all damages awarded;
- G. Awarding to plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

H. Granting such other and further relief as the Court deems just and proper.

PRICKETT, JONES & ELLIOTT, P.A.

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