

From: Gorman, Robert <Robert.Gorman@valeant.com>
Sent: Friday, May 11, 2018 2:00 PM
To: Diner, Bryan
Subject: FW: My concern about the Valeant representation

From: Verde, Michael I. [mailto:michael.verde@kattenlaw.com]
Sent: Friday, May 11, 2018 1:38 PM
To: Gorman, Robert
Cc: Mandell, Floyd A.
Subject: RE: My concern about the Valeant representation

Mr. Gorman:

Floyd Mandell asked me to respond to your email as the General Counsel of Katten. There seems to be a fundamental misunderstanding regarding the scope of Katten's work for Valeant. As you note, almost all of Katten's work since 2015 has been for Bausch & Lomb and Obagi. While you treat these independent companies as if they were Valeant, your Outside Counsel Guidelines say otherwise:

Valeant expects a significant degree of loyalty from its key external firms (key firms being firms with 12-month billings exceeding one million dollars (\$1,000,000)). ***Such firms should therefore not represent any party in any matters where such party's interests conflict with the interests of any Valeant entity.*** Valeant expects its firms to adhere to local rules and ethics rules relating to conflict of interest and client representation. Any request to waive a conflict of interest must be referred to the Valeant General Counsel. (emphasis added)

Under this definition, Katten has never been a "key external firm" and so, consistent both your Guidelines and Rule 1.7 of the Rules of Professional Conduct, Katten properly considered Bausch & Lomb and Obagi as separate companies for conflict purposes. Katten did handle some small matters for Valeant itself between 2015 and 2017, but they involved copyright and advertising issues and did not in any way involve patent issues or the product that is the subject of the current Lawsuits. Your statement that Katten has represented Valeant "for decades" is inaccurate. Katten has represented Bausch & Lomb for decades, but only began doing work for Valeant after Valeant acquired Bausch & Lomb in 2013. Notably, the other Valeant affiliate for whom Katten did substantial work, Obagi, was sold by Valeant in 2017.

As for your other questions, we do extensive conflict checks as part of our hiring process and were well aware of this situation months ago but, for the reasons set forth above, did not deem this to be a conflict that would prevent Mr. Mukerjee and his team from handling a trial that was more than two years in the making. For obvious reasons we could not contact Valeant on this issue until after Mr. Mukerjee and his team had announced their departure from Alston & Bird. While we did not intend to seek a waiver from Valeant because none was needed, we nevertheless planned to alert Valeant to this situation before Mr. Mukerjee and his team filed the substitution of counsel indicating they were now at Katten. However, through a miscommunication, our local counsel filed the substitution before Mr. Mandell was told that he should contact you. While not a breach of our ethical obligations, this was an unintended breach of our protocol and for that we apologize.

After Mr. Mukerjee and his team arrived at Katten, we instituted an ethical wall between any attorneys who had billed time to any Valeant or Bausch & Lomb matters in the last 18 months and any attorneys working on any Mylan matters to protect any confidential information Katten might have obtained from Valeant. When we set up an ethical wall, (1) a notice is sent to the walled attorney informing that they cannot work on, access, bill time or discuss with anyone the

matters from which they are walled; (2) a notice is sent to all Firm personnel informing that the attorney is walled from the specific matters and that personnel must not assign any work to, share any records with or discuss any aspect, either verbally or via electronic means, with the walled attorney; (3) restricted stickers are placed on physical file wallets belonging to each matter, further notifying all personnel of the wall in place; (4) the walled attorney is unable to access physical files in the records management system; (5) the walled attorney is unable to enter time on the matters from which they are walled; (6) the walled attorney is unable to access electronic documents in the document management libraries from which they are walled; (7) the walled attorney is unable to view details in the billing system on matters from which they are walled; and (8) the walled attorney is unable to access litigation support data on the network file shares. We are confident that these procedures, combined with the fact that Mr. Mukerjee and his team have only been at Katten for a few weeks, have prevented Mr. Mukerjee and his team from accessing any Valeant information, even though that information was limited to Katten's trademark and copyright work for Valeant and its affiliates and had absolutely no relevance or relationship to the matters at issue in the Lawsuits.

I assume you saw my letter to Mr. Diner setting forth the legal reasons why there is neither a need for Katten to withdraw from this matter nor a basis for Valeant to move to disqualify Katten. As I indicated to Mr. Diner, if there are facts or circumstances that you believe we either have misapprehended or failed to weigh properly, please tell us what they are and we will reconsider our position.

Sincerely,

Michael I. Verde

General Counsel

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From: Gorman, Robert <Robert.Gorman@valeant.com>

Sent: Thursday, May 10, 2018 1:32 PM

To: Mandell, Floyd A. <floyd.mandell@kattenlaw.com>

Cc: Verde, Michael I. <michael.verde@kattenlaw.com>

Subject: My concern about the Valeant representation

Floyd

I am writing to you in your capacity as the responsible partner for Katten's work with Valeant.

As you know, Valeant by itself and through affiliates such as Bausch & Lomb, Biovail, and Obagi (collectively "Valeant") has been, and continues to be, a longstanding client of your firm. Valeant has entrusted Katten with many significant intellectual property cases and other matters in many subject matter areas and worked with numerous attorneys in many of your offices for decades.

I was stunned to learn that Katten recently hired attorneys ("Lateral Attorneys") who are currently litigating against Valeant in *Valeant Pharm. Int'l, Inc. et al. v. Mylan Pharm., Inc., et al.*, No. 2:15-cv-08180 (SRC) (CLW); *Valeant Pharmaceuticals International, Inc. et al. v. Mylan Pharmaceuticals, Inc. et al.*, Civil Action No. 2:17-06714 (SRC) (CLW) (consolidated) (the "Lawsuits"). I was not contacted before Katten hired the Lateral Attorneys, and to the best of my knowledge, no one else at Valeant was contacted either.

I trust you can understand that I have many questions. Can you please describe your standard conflict check for potential new hires; explain how Katten's standard conflict check did not uncover this clear conflict of interest; tell me

why Valeant was not informed about this development before (and even after) the Lateral Attorneys joined your firm; and let me know when and what measures Katten has taken to ensure that all Valeant's confidential and privileged information has been shielded from improper access. This seems to me to be a clear breach of loyalty to Valeant, and I need to ask, with all respect, for Katten to withdraw from representing Mylan in the Lawsuits.

I look forward to a prompt response.

Sincerely,

Rob

Rob Gorman

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