

CytoDyn Faces Continued Shareholder Pressure

Corporate Defense and Disputes Blog on **June 11, 2021**

The spate of shareholder actions against biotech companies relating to COVID-19 treatments shows no signs of stopping, and now, derivative lawsuits are following the initial wave of securities class actions. For example, late last week, a shareholder of CytoDyn, Inc., brought a derivative action against certain officers and directors of the company. CytoDyn is a biotechnology company that has focused on the development and commercialization for a drug called “Leronlimab,” what was promoted as a potential therapy for HIV. According to the complaint, in 2020, CytoDyn began promoting Leronlimab as a treatment for COVID-19, causing its stock price to rise. But when it came out that marketing Leronlimab as a COVID-19 treatment was not a commercially viable development for the company, the complaint alleges CytoDyn’s shares dropped significantly. Specifically, the complaint alleges a CytoDyn “partner,” advisor, and shareholder (who is not named in the complaint), participated in an interview in which he stated that CytoDyn would be moving forward with the federal government program aimed at fast-tracking virus treatments, known as Operation Warp Speed. After his comments, the stock rose precipitously. Just six days later, however, the [Wall Street Journal](#) reported that the company was not being considered for Operation Warp Speed, and following the publication of the article, the complaint alleges that CytoDyn stock dropped over 17%.

Despite this revelation, the complaint alleges that the company continued to promote Leronlimab as a COVID-19 treatment, re-inflating the stock. However, after nearly 12 months of promotion, CytoDyn disclosed that its COVID-19 studies had produced non-statistically significant results. The release of the test results again caused the stock to plummet.

The plaintiff also claims that, while promoting Leronlimab’s COVID-19 treatment capabilities, company executives began selling millions of shares of CytoDyn stock and made over \$25 million in total proceeds.

The up and down nature of CytoDyn's stock price over the course of the pandemic led to two securities class actions. In this derivative complaint, the plaintiff alleges defending these suits will cause the company to expend significant amounts of money.

The complaint was brought in the federal court in the Western District of Washington (where CytoDyn is headquartered). As previously noted in this space, however, companies incorporated in Delaware have recently begun adopting bylaws requiring shareholder derivative suits to be filed in Delaware Chancery Court. Like those complaints, the CytoDyn complaint contains claims for breach of fiduciary duty, waste of corporate assets, and unjust enrichment, while also containing a federal count for alleged violations of Sections 10(b) and 20(a) of the Exchange Act. It remains to be seen whether CytoDyn maintains a similar forum selection provision, but check back here for additional updates as the case moves forward.

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