

SHOUT OUT

Shout-Out: Latham Knocks Out Securities Class Action Against Medical Device Maker

August 28, 2019

Latham & Watkins litigators won dismissal with prejudice of a putative class action against medical device company, Nevro Corp.

Partners Matthew Rawlinson and Elizabeth Deeley, with associates Grant Strother, Michael Short, Jay Mitchell, and Barr Benjamin convinced U.S. District Judge Vince Chhabria of the Northern District of California to nix the suit.

Filed last year by Saxena White and Bernstein, Litowitz, Berger & Grossmann, the plaintiffs alleged that the company made materially false and misleading claims about its sole product and only source of revenue—a spinal cord stimulation system called “Senza” that’s designed to alleviate chronic pain.

“In reality, Nevro’s purportedly ‘proprietary technology’ was founded upon a years-long, fraudulent scheme to steal trade secrets from one of the company’s main competitors, Boston Scientific Corporation,” they alleged. “Notably, defendants’ scheme was revealed through documents and communications that Nevro’s own counsel discovered and disclosed in a series of patent infringement lawsuits between Nevro and Boston Scientific regarding the very technology upon which Senza is based.”

In a motion to dismiss, the Latham team shredded the arguments.

“First, the challenged statements are not actionable,” they wrote—they’re puffery.

“Second, plaintiff does not come close to alleging facts that (even if taken as true) would render any of Nevro’s statements false,” they continued. “Nothing in plaintiff’s allegations suggests that Nevro did not develop and does not possess its own proprietary technology.”



“Third, having failed to properly allege any false statement of fact, plaintiff necessarily fails to plead a compelling inference of scienter,” the Latham team wrote.

“Fourth, plaintiff has not even plausibly alleged loss causation,” they concluded, adding that “It is black letter law that previously public information cannot—merely by virtue of being published again—become a ‘corrective disclosure.’”

The judge was convinced. “Even assuming that some of Nevro’s statements about its competitive advantage and about the proprietary nature of the Senza technology were not puffery, the plaintiff has not adequately alleged that those statements were materially false or misleading,” Chhabria wrote on Aug. 1, giving the plaintiffs leave to file an amended complaint.

Instead, they threw in the towel, announcing that they would not try again—sealing the win for Latham and Nevro.