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COVER STORY

Defense limits damages in major securities fraud verdict

Puma Biotechnology must pay fraction of billion-dollar claim

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SANTA ANA — A federal jury returned a verdict Monday that was a fraction of what plaintiffs sought in a billion-dollar case against a pharmaceutical company, authorizing about 5 percent of the damages requested in the largest securities fraud trial in 10 years.

Following a two-week trial and about three days of deliberation, the jury of eight unanimously concluded that Alan Auerbach, founder and CEO of Puma Biotechnology Inc., committed securities fraud by lying about disease-free survival rates for the breast cancer drug neratinib.

But jurors also concluded Auerbach didn't lie about three other test results, including the drug's diarrhea rate, and they awarded damages of $4.50 per share when plaintiff's attorneys requested approximately $87. *Hsu v. Puma Biotechnology*, 15-CV00865 (C.D. Cal., filed June 3, 2015).

Puma's lawyers at Latham & Watkins LLP looked elated as they left U.S. District Judge Andrew J. Guilford's Santa Ana courtroom, but they declined comment to the Daily Journal.

Andrew B. Clubok, who was lead co-counsel with Michele D. Johnson representing Puma, emphasized in his Jan. 29 closing argument that the drug continues to save lives, and that no company leader profited from the stock during the time in which the plaintiffs alleged securities fraud, which he said didn't occur. All money raised during that time went to cancer research, he said.

Patrick J. Coughlin, of counsel to Robbins Geller Rudman & Dowd LLP, acknowledged that the damages are much less than he requested but said, "It's still a win" and noted the fraud finding against Auerbach.

"Hopefully, the U.S. attorney's office will take note of that," added Coughlin's co-counsel Jason A. Forge, a Robbins Geller partner.

Coughlin said the number of shares affected by the $4.50 damages is as low as 11 million and as high as 20 million. That would bring total damages of $49.5 million to $90 million. However, the actual amount depends on how many shares are covered by the yet-to-be-filed claims, and that number is traditionally far lower than the total eligible. Puma's defense team at Latham & Watkins disputes the 11 million to 20 million range and says the maximum number of eligible shares is 10 million.

His team represents the Norfolk County Council in England, which had bought Puma stock at the high price, then lost money when the stock cratered. The Council is the only active claim in the case. Now that a verdict has been reached, other class members may file claims.

Coughlin and Forge, who handled the Trump University class action together, were joined at trial by Robbins' Tor Gronborg, Trig R. Smith, Susannah R. Conn, J. Marco Janoski Gray, Debashish Bakshi and Ting H. Liu.

Johnson and Clubok's team included Colleen C. Smith, Sarah Tomkowiak, Kristin N. Murphy, Jordan D. Cook and Meryn Grant.

Auerbach started Puma Biotechnology after selling his first cancer drug company, Cougar Biotechnology, to Johnson & Johnson in 2009. Puma licensed neratinib from Pfizer Inc., and Puma's share price soared in 2014 amid the results of a late-stage technical trial. It dropped in 2015 amid news of omitted results, including higher-than-reported diarrhea rates, which led to the massive securities fraud complaint.

"This is what was really going on: He doubled or cut down by a third each of these key numbers," Coughlin said in his closing argument. "It was not the blockbuster drug that Mr. Auerbach led the market to believe."

Clubok said the plaintiffs "have mixed all the concepts together to try to create the appearance of some materially false or misleading statement."

The trial included extensive testimony about what plaintiff's attorneys described as extraordinarily and debilitating diarrhea, which Clubok said was exaggerated.

"You heard that were going to hear about debilitating diarrhea," Clubok said in his closing. "It turns out, at least the facts have shown, that the diarrhea is manageable. It's a short-term issue."

Clubok suggested the plaintiffs were the ones acting fraudulently by exaggerating the diarrhea, which he said can be managed with another drug.