

Puma Biotech Says Liability Still Unsettled In Stock-Drop Row

By **Dean Seal**

Law360 (July 29, 2019, 7:39 PM EDT) -- Puma Biotechnology Inc. told a California federal judge last week that investors who scored a partial jury win on stock-drop claims are trying to breeze past the fact that the jury's verdict didn't resolve liability or damages.

In February, a jury found that one of four statements about the results of a clinical trial involving a breast cancer treatment, which investors in a putative class action alleged were misleading and caused a stock drop, did contain misrepresentations. The jury found in Puma's favor on the other three contested statements.

Puma's investors were awarded damages of \$4.50 per share, but when the pension fund leading the litigation motioned for the entry of a final judgment, a California federal judge rejected it as premature, finding in May that both liability and the damages amount for absent class members were not solidified and could be challenged by Puma.

According to Puma's filing on Friday, the pension fund has proposed a claims process and class notice that give "short shrift" to the court's ruling and ignores Puma's right to challenge its liability to absent class members.

"Plaintiff would mislead class members into believing that liability has already been adjudicated entirely in their favor, and fails to inform them of the possibility of discovery and the nature of additional proceedings between submitting a claim and (possibly) receiving damages," the biopharmaceutical company said.

Filed in 2015, the investor suit alleged Puma made false or misleading statements about the results of a Phase III clinical trial, known as the ExteNET trial, for the breast cancer treatment neratinib. Executives falsely stated that the disease-free survival rate for patients who had been taking the treatment was 91% compared to an 86% disease-free survival rate for those taking the placebo, according to an amended complaint.

It became clear in May 2015, however, that the disease-free survival rate for patients taking the treatment was 93.9%, compared with 91.6% for patients taking a placebo, investors alleged. When the market realized that the difference in disease-free survival rates was about half the amount the company previously disclosed, shares declined by 18.6%, or \$39.05 per share, the investors said.

The jury found in February that the investors had proven the misrepresentations about the survival rates "played a substantial part in causing the decline in Puma's stock price," but did not reach the same conclusion about the other three challenged statements. Both sides saw the verdict as a victory, with Puma's counsel declaring it "an almost complete exoneration of all defendants on plaintiff's claims."

In May, U.S. District Judge Andrew J. Guilford said that the parties had yet to reach an agreement on how actual damages would be calculated for individual class members, given that some may not have experienced losses, and declined to enter a final judgment.

Puma referenced that ruling last Friday as it sought to strike down the pension fund's proposed claims process and verdict notice, arguing that it has a right to litigate each individual class member's reliance on the misrepresentation in assessing its liability to the class member.

The pension fund's proposed claims process would prevent Puma from obtaining post-trial discovery to make those determinations, according to the company, while the verdict notice would have potential class members believe that issues of damages and liability are already settled.

"Plaintiff has not come to terms with the court's ruling that defendants have a legal right to litigate whether individual class members can claim the fraud-on-the-market presumption," Puma said.

The company further alleges that the investors' proposed methodology for calculating damages would actually overcompensate its class members because it ignores gains investors may have realized as a result of the share price inflation caused by Puma's misrepresentation.

According to Friday's filing, Puma has suggested its own approach to the claims process and verdict notice that would preserve its right to assess individual liability, "accurately inform class members about the state of this case and next steps, and bring the case to resolution as fairly and expeditiously as possible."

"As reflected in our papers, we believe plaintiff's approach to the claims process is contradicted by both the federal rules and prior court decisions," Michele Johnson, an attorney for Puma, told Law360 in an email. "While the legal team will continue to challenge plaintiff's efforts to overreach, the company has been pleased to maintain its focus on delivering life-saving cancer treatments to patients who would otherwise be out of options under the standard of care before neratinib.

Counsel for the investors did not respond to requests for comment.

The investors are represented by Susannah Conn, Tor Gronborg, Jason Forge, Trig Smith, J. Marco Janoski Gray, Debashish Bakshi, Ting H. Liu and Patrick Coughlin of Robbins Geller Rudman & Dowd LLP.

Puma is represented by Andrew Clubok, Michele Johnson, Colleen Smith, Sarah Tomkowiak and Kristin Murphy of Latham & Watkins LLP.

The case is Hsu v. Puma Biotechnology Inc. et al., case number 8:15-cv-00865, in the U.S. District Court for the Central District of California.

--Additional reporting by Rachel Graf. Editing by Jay Jackson Jr.