

Securities Regulation Daily Wrap Up, FRAUD AND MNAIPULATION—DNJ: No Misrepresentations or Failures to Disclose Found in Drug Company Press Releases, (Apr. 24, 2013)

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By Rodney F. Tonkovic, J.D.

Fraud claims were dismissed after a district court found that the plaintiffs failed to sufficiently allege that the defendants made a misstatement or omission of material fact in a press release. The court also found that the complaint did not show a failure to disclose in a second press release. This opinion was released as “Not for Publication” (*Security Police and Fire Professionals of America Retirement Fund v. Pfizer, Inc.*, April 22, 2013, Wigenton, S.).

An institutional investor brought the action against Pfizer, Inc., as successor-in-interest to Wyeth, on behalf of purchasers of Wyeth stock. The action involves bapineuzumab, a drug for the treatment of Alzheimer’s disease. According to the complaint, Wyeth made false statements and failed to disclose information in press releases issued on May 21 and June 17, 2007. The first amended complaint in this action was dismissed for failure to state a claim after the court found that the plaintiffs failed to successfully allege that the press statements were not misleading or that there was a duty to disclose.

Misrepresentations. Regarding the May 21 release, the amended complaint argued that Wyeth’s statement that the decision to proceed with Phase III testing was based on Phase II data was false because the decision was not based on Phase II interim data. This argument was based on new allegations from a confidential witness. The court disagreed, however, stating that Wyeth’s statement was not misleading when taken in context. The court again concluded that the press release “contained cautionary language that neutralized any potential harmful language by [d]efendants.”

Specifically, the release stated that no conclusions could be drawn about the Phase II study until it was completed and after the data was analyzed. Moreover, the court stated, the press release made no affirmative statements about the Phase II interim data. Accordingly, the court concluded that the complaint failed to sufficiently allege that the statements in the May 21 press release constituted a misstatement or omission of material fact.

Duty to disclose. Next, the plaintiffs argued that the statements in the June 17 press release were materially false because they failed to disclose negative Phase II results while stating that those results were encouraging and supported the decision to move to Phase III. Here, the court concluded that these arguments mirrored those rejected in the first amended complaint and similarly concluded that the complaint failed to establish that the defendants had a duty to disclose the specific information that the plaintiffs referenced. Pfizer’s motion to dismiss was accordingly granted.

The case is Civil Action No. 10-cv-3105.

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Companies: ARCA S.G.R.S.; Pfizer, Inc.; Wyeth

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