AXINN

Pharmaceutical Experience Matters in Defending Pharmaceutical Securities Cases

January 2020

ATTORNEYS

Becker, Matthew

Landmon, Chad

PRACTICE AREAS

Intellectual Property

Litigation

Matthew Becker and Chad Landmon
Axinn Update

It is no secret that the number of securities class actions filed against pharmaceutical companies has soared in recent years. From a historical average of 12 per year from 1997-2016, the number of securities cases against pharmaceutical companies rose to 30 in 2017 and 24 in 2018.[1] In recent years, the pharmaceutical industry has been the single largest recipient of securities suits across all listed companies.

What is the best response to this tsunami of securities filings? A firm grasp of securities law fundamentals is obviously critical. But does expertise and experience in the pharmaceutical industry matter as well?

Recent case law shows that pharmaceutical industry knowledge can lead to better results in securities suits in the pharmaceutical industry. Stand-out early resolutions of securities claims against pharmaceutical companies reflect the defendant's ability to talk knowledgeably about such industry-specific issues as:

- Clinical studies and special protocol reviews
- Interaction of patent applications with clinical studies
- Comparisons of a drug candidate with other drugs
- Significance of statements at various stages of clinical trials
- Pronouncements by the FDA and independent committees

These "technical" points go to the central securities-law elements of whether a misrepresentation was made, its materiality, the defendant's scienter, and damages. In many industries, securities defense amounts to a formulaic consideration of these elements, with little regard to the industry at issue. As the cases discussed below attest, in the pharmaceutical world, industry experience can be crucial in constructing a winning securities defense.

The balance of this memorandum summarizes recent securities decisions illustrating the relevance of pharmaceutical industry knowledge and experience to the successful defense of securities claims against a pharmaceutical defendant.

Click here to access the entire memorandum.