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Chelsea Shareholders Lose Suit Over Drugmaker's Sale

By **Braden Campbell**

Law360, New York (May 20, 2016, 8:36 PM ET) -- The Delaware Chancery Court dismissed shareholder litigation Friday alleging Chelsea Therapeutics International Ltd.'s board acted in bad faith by omitting two projections from disclosures ahead of the drugmaker's 2014 sale, ruling the optimistic earnings forecasts were unlikely to be realized.

Chelsea shareholders had argued that the board acted in bad faith by not looking at a proposed buyout offer from Lundbeck A/S, which Chelsea ultimately accepted, through the lens of projections that assumed the primary competitor for Chelsea's flagship drug Northera would be removed from the market and the Parkinson's disease-related blood pressure treatment would be approved to treat several more diseases.

But Vice Chancellor Sam Glasscock III ruled Friday that the shareholders failed to state a claim, agreeing with a colleague and the board that the forecasts in question were highly speculative and that Chelsea's leadership had little incentive to rush into a deal.

“The question before me is, simply, was the Chelsea board's decision to exclude the projections so egregious on its face that — notwithstanding that there are no allegations that the directors are interested or lack independence — the plaintiffs have stated a case that it is reasonably conceivable that the defendants have acted in bad faith?” Vice Chancellor Glasscock said. “Here, the answer is no.”

The maker of symptomatic neurogenic orthostatic hypotension drug Northera had accepted a buyout offer from Lundbeck in May 2014 that would pay shareholders $6.44 per share plus contingent value rights that could pay as much a $1.50 per share if certain sales targets were met.

A group of shareholders filed suit seeking to block the merger days later, on the grounds the board undervalued the company by as much as $558 million through its failure to take the projections into account. The deal went through the next month, after the shareholders were denied a preliminary injunction, and they revised their suit a year later seeking post-merger damages on the same grounds.

The first projection, referred to in court documents as the no-midodrine projection, forecast a lucrative surge in sales of Northera should its primary competitor, midodrine, be taken off the market. Indeed, the U.S. Food and Drug Administration said in 2010 it planned to take the drug off the market due to “side effects and ineffectiveness,” according to Vice Chancellor Glasscock's ruling. But, he noted, the agency quickly reversed course amid a “public outcry from patients and physicians alike,” making it unlikely the projections would be realized.

The second projection, referred to as the L.E.K. study, projected future revenues for Northera to be as much as $860 million higher in 2030 should it be approved for treatment of additional conditions including freezing of the gait, intradialytic hypertension, attention deficit hyperactivity disorder and fibromyalgia. But Vice Chancellor Glasscock likewise dismissed this study as too speculative to be given much weight in merger considerations, agreeing with former Vice Chancellor Donald F. Parsons' 2014 opinion denying the injunction. What's more, the study fails to account for risk, Friday's opinion said.

The shareholders had also argued that the board was acting in its own interest rather than that of shareholders when it agreed to the sale, citing as evidence a change-in-control provision that paid Chelsea's leaders more than $3 million collectively when the deal closed by the end of 2014. But Vice Chancellor Glasscock was unconvinced, saying the shareholders failed to show this provision was more lucrative to the board than a hypothetical deal that reflected the projections would have been.

"The plaintiffs point out that these payments, not available to the other stockholders, allowed the defendants to recoup (at least in part) the loss to them engendered by the allegedly faithless exclusion of the projections," he said. "Of course, if there were a well-pleaded allegation that the change-in-control payments exceeded ... the loss engendered by an intentional undervaluation of the company in aid of the transaction, a loyalty breach would have been pled."

The shareholders are represented by Seth D. Rigrodsky, Brian D. Long, Gina M. Serra, and Jeremy J. Riley of Rigrodsky & Long PA, Ryan M. Ernst and Daniel P. Murray of O'Kelly Ernst & Bielli LLC, Donald J. Enright and Elizabeth K. Tripodi of Levi & Korsinsky LLP, and Kent A. Bronson of Milberg LLP.

The defendants are represented by S. Mark Hurd and Thomas P. Will of Morris Nichols Arsht & Tunnell LLP, Brian A. Herman and John A. Vassallo III of Morgan Lewis & Bockius LLP

The case is In re Chelsea Therapeutics International Ltd. Stockholders Litigation, case number 9640, in the Court of Chancery of the State of Delaware.

--Editing by Edrienne Su.

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