

CardioNet Wins Dismissal Of Investor Class Action

By **Abigail Rubenstein**

Law360, New York (August 12, 2010) -- A federal judge has tossed a securities class action accusing CardioNet Inc. and two of its executives of inflating the value of the company's stock by making overly optimistic statements about the reimbursement rates Medicare would pay for its wireless heart monitor.

Judge Stewart Dalzell of the U.S. District Court for the Eastern District of Pennsylvania dismissed the case Tuesday, finding that CardioNet's investors had failed to plead falsity or scienter with respect to the defendants' allegedly false and misleading statements.

The suit alleged that despite representations by CardioNet CEO Randy Thurman and Chief Financial Officer Martin Galvan that a significant change to the reimbursement rate was unlikely, the rate was reduced, and CardioNet's stock price consequently plummeted.

The plaintiffs further contended that the company had downplayed an April 24, 2009, report issued by an analyst at Jefferies & Co. Inc. that took a negative view of CardioNet's prospects because an investigation showed that Centers for Medicare and Medicaid Services contractor Highmark Medicare Services planned to reduce the reimbursement rate.

The plaintiffs asserted that they suffered damages when they purchased stock during the class period, which lasted from the day of the report's release until July 10, 2009, when the rate was changed, because the stock price was artificially inflated during due to the defendants' false and misleading statements.

But Judge Dalzell noted that the plaintiffs did not refute the defendants' claim that they had reached out to Highmark in response to the report and that Highmark assured them that no rate reduction was imminent and that it had not leaked information to the Jefferies analyst.

The statements were not false because they reflected what Highmark had told the defendants, Judge Dalzell ruled.

However, even if the statements were false, the court ruled that the class had failed to sufficiently show that the defendants had acted with scienter.

According to the ruling, the plaintiffs appeared to suggest that CardioNet should not have checked the information just with Highmark but also with the analyst who issued the report to determine if Highmark had in fact leaked the information.

But Judge Dalzell held that CardioNet's decisions not to contact Jefferies regarding its sources could not be termed an extreme departure from the standards of ordinary care for a publicly traded company and its executives.

“If we held otherwise, such a company would be required to contact every analyst who issued an unfavorable report based on information that differed from the company's. Perhaps more intriguingly, the analyst would then presumably be required to divulge his or her sources, so that the company could determine whether its sources or the analyst's sources were more credible,” the opinion said.

CardioNet CEO Joe Capper said, “We are pleased with the court's ruling and believe that the facts in the case clearly supported the company's position.”

Morgan Lewis & Bockius LLP's Marc J. Sonnenfeld, who represented CardioNet, called the ruling “a very strong decision.”

An attorney for the class declined to comment on the decision Thursday.

Barrack Rodos & Bacine and Branstetter Stranch & Jennings PLLC served as co-lead counsel for the class.

CardioNet was represented in this matter by Morgan Lewis & Bockius LLP. Attorneys Marc J. Sonnenfeld, Jill Baisinger and Karen Pohlman filed the motion to dismiss.

The case is Solomon-Shrawder v. CardioNet Inc. et. al., case number 09-cv-03894, in U.S. District Court for the Eastern District of Pennsylvania.