

Helping a Pharmaceutical Company Dismiss Groundless Investor Claims

Client:	Incyte Corp.
Industry:	Pharmaceuticals
Area of Law:	Securities
Venue:	U.S. District Court of Delaware
Result:	Dismissal of case with prejudice



“We could not have hoped for a better result. Pillsbury’s strategy from the outset led to a swift and favorable outcome in a very cost-effective manner.” —Eric Siegel, Executive Vice President & General Counsel

When biopharmaceutical company Incyte Corp. announced that revenues for Jakafi, its drug targeting a rare disease called myelofibrosis, were up more than 50 percent from the previous quarter, one might think investors would have viewed it as a positive development. After all, it was only the second full quarter of revenue for the small molecule drug, and the market had reacted well to the previous quarter’s earnings announcement.

Instead, after analysts expressed concern over what they perceived as a high rate of discontinued use among patients, the stock price dropped by over 20 percent.

This drop then triggered a securities fraud suit by investors in the District of Delaware. The complaint alleged, among other things, that the company knew about, but failed to disclose, the drug’s higher-than-expected rate of patient discontinuations, and that numerous other comments by management had been false and misleading.

The suit didn’t make it past Pillsbury’s motion to dismiss.

After reviewing the full content of relevant press releases and conference transcripts, the court ruled that the plaintiffs had failed in the first instance to allege a materially false or misleading statement. Pillsbury’s lawyers argued, and the court agreed, that the plaintiffs should not be permitted to base their complaint on incomplete excerpts from those materials. The court also agreed with Pillsbury that vague expressions of optimism—such as “the initial launch is going well” and “early response to the drug is encouraging”—could not be the basis for legal liability.

The judge went even further, however, noting that the evidence submitted showed that the cautious and conservative predictions that were made—for example, that the company expected slow but steady increases in revenue over subsequent quarters—actually came true.

When the plaintiffs thereafter failed to file an amended complaint within the time allowed, the court entered an order dismissing the case with prejudice, allowing Incyte to focus its full attention and resources on the continued development of its proprietary pipeline of cancer-treating drugs.