JUDGE NEIL M. GORSUCH

SENATE JUDICIARY COMMITTEE QUESTIONNAIRE

APPENDIX 12(e)

Interviews

1. Jury Awards Columbia Hospital $18.2 Million

   Client/Matter: -None-

Jury Awards Columbia Hospital $18.2 Million

The Washington Post

February 18, 2004 Wednesday, Final Edition

Section: Financial; E02

Length: 252 words

Byline: Bill Brubaker, Washington Post Staff Writer

Body

A D.C. Superior Court jury awarded the defunct Columbia Hospital for Women Medical Center $18.2 million in damages, agreeing with the hospital that a malpractice insurance company had overcharged for premiums and encouraged doctors to practice elsewhere.

Officials for the insurer, NCRIC Group Inc., said that the verdict, if upheld, could threaten its viability.

A failure by NCRIC could force many of the doctors it covers to leave the District, a company official said.

The jury rejected claims by NCRIC in a 2000 lawsuit that Columbia had failed to pay $3 million in premiums and interest. The hospital denied the allegation, counterclaiming that it was owed damages by NCRIC. NCRIC denied those allegations.

The 136-year-old hospital closed in May 2002, citing severe financial problems.

Columbia attorney Neil M. Gorsuch said of the verdict, returned on Friday: "We feel that justice was done and are gratified that the jury, after a 21/2-week trial and significant deliberations, rendered a verdict confirming that NCRIC tortiously interfered with the operations of Columbia Hospital for Women."

District-based NCRIC said it will appeal.

"It's appalling that Columbia's management targeted NCRIC as a scapegoat for the hospital's failure," R. Ray Pate Jr., NCRIC's chief executive, said in a statement. "This outcome was driven by misguided sympathy for a failed hospital that had been on a downward spiral for many years."

NCRIC stock fell 12.8 percent, to $9.99, yesterday on the Nasdaq Stock Market.

Classification

Language: ENGLISH

Publication-Type: Newspaper

Subject: VERDICTS (92%); JURY TRIALS (90%); DAMAGES (90%); TORTS (78%); LAW COURTS & TRIBUNALS (78%); BUSINESS TORTS (78%); MEDICAL MALPRACTICE (78%); SUITS & CLAIMS (78%); LITIGATION (78%); APPEALS (73%); EXECUTIVES (66%)

Company: NCRIC GROUP INC (72%); NASDAQ OMX GROUP INC (54%)

Organization: SUPERIOR COURT OF THE DISTRICT OF COLUMBIA (91%)

Ticker: NDAQ (NASDAQ) (54%)

Industry: HOSPITALS (90%); PROFESSIONAL LIABILITY INSURANCE (78%); MEDICAL MALPRACTICE (78%); HEALTH CARE (78%); LITIGATION (78%); MATERNITY HOSPITALS (78%); INSURANCE PREMIUMS (77%)

Load-Date: February 18, 2004

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1. _Supreme Court to hear case of former San Diego drug company_

Client/Matter: -None-

Supreme Court to hear case of former San Diego drug company

Copley News Service

January 5, 2005 Wednesday

Section: CALIFORNIA ONLY

Length: 736 words

Byline: Dana Wilkie Copley News Service

Dateline: WASHINGTON

Body

If you buy a company's stock at $10 a share, then learn the company inflated the stock's value, should you be able to sue for securities fraud - even if you sold the stock with no financial loss?

This is the question going before the U.S. Supreme Court Wednesday (Jan. 12) in a case involving former San Diego drug company Dura Pharmaceuticals Inc. and investors who say they were victimized by Dura's misrepresentations about its stock.

The high court's ruling could affect anyone who buys or sells stocks, or anyone who invests in mutual funds that buy and sell stocks on their behalf.

"This is a case of extreme importance in securities law," said Neil Gorsuch, an attorney representing the U.S. Chamber of Commerce, which is siding with Dura in the case known as Dura Pharmaceuticals Inc. vs. Michael Broudo. "The whole question is whether damages should be tied to (money) actually lost, or whether you're going to permit damages… not tied to shareholders' actual losses."

In 1997, Dura Pharmaceuticals - the San Diego-based maker of allergy and asthma prescription drugs - made several statements promoting "strong" sales of Ceclor CD, a respiratory antibiotic, while indicating that FDA approval of a new asthma inhaler called Albuterol Spiros was imminent. The company's stock that year reached a high of $53 a share.

In February 1998, Dura announced that it anticipated lower than expected revenues because of slow sales of Ceclor CD. Its stock dropped 47 percent in one day. Nine months later, Dura announced that the FDA would not approve Albuterol Spiros after all. Dura's stock fell another 21 percent to $9.75 a share. The FDA chided Dura for news releases allegedly glossing over FDA concerns about Albuterol Spiros' safety.

Investors who bought Dura stock between April 1997 and Feb. 24, 1998 sued, claiming the company violated the Securities and Exchange Act. The centerpiece of their claim: That Dura knowingly inflated its stock price with misleading, upbeat statements about its financial performance, the sales of Ceclor CD and the coming approval of Albuterol Spiros.

In 2001, a San Diego federal judge rejected the lawsuit. Dura investors appealed to the Ninth U.S. Circuit Court of Appeals, which reversed the lower court. Dura appealed the Ninth Circuit's ruling to the U.S. Supreme Court, which is expected to rule this summer. The Bush administration, which wants to curb what it views as frivolous lawsuits, supported Dura's appeal.

The federal courts are split on the matter: The Ninth and Eighth circuits agree that an investors case should move forward if plaintiffs prove that a company's stock value was inflated when the plaintiff bought it. But other circuits have said such cases should go forward only if plaintiffs prove the stock value dropped immediately after earlier misstatements were corrected.

"Courts other than the Ninth have said… there can be all the evidence in the world that a company lied through its teeth, but unless you can show a stock drop following public correction of (the) misstatements, there is no recovery," said Donald Langevoort cq, a former SEC lawyer and now a securities expert at Georgetown University Law Center. "The Ninth is saying that as long as the plaintiff properly alleges there was (fraudulent) stock price inflation … we'll let the case go forward. Eventually, we'll have to figure out if the investor suffered loss, and how much."

Representing investors is the law firm of Lerach, Coughlin, Stoia & Robbins. Patrick Coughlin, who will argue his case before the court Wednesday, did not reply to requests for an interview. But in a brief filed with the court, the firm argues that "the Ninth Circuit followed decades of precedent" and that investors were injured "at the time of the transaction."

Representing Dura - which is now a unit of Irish drug maker Elan Corp. - is William Sullivan of the San Diego office of Paul, Hastings, Janofsky & Walker. Sullivan will argue that if the court upholds the Ninth Circuit's ruling, it will mean plaintiffs can sue any time they perceive a misstatement by a company, even if they suffer no loss.

"If you buy stock at $10 and sell it again at $10, there's no loss to you," Sullivan said. "You can argue there were misstatements… but if no loss was caused by that, then there's no reason for the individual to recover (damages)."

Classification

Language: ENGLISH

Subject: ASTHMA (90%); LAW COURTS & TRIBUNALS (89%); APPEALS (89%); US FEDERAL GOVERNMENT (89%); DECISIONS & RULINGS (89%); SUPREME COURTS (89%); SUITS & CLAIMS (89%); LITIGATION (89%); SECURITIES LAW (89%); APPROVALS (87%); US SECURITIES EXCHANGE ACT OF 1934 (78%); BANKING & FINANCE REGULATION (77%); APPELLATE DECISIONS (77%); FRAUD & FINANCIAL CRIME (77%); APPEALS COURTS (77%); DRUG & MEDICAL DEVICES APPROVAL (76%); LAWYERS (74%); SHAREHOLDERS (73%); US FDA APPROVALS (72%); FINANCIAL PERFORMANCE & REPORTS (72%); JUDGES (72%); US FDA REVIEW (70%); ALLERGIES (66%); CHAMBERS OF COMMERCE (54%)

Company: DURA PHARMACEUTICALS INC (92%); DURA PHARMACEUTICALS INC (92%); SUPREME COURT OF THE UNITED STATES (90%); SUPREME COURT OF THE UNITED STATES (90%); UNITED STATES CHAMBER OF COMMERCE (56%); UNITED STATES CHAMBER OF COMMERCE (56%); FOOD & DRUG ADMINISTRATION (54%); FOOD & DRUG ADMINISTRATION (54%)

Organization: SUPREME COURT OF THE UNITED STATES (90%); SUPREME COURT OF THE UNITED STATES (90%); UNITED STATES CHAMBER OF COMMERCE (56%); UNITED STATES CHAMBER OF COMMERCE (56%); FOOD & DRUG ADMINISTRATION (54%); FOOD & DRUG ADMINISTRATION (54%); SUPREME COURT OF THE UNITED STATES (90%); SUPREME COURT OF THE UNITED STATES (90%); UNITED STATES CHAMBER OF COMMERCE (56%); UNITED STATES CHAMBER OF COMMERCE (56%); FOOD & DRUG ADMINISTRATION (54%); FOOD & DRUG ADMINISTRATION (54%)

Ticker: DURA (NASDAQ) (94%); DURA (NASDAQ) (94%)

Industry: SECURITIES TRADING (91%); PHARMACEUTICALS INDUSTRY (91%); PHARMACEUTICAL PREPARATION MFG (90%); LITIGATION (89%); ANTIBIOTICS (89%); SECURITIES LAW (89%); US SECURITIES EXCHANGE ACT OF 1934 (78%); BANKING & FINANCE REGULATION (77%); DRUG & MEDICAL DEVICES APPROVAL (76%); DRUG DELIVERY SYSTEMS (76%); LAWYERS (74%); BANKING & FINANCE (73%); US FDA APPROVALS (72%); MUTUAL FUNDS (71%); PRESCRIPTION DRUGS (71%); US FDA REVIEW (70%); AEROSOL DRUGS (66%)

Geographic: CALIFORNIA, USA (79%); UNITED STATES (94%)

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