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Securities Litigation and Counseling

First COVID-19 Securities Class Action Lawsuits Hit Cruise Line and Pharmaceutical Company

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The rapid developments in the spread and economic impact of COVID-19 present particular challenges for officers and directors of public companies trying to manage their businesses while providing timely and truthful information to shareholders. Over the last few days, shareholders have filed the first suits alleging that public companies materially misrepresented the impact of COVID-19 on their operations. If history is any guide, derivative litigation alleging director and officer mismanagement is likely to follow. Directors and officers of public companies should exercise great care in any public statements regarding the impact of COVID-19 on their businesses, and carefully consider and document the steps they are taking to oversee and respond to COVID-19 developments.

Securities Class Actions Related To COVID-19

On March 13, 2020, a shareholder in Norwegian Cruise Lines (NCL) filed a stock drop securities class action in the Southern District of Florida. Cruise lines have been particularly hard hit over the last month as large numbers of COVID-19 cases were identified among cruise passengers, certain cruises faced lengthy quarantines at sea, and cruise ship operations were suspended from all US ports of call. The shareholder's suit challenged statements made by NCL on and after February 20, 2020, in which the company allegedly minimized the likely impact of the coronavirus outbreak on NCL's operations and omitted information about allegedly deceptive sales practices undertaken in response to the virus.

Another stock drop securities class action was filed last week by a shareholder of Inovio Pharmaceuticals. In that suit, filed in the Eastern District of Pennsylvania, the shareholder alleges that Inovio misrepresented its progress on a COVID-19 vaccine, including by claiming that it would start human testing as soon as April 2020. Inovio's stock price allegedly spiked on the initial statement and then significantly declined, supposedly as additional information was revealed about the status of the potential vaccine. The Inovio lawsuit shows how even companies that are potentially well positioned economically relative to the coronavirus outbreak face challenges in navigating their public statements.

Derivative Litigation Related To COVID-19

Securities class actions are not the only mechanism shareholders use to challenge conduct by a company's officers and directors. The significant economic and stock market volatility caused by COVID-19 is likely to result in derivative litigation claiming that companies' directors and officers engaged in mismanagement either before or during the outbreak. These lawsuits may or may not accompany a stock drop lawsuit and may or may not be preceded by books and records requests. Because derivative actions are generally subject to the deferential business judgment rule, officers and directors should carefully consider what the company's records—viewed in hindsight—will show about the steps they took to oversee the company's operations and coordinate the company's response, during the COVID-19 outbreak.

It remains to be seen whether any securities or derivative litigation alleging fraud or mismanagement related to the COVID-19 developments will be successful, but public companies and their directors and officers face meaningful risks as the outbreak continues to unfold in unpredictable ways. As in other times of uncertainty, careful consideration of any public statements and a strong record of involvement in oversight and management remain the best defenses to potential shareholder litigation.

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