

Drugmaker MannKind Beats Shareholder Securities Suit

By **Y. Peter Kang**

Law360, Los Angeles (August 24, 2016, 8:49 PM ET) -- A California federal judge on Tuesday tossed a shareholder suit accusing specialty pharmaceutical company MannKind Corp. of issuing false or misleading statements in connection with poor sales of its lone product, a diabetes drug, saying investors failed to prove the company did so.

In granting MannKind's motion to dismiss the suit brought by Vladimir Rivkin and other shareholders, U.S. District Judge R. Gary Klausner said the investors failed to prove the company misled investors by making statements during earnings calls about its licensing deal with drug giant Sanofi-Aventis to sell an inhaled insulin product called Afrezza. The judge said company executives acknowledged an issue impeding sales: a requirement that patients needed to take a lung function test using a device called a spirometer before being allowed to use the drug.

"A review of the documents ... shows that defendants never claimed that spirometry issues did not persist or were not still affecting Afrezza sales," Judge Klausner wrote in an eight-page order. "Taken in their entirety, defendants' allegedly false statements suggest only that the spirometry issue — while still problematic — was no longer the main bottleneck in Afrezza's successful commercialization."

The judge said the investors' suit simply ignores these statements acknowledging the spirometry issue and offers no specific facts to support claims of securities fraud.

"Plaintiffs have not satisfied their burden of pleading particularized facts showing that the challenged statements are false or misleading," he said.

Judge Klausner said that while optimistic statements made by MannKind executives about the drug's prospects may have been "puffery," they were not objectively false or misleading and didn't warrant allowing the suit to proceed.

The investors had also alleged that MannKind executives made a false statement in November 2015 when they said they had no indication Sanofi was planning on terminating the Afrezza licensing agreement two months before Sanofi actually did so. But Judge Klausner said the investors offered no concrete facts that the company was aware of any pending termination.

"Instead, plaintiffs simply allege that defendants must have known about Sanofi's plans to terminate because defendants were in 'transparent and frequent contact with Sanofi,'" the judge said. "Plaintiffs offer no particularized facts to support these bare assertions."

Judge Klausner dismissed the suit with prejudice, saying it would be futile to allow the investors to amend their complaint.

Representatives for the parties did not immediately respond to requests for comment Wednesday.

The investors are represented by Laurence M. Rosen and Jacob A. Goldberg of The Rosen Law Firm PA.

MannKind is represented by Koji F. Fukumura, Peter M. Adams and Blake Zollar of Cooley LLP.

The case is Eric Ardolino et al. v. MannKind Corp. et al., case number 2:16-cv-00348, in the U.S. District Court for the Central District of California.

--Editing by Jack Karp.