



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MAGER PARUAS, LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. No.
)	
MARK J. ALLES, RICHARD BARKER,)	
HANS BISHOP, MICHAEL W. BONNEY,)	
MICHAEL D. CASEY, CARRIE S. COX,)	
MICHAEL A. FRIEDMAN, JULIA A.)	
HALLER, PATRICIA HEMINGWAY)	
HALL, JAMES J. LOUGHLIN, ERNEST)	
MARIO, JOHN H. WEILAND, CELGENE)	
CORPORATION, and BRISTOL-MYERS)	
SQUIBB COMPANY,)	
)	
Defendants.)	

VERIFIED CLASS ACTION COMPLAINT

Plaintiff Mager Paruas, LLC (“Plaintiff”), by its attorneys, for its complaint against defendants, alleges upon personal knowledge as to itself, and upon information and belief as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. Plaintiff brings this stockholder class action on behalf of itself and all other similarly situated public stockholders of Celgene Corporation (“Celgene” or the “Company”), against the Celgene board of directors (the “Board”) to enjoin Defendants from breaching their fiduciary duties in the proposed merger with

Bristol-Myers Squibb Company (“BMY”), through its wholly owned subsidiary, Burgundy Merger Sub, Inc. (the “Proposed Transaction”), under which BMY has proposed to acquire Celgene for approximately \$74 billion.

2. Celgene and BMY entered into a merger agreement on January 2, 2019 that would provide Celgene stockholders with 1.0 BMY share and \$50.00 in cash for each share of Celgene owned.

3. Celgene stockholders will also receive one Contingent Value Right (“CVR”) for each share of Celgene that will entitle its holder to potentially receive a one-time potential payment of \$9.00 in cash. This payment is contingent upon FDA approval of three drugs by specific deadlines: Ozanimod (by December 31, 2020), Liso-cel (JCAR017) (by December 31, 2020) and bb2121 (by March 31, 2021).

4. Celgene claimed the Proposed Transaction was a premium to stockholders providing value of \$102.43 per Celgene share based on the closing price of BMY stock of \$52.43 on January 2, 2019. However, BMY’s share price dropped by 13% when the Proposed Transaction was announced and has since to fully rebound.

5. Furthermore, the so-called “premium price” was illusory because Celgene’s stock price was temporarily depressed. Industry experts anticipate the

drug will ultimately get approved which would result in a rebound in the Company's stock price that is not reflected in the alleged premium.

6. Also, the CVR undervalues the drugs seeking regulatory approval. Celgene's own filings have estimated that the combined value of these drugs will be \$8 to \$10 billion per year. However, the CVR, which is contingent on on-time approvals for these drugs, will only result in a payout of \$6.3 billion to Celgene's stockholders.

7. Celgene is poised for growth. In 2018, Celgene acquired Impact Biomedicines ("Impact") for \$7 billion and Juno Therapeutics ("Juno") for \$9 billion. The timing of the Proposed Transaction will not allow stockholders the opportunity to realize the gains in connection with those acquisitions.

8. And Celgene recently engaged in billions of dollars of share buybacks reportedly at prices well above the deal prices demonstrating the Company knows the true value of the Company.

9. Celgene CEO Mark Alles ("Alles"), however, will personally benefit from the Proposed Transaction and used his influence to get the Board to approve the deal. Alles will be entitled to enhanced severance benefits if he resigns with good reason or is terminated without cause within two years of the Proposed Transaction closing. Specifically, Alles will get a cash payment equal to three times his annual base salary and annual cash incentive opportunity. Absent a deal,

Alles would only be entitled to two times his annual base salary and annual cash incentive opportunity.

10. Celgene's other top executives similarly will obtain enhanced payments in a deal context. These executives, including the Company's CFO, will each be eligible for a cash payment equal to 2.5 times their annual base salary and annual cash incentive opportunity under similar circumstances. Absent the Proposed Transaction they would only be entitled to 1.5 times their annual base salary and annual cash incentive opportunity.

11. These executives who stand to personally profit from the Proposed Transaction are the same individuals who are responsible for the creation of the Company's projections and models upon which the Board relied in determining that the Proposed Transaction was fair to stockholders.

12. On February 1, 2019, BMY filed a Form S-4 registrations statement and an amendment thereto (the "S-4"). The S-4 set a stockholder vote on the Proposed Transaction for April 12, 2019.

13. The S-4 revealed that Celgene and BMY had initially reached a deal where each Celgene stockholder would receive \$57 cash plus one share of BMY. After the parties had begun negotiations on the merger agreement, BMY withdrew its offer and made a revised proposal of \$50 cash, one BMY share, and the CVR.

14. Celgene's Board quickly agreed to the revised price despite having rejected previous offers at or above this amount.

15. The Board harmed stockholders in agreeing to an unfair price that does not adequately compensate its stockholders.

THE PARTIES

16. Plaintiff is a current Celgene stockholder and has been a stockholder continuously since prior to the announcement of the Proposed Transaction.

17. Celgene is a biopharmaceutical company. Celgene is a Delaware corporation with principle executive offices located in Summit, New Jersey. Celgene common stock trades on the NASDAQ Stock Market under the symbol "CELG."

18. Defendant Alles is the Chairman and Chief Executive Officer of the Company.

19. Defendant Richard W. Barker ("Barker") has been a director of Celgene since January 2012. Barker is currently Director of the Centre for the Advancement of Medical Innovations, Director of Precision Medicine PLC, a UK government research entity, Chairman of the Health Innovation Network of South London, UK, Chairman of International Health Partners, a UK charity providing donated medicines to crisis situations, and Chairman of Image Analysis Group, a company applying advanced algorithmic analysis to medical images.

20. Defendant Hans Bishop (“Bishop”) has been a director of Celgene since April 2018. Bishop co-founded Juno in 2013, where he served as President and CEO until Juno was acquired by Celgene in 2018.

21. Defendant Michael W. Bonney (“Bonney”) has been a director of Celgene since April 2015. Bonney is currently the CEO and Chairman of the Board of Kaleido Biosciences, Inc.

22. Defendant Michael D. Casey (“Casey”) has been a director of Celgene since August 2002 and the Lead Independent Director since June 2007. Casey is the retired Chairman, President, Chief Executive Officer and a director of Matrix Pharmaceutical, Inc.

23. Defendant Carrie S. Cox (“Cox”) has been a director of Celgene since December 2009. Cox currently serves as the Chairman of the Board of Directors and Chief Executive Officer of Humacyte, Inc.

24. Defendant Michael A. Friedman (“Friedman”) has been a director of Celgene since February 2011. Friedman is the Emeritus Cancer Center Director at City of Hope, a cancer research, treatment and education institution.

25. Defendant Julia A. Haller (“Haller”) has been a director of Celgene since October 2015. Haller is Ophthalmologist-in-Chief of the Wills Eye Hospital.

26. Defendant Patricia Hemingway Hall (“Hall”) has been a director of Celgene since April 2018. Hall is the retired CEO of Health Care Service Corporation.

27. Defendant James J. Loughlin (“Loughlin”) has been a director of Celgene since January 2007. Loughlin is the retired National Director of the Pharmaceuticals Practice at KPMG LLP.

28. Defendant Ernest Mario (“Mario”) has been a director of Celgene since August 2007. Mario is the former Deputy Chairman and Chief Executive of Glaxo Holdings plc.

29. Defendant John H. Weiland (“Weiland”) has been a director of Celgene since February 2018. Weiland is the retired President and Chief Operating Officer of C. R. Bard, Inc.

30. Defendants Alles, Barker, Bishop, Bonney, Casey, Cox, Friedman, Haller, Hall, Loughlin, Mario and Weiland are collectively referred to herein as the “Individual Defendants” or the “Board.”

31. Defendant BMY is a Delaware corporation with principle executive offices located in New York City. BMY is a global biopharmaceutical company. BMY common stock trades on the NYSE under the symbol “BMY.”

32. Defendant Burgundy Merger Sub, Inc. (“Merger Sub”) is a Delaware corporation and wholly-owned subsidiary of BMY formed solely to effectuate the

Proposed Transaction. Merger Sub and BMY are collectively referred to herein as “BMY.”

33. The Individual Defendants, Celgene and BMY, are collectively referred to herein as “Defendants.”

SUBSTANTIVE ALLEGATIONS

Background of the Company

34. Celgene is a pharmaceutical company that is most well known for its cancer treatment, Revlimid.

35. Revlimid’s patent is set to expire in 2022 and has been subject to legal challenges.

36. In fact, on February 12, 2019 it was reported that the US Patent and Trademark Office rejected Dr. Reddy’s Laboratories petition to invalidate three patents.

37. Celgene also recently acquired Impact for \$7 billion and Juno for \$9 billion.

38. Juno has been working on CAR-T cell therapy that uses a patient’s own immune cells to make them attack specific cancer proteins. These CAR-T cell therapies are more effective than other cancer therapies and the overall market for them is expected to grow at a compounded annual growth rate of 63% over the next 4-years.

39. Similarly, the acquisition of Impact resulted in Celgene owning Fedratinib, a drug for the treatment of myelofibrosis that is anticipated to be very profitable to Celgene stockholders.

40. Through these acquisitions, Celgene is poised for growth, growth that will be diluted for Celgene's stockholders in the Proposed Transaction.

The Proposed Transaction Provides Unfair Consideration

41. Celgene investors are anticipated to get about \$102 in value per Celgene share (depending on the price of BMY at closing), an inadequate price, and Defendants' rationale for a premium price implying a fair price is specious.

42. At least one Wall Street analyst had a price target of \$150.00 per share – well below the deal price.

43. The S-4 revealed that BMY initially agreed to a purchase price with an aggregate value of over \$110 per share.

44. On December 10, 2018, after several months of negotiations, BMY made a final offer to purchase Celgene for \$57 per share in cash plus one share of BMY stock. The parties began to negotiate the terms of a merger agreement.

45. On December 27, 2018, BMY lowered its offer to \$50 per share in cash, one BMY share, and the CVR.

46. Inexplicably, the Celgene Board accepted the revised offer.

47. Celgene limited its search for potential acquirers to BMY and one other unidentified potential acquirer for the Company before accepting this inadequate offer.

48. Celgene also agreed to a \$2.2 billion termination fee, effectively locking-up the Proposed Transaction for BMY.

49. Celgene's financial advisors, J.P. Morgan and Citigroup, were motivated to find the deal fair at any price given that this has been reported to be one of the most lucrative advisory assignments ever recorded on Wall Street. J.P. Morgan will earn \$100 million in connection with advising Celgene (of which \$85 million is contingent on the Proposed Transaction closing) and Citigroup will earn \$67 million (of which \$57 million is contingent on the Proposed Transaction closing).

50. BMY is taking advantage of Celgene's recent stock decline, a decline that was expected to be temporary. Celgene common stock is trading at depressed levels as the Company is at the bottom of a business cycle that is expected to improve. A fair price cannot be based on a purported "premium" over a depressed market price and the \$102 price is unfair to stockholders.

51. In February 2018, Celgene announced that the FDA would not consider its application for Ozanimod, an experimental treatment for multiple sclerosis.

52. However, since that time industry insiders have predicted the drug will ultimately be approved, which would lead to a stock rebound – a rebound Celgene stockholders will fail to get the benefit of in the Proposed Transaction.

53. While Ozanimod is one of the drugs tied to the CVR, as described below, stockholders will not get the full value of the revenues likely to be generated once this drug is approved either.

54. About half of the transaction consideration is tied to BMY stock, which has been on a steady decline since the fall of 2018.

55. BMY's earnings are largely tied to a single drug, Opdivo, accounting for about 30% of BMY's total revenue.

56. However, the future for Opdivo is unclear. Opdivo has seen multiple failures in its pipeline trials in the recent years, and analysts have reduced their peak sales forecast for the drug. Opdivo's clinical-trial results have been disappointing, and a competing drug from the same class, Keytruda sold by Merck & Co., Inc., has taken a commanding lead.

57. Analysts have criticized Opdivo's future prospects noting that BMY's phase 3 pipeline is not encouraging with only a couple of new compounds.

58. In fact, BMY recently announced it was pulling the regulatory submission for a combination of Opdivo and Yervoy as a first-line treatment for certain patients with advanced non-small-cell lung cancer.

59. Further, in connection with BMY's announcement of its Fourth Quarter 2018 financial results it announced its projected earnings per share would reflect year-over-year growth of only 4% – this is far lower than the 32% year-over-year growth BMY achieved in 2018 and the compound annual growth rate of 16.5% over the last five years.

60. The Proposed Transaction was based on a stock price of \$52.02 per share. However, BMY's stock price fell immediately to \$45.12 per share and has not rebounded to the pre-announcement price.

61. The deal price is less than 10 times expected earnings. Nearly all other biotech companies have a forward multiple in excess of 10.

62. Celgene in early 2017 approved share repurchases of \$925 million at prices well above the \$102 per share estimated deal price. In late 2017, Celgene again approved \$3 billion in stock repurchases above the deal price.

63. Furthermore, any concerns that Celgene needs to be sold because of its dependence on Revlimid were quashed when BMY's CEO, Giovanni Caforio, told investors at the J.P. Morgan Healthcare conference that they looked at Celgene's value without Revlimid and thought that it was still a good deal. Therefore, BMY is acknowledging that its purchase price undervalues Celgene by forgoing the significant value that Revlimid derives for stockholders.

64. It is very likely Celgene will maintain its Revlimid exclusivity for the next several years and will continue to derive money for the cancer drug even after the patent does ultimately expire. The US Patent and Trademark Office's recent dismissal of a challenge to Revlimid makes its value even more certain. It appears that Celgene was willing to forgo this value, to the harm of stockholders.

65. BMY's CEO also told investors that Celgene has "the best [pipeline] in the industry" for cell-therapy. He pointed to six drugs in particular that he valued at providing a combined revenue of more than \$15 billion per year.

66. This estimate from the buyer is likely more conservative than the actual value. The price offered here does not reflect this significant value, all to be derived from Celgene.

67. The CVR also undervalues the drugs tied to it and might never come to fruition if approvals are missed by even a day.

68. Under the terms of the CVR, BMY will pay Celgene stockholders \$9 in cash if the FDA approves ozanimod by December 31, 2020; liso-cel (also known as JCAR017) by December 31, 2020; and bb2121 by March 31, 2021. All three drugs must win FDA approval by the specified dates for the one-time payment to be made.

69. The total value of the CVR is \$6.3 billion. However, this is far below what these drugs are worth.

70. Celgene has stated that it expects annual sales for Ozanimod alone to be between \$4 billion and \$6 billion, and that Liso-cel and bb2121 will each generate at least \$2 billion annually.

71. Celgene projects that the three drugs will generate \$8 to \$10 billion per year. Over just five years, that amounts to \$40 to \$50 billion – well below the \$6.3 billion Celgene is valuing the CVR.

72. Also, under the CVR, the payment will only be made if all three drugs are approved on or before the deadline. Therefore, if any one of the drugs is not approved, or is approved after the deadline set in the agreement, stockholders will get nothing.

73. The new management of the combined company, led by BMY, will have every incentive to delay (even minimally) approval of these drugs to avoid paying out \$6.3 billion.

74. Furthermore, political uncertainties and government shutdowns could impact the FDA's ability to review these drugs in a timely fashion.

75. On January 2, 2019, the same day the Proposed Transaction was announced, the Company's top executives entered into an Executive Severance Plan.

76. Celgene's CEO, CFO, President, Research & Early Development Officer, and Chief Corporate Strategy Officer will all be entitled to enhanced

severance benefits if they resign with good reason or are terminated without cause within two years of the deal closing.

77. As a result, these executives who are personally responsible for establishing management's projections for the Company's financial future, were motivated to ensure the Proposed Transaction was approved by the Board.

78. Celgene's CEO, Alles, will be eligible for a severance benefit that would be three times his annual salary and cash incentive opportunity.

79. Celgene's CFO, President, Research & Early Development, and Chief Corporate Strategy Officer will each be entitled to severance benefits that include a cash severance payment equal to 2.5 times the officer's annual base salary and annual cash incentive opportunity.

80. These amounts are far higher than would be provided in a non-deal scenario. Absent a transaction, Alles is entitled to two times his annual salary and cash incentive opportunity and the other officers are entitled to 1.5 times their annual salary and cash incentive opportunity.

81. Given this personal incentive, the underlying financial information upon which the Board and their advisers relied is unreliable.

82. It is clear the Board thought that the Company was worth more when it recently engaged in share buybacks at a reportedly higher price, but now – with

certain of them to be personally financially impacted – the Board has done an about face on its value.

CLASS ACTION ALLEGATIONS

83. Plaintiff brings this action on behalf of itself and all other stockholders of the Company (except the Defendants herein and any persons, firm, trust, corporation, or other entity related to or affiliated with them and their successors in interest), who are, have been or will be, threatened with injury arising from Defendants' actions, as more fully described herein.

84. This action is properly maintainable as a class action for at least the following reasons:

(a) The class is so numerous that joinder of all members is impracticable. As of April 19, 2018, there were over 700 million shares outstanding and not owned by Celgene's directors or executive officers;

(b) Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff has the same interests as the other members of the Class. Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class;

(c) The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for defendants, or adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; and

(d) There are also questions of law and fact that are common to the Class including whether the individual defendants breached their duty of care and whether there were disabling conflicts.

FIRST CAUSE OF ACTION

Claim for Breach of Fiduciary Duties Against the Individual Defendants

85. Plaintiff repeats and realleges each allegation set forth herein.

86. The Individual Defendants have violated their fiduciary duties of care and loyalty owed to public stockholders of Celgene.

87. By the acts, transactions and courses of conduct alleged herein, Individual Defendants, individually and acting as a part of a common plan, are attempting to unfairly deprive Plaintiff and other members of the Class of the true value of their investment in Celgene.

88. As demonstrated by the allegations above, the Individual Defendants failed to exercise the care required, and breached their duty of loyalty owed to the stockholders of Celgene because, among other reasons, they failed to take steps to maximize the value of Celgene to its public stockholders.

89. As a result of the actions of Individual Defendants, Plaintiff and the Class will suffer irreparable injury in that they have not and will not receive their fair portion of the value of Celgene's assets and businesses and have been and will be prevented from obtaining a fair price for their common stock.

90. The Individual Defendants are not acting in good faith toward Plaintiff and the other members of the Class, and have breached and are breaching their fiduciary duties to the members of the Class. Unless enjoined by the Court, the individual defendants will continue to breach their fiduciary duties owed to Plaintiff and the members of the Class, all to the irreparable harm of the members of the Class.

91. Plaintiff and the members of the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate and irreparable injury caused and to be caused by the wrongful conduct alleged herein.

SECOND CAUSE OF ACTION

Claim for Aiding and Abetting the Individual Defendants’ Breach of Fiduciary Duties Against BMY

92. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

93. BMY has acted and is acting with knowledge of, or with reckless disregard to, the fact that the Individual Defendants are in breach of their fiduciary duties to Celgene’s public stockholders, and has participated in such breaches of fiduciary duties.

94. BMY has knowingly aided and abetted the Individual Defendants’ wrongdoing alleged herein. In so doing, BMY rendered substantial assistance in order to effectuate the Individual Defendants’ plan to consummate the Merger in breach of their fiduciary duties.

95. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands relief in its favor and in favor of the Class and against Defendants as follows:

A. Declaring that this action is properly maintainable as a Class action and certifying Plaintiff as Class representative;

B. Enjoining Defendants, their agents, counsel, employees and all persons acting in concert with them from consummating the Proposed Transaction,

unless and until the Company adopts and implements a procedure or process to obtain a merger agreement providing the best possible terms for stockholders;

C. Rescinding, to the extent already implemented, the Proposed Transaction or any of the terms thereof, or granting Plaintiff and the Class rescissory damages;

D. Directing the Individual Defendants to account to Plaintiff and the Class for all damages suffered as a result of the Individual Defendants wrongdoing;

E. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and

F. Granting such other and further equitable relief as this Court may deem just and proper.

Dated: March 11, 2019

ROSENTHAL, MONHAIT &
GODDESS, P.A.

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