

Delaware Supreme Court Upholds \$70 Million Award for Susman Godfrey Client Wellstat Therapeutics

Susman Godfrey LLP has secured another victory for client Wellstat Therapeutics in its pharmaceutical contract dispute with BTG International, Inc. The Delaware Supreme Court has upheld an estimated \$70 million award granted last fall to Wellstat Therapeutics.

In its opinion, the Delaware Supreme Court affirmed the majority of the lower court's judgment against BTG in favor of Wellstat, making only a minor adjustment in the dates used to calculate prejudgment interest. Susman Godfrey expects to recover at least the full amount of the original judgment, if not more, for its client given that eight months of post-judgment interest have now accrued since the original award.

In its lawsuit, Wellstat sued BTG over the marketing of Vistogard®, a life-saving drug designed to serve as an antidote for over-exposure to certain types of chemotherapy, for which Wellstat developed and obtained FDA approval. Wellstat signed a distribution agreement with BTG that obligated BTG to commercialize and market the drug over a 10-year period. Under the agreement, BTG was supposed to use "diligent efforts."

The FDA approved Vistogard® in December 2015. In the months preceding approval, the parties began to dispute the level of effort BTG planned to devote to the product. Seven months later, in July 2016, BTG sued Wellstat claiming that BTG had complied with the contract. Wellstat filed a counterclaim seeking to terminate the distribution rights and to recover damages.

Last fall, Vice Chancellor J. Travis Laster of the Delaware Court of Chancery ruled in favor of Wellstat, finding that BTG had breached the agreement in various ways. Further, he found no validity to BTG's claims. Vice Chancellor Laster awarded Wellstat actual damages of \$55.8 million plus prejudgment interest accruing at 1 percent per month, compounded. In addition, Vice Chancellor Laster awarded Wellstat an unspecified amount of attorneys' fees due to BTG's conduct during the litigation.

Susman Godfrey partners Steve Susman and Harry Susman served as lead counsel to Wellstat for the appeal, and were supported by associates Cory Buland and Mark Musico.

Susman Godfrey was joined by Kelly E. Farnan and Blake Rohrbacher of Richards, Layton & Finger who served as co-counsel. Wellstat's legal team also was assisted by Jeremy Schulman and Koushik Bhattacharya of Schulman Bhattacharya.