



DENIED

EFiled: Sep 20 2013 10:28AM EDT
Transaction ID 54249389
Case No. Multi-Case



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

<p>GLORIA SCHWARTZ, individually and on behalf of all others similarly situated,</p> <p>Plaintiff,</p> <p>v.</p> <p>JAMES S.J. MANUSO, HARREN JHOTI, CHARLES J. CASAMENTO, PETER FELLNER, THOMAS V. GIRARDI, ALLAN R. GOLDBERG, TIMOTHY HAINES, ISMAIL KOLA, WALTER J. LACK, ASTEX PHARMACEUTICALS, INC., OTSUKA PHARMACEUTICAL CO., LTD. and AUTUMN ACQUISITION CORPORATION,</p> <p>Defendants.</p>	<p>C.A. No. 8887-VCL</p>
<p>JOHN DEWAN, on behalf of himself and all others similarly situated,</p> <p>Plaintiff,</p> <p>v.</p> <p>ASTEX PHARMACEUTICALS, INC., JAMES S.J. MANUSO, HARREN JHOTI, CHARLES J. CASAMENTO, PETER FELLNER, THOMAS V. GIRARDI, ALLAN R. GOLDBERG, TIMOTHY HAINES, ISMAIL KOLA, WALTER J. LACK, OTSUKA PHARMACEUTICAL CO., LTD., and AUTUMN ACQUISITION CORPORATION,</p> <p>Defendants.</p>	<p>Civil Action No. 8899-VCL</p>

<p>STEPHEN BUSHANSKY, on behalf of himself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>ASTEX PHARMACEUTICALS, INC., JAMES S.J. MANUSO, HARREN JHOTI, CHARLES J. CASAMENTO, PETER FELLNER, THOMAS V. GIRARDI, ALLAN R. GOLDBERG, TIMOTHY HAINES, ISMAIL KOLA, and WALTER J. LACK,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil Action No. 8896-VCL</p>
<p>DAVID KUSS, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>ASTEX PHARMACEUTICALS, INC., AUTUMN ACQUISITION CORPORATION, OTSUKA PHARMACEUTICAL CO., LTD., JAMES S.J. MANUSO, HARREN JHOTI, CHARLES J. CASAMENTO, PETER FELLNER, THOMAS V. GIRARDI, ALLAN R. GOLDBERG, TIMOTHY HAINES, ISMAIL KOLA, and WALTER J. LACK,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil Action No. 8901-VCL</p>

<p>DELLA ELIZABETH MOODY DAVIS, on behalf of herself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>ASTEX PHARMACEUTICALS, INC., CHARLES J. CASAMENTO, PETER FELLNER, THOMAS V. GIRARDI, ALLAN R. GOLDBERG, TIMOTHY HAINES, HARREN JHOTI, ISMAIL KOLA, WALTER J. LACK, JAMES S.J. MANUSO, OTSUKA PHARMACEUTICAL CO. LTD., and AUTUMN ACQUISITION CORPORATION,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil Action No. 8917-VCL</p>
<p>ARLIE J. WILSON, on behalf of himself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>ASTEX PHARMACEUTICALS, INC., JAMES S.J. MANUSO, HARREN JHOTI, CHARLES J. CASAMENTO, PETER FELLNER, THOMAS V. GIRARDI, ALLAN R. GOLDBERG, TIMOTHY HAINES, ISMAIL KOLA, WALTER J. LACK, OTSUKA PHARMACEUTICAL CO. LTD., and AUTUMN ACQUISITION CORPORATION</p>	<p>Civil Action No. 8921-VCL</p>

[PROPOSED] STIPULATED CONSOLIDATION AND SCHEDULING ORDER

WHEREAS, on September 5, 2013, Astex Pharmaceuticals, Inc. (“Astex” or the “Company”) and Otsuka Pharmaceutical Co., Ltd. (“Otsuka”) entered into an Agreement and Plan of Merger whereby Otsuka, will acquire all of the outstanding shares of Astex for \$8.50 per share in cash (the “Proposed Transaction”);

WHEREAS, following the September 5, 2013 announcement of the Proposed Transaction, on September 11, 2013, Gloria Schwartz, a purported stockholder of Astex, filed her Class Action Complaint (the “Schwartz Action”), titled *Schwartz v. Manuso, et al.*, C.A. No. 8887-VCL, on behalf of the public stockholders of Astex challenging the Proposed Transaction and asserting claims against Astex, the members of its board of directors (the “Director Defendants,” and collectively with Astex, the “Astex Defendants”), Otsuka and Autumn Acquisition Corporation (collectively, Otsuka, and with the Astex Defendants, the “Defendants”);

WHEREAS, on September 12, 2013, Stephen Bushansky, another purported stockholder of Astex, filed his Verified Class Action Complaint (the “Bushansky Action”), titled *Bushansky v. Astex Pharmaceuticals, Inc., et al.*, C.A. 8896-VCL, on behalf of the public stockholders of Astex challenging the Proposed Transaction and asserting claims against the Astex Defendants;

WHEREAS, on September 13, 2013, John Dewan, another purported stockholder of Astex, filed his Verified Class Action Complaint (the “Dewan Action”), titled *Dewan v. Astex Pharmaceuticals, Inc., et al.*, C.A. 8899-VCL, on behalf of the public stockholders of Astex challenging the Proposed Transaction and asserting claims against Defendants;

WHEREAS, on September 13, 2013, David Kuss, another purported stockholder of Astex, filed his Verified Class Action Complaint for Breach of Fiduciary Duty (the “Kuss Action”), titled *Kuss v. Astex Pharmaceuticals, Inc., et al.*, C.A. 8901-VCL, on behalf of the public stockholders of Astex challenging the Proposed Transaction and asserting claims against Defendants;

WHEREAS on September 13, 2013 Astex filed a 14D-9 with the United States Securities and Exchange Commission (the “SEC”) and Otsuka filed a Schedule TO with the SEC;

WHEREAS, Otsuka filed an answer to the complaint in the Schwartz Action on September 14, 2013;

WHEREAS, Otsuka filed answers to the complaints in the Dewan and Kuss Actions on September 16, 2013;

WHEREAS, on September 17, 2013, Della Elizabeth Moody Davis, another purported stockholder of Astex, filed her Verified Class Action Complaint (the “Davis Action”, titled *Davis v. Astex Pharmaceuticals, Inc., et al.*, C.A. 8917-VCL, on behalf of the public stockholders of Astex challenging the Proposed Transaction and asserting claims against Defendants;

WHEREAS, Otsuka filed an answer to the complaint in the Davis Action on September 18, 2013;

WHEREAS, on September 18, 2013, Arlie J. Wilson, another purported stockholder of Astex, filed his Verified Class Action Complaint (the “Wilson Action”, and together with the Schwartz, Bushansky, Dewan, Kuss, and Davis Actions, the “Actions”), titled *Wilson v. Astex Pharmaceuticals, Inc., et al.*, C.A. 8921-__, on behalf of the public stockholders of Astex challenging the Proposed Transaction and asserting claims against Defendants;

WHEREAS, five lawsuits were also filed in the California Superior Court titled: *Wagner v. Astex Pharmaceuticals, Inc.*, Case No. HG13695090; *Morgan v. Astex Pharmaceuticals, Inc.*, Case No. RG13694856; *West v. Astex Pharmaceuticals, Inc.*, Case

No. RG13695076; *Wertheim v. Manuso*, Case No. RG136951800 ; and *Carr v. Astex Pharmaceuticals*, Case No. RG13695681;

WHEREAS, each of the parties to the Actions recognize that the Actions raise important issues of Delaware corporate law that should be addressed by this Court. *See In re Topps Co. S'holders Litig.*, 924 A.2d 951, 958 (Del. Ch. 2007) (recognizing that “a state has a compelling interest in ensuring the consistent interpretation and enforcement of its corporation law”);

WHEREAS, it appearing that the Actions involve the same subject matter, and that the administration of justice would be best served by consolidating the actions,

WHEREAS, Plaintiffs purportedly seek to enjoin Defendants from taking any steps to consummate the Proposed Transaction or, in the event the Proposed Transaction is consummated, recover damages resulting from the Defendants’ alleged conduct;

WHEREAS, the Defendants intend to vigorously oppose Plaintiffs’ requests for injunctive and monetary relief, which they believe are wholly without merit.

IT IS HEREBY STIPULATED AND AGREED this 19th day of September, 2013, and subject to the approval of the Court:

CONSOLIDATION

1. The above-captioned actions shall be consolidated for all purposes (the “Consolidated Action”).
2. Hereafter, papers need only be filed in Civil Action No. 8917-VCL.
3. The consolidated case caption shall be:

IN RE ASTEX PHARMACEUTICALS, INC.
SHAREHOLDERS LITIGATION

CONSOLIDATED C.A. NO. 8917-VCL

4. All pleadings, papers, and other documents previously filed to date in any of the cases consolidated herein are deemed a part of the record in the Consolidated Action, and all stipulations and agreements entered into in the separate actions shall remain in full force in the Consolidated Action, and the terms of the Stipulated Confidentiality Agreement submitted to the Court for approval by the parties in Civil Action No. 8917-VCL shall govern and apply to the exchange of confidential discovery materials in the Consolidated Action. Plaintiffs' shall designate the Verified Class Action Complaint filed on September 17, 2013 in Civil Action No. 8917-VCL as the operative complaint or file a Consolidated Amended Class Action Complaint no later than September 23, 2013.

5. Plaintiffs will address with the Court the issue of lead and liaison counsel in separate papers.

6. When a case that properly belongs as part of the Consolidated Action is hereafter filed in the Court, this Court requests the assistance of counsel in calling to the attention of the Court the filing or transfer of any case which might properly be consolidated as part of the Consolidated Action, and counsel are to assist in assuring that counsel in subsequent actions receive notice of this Order.

7. This Order is without prejudice to the right of any defendant to raise any and all substantive arguments or defenses concerning the claims raised in the Consolidated Action.

SCHEDULING

1. Without waiver of any arguments, objections, or defenses, the following schedule shall apply:

- a. The Astex Defendants and Plaintiffs shall commence document production on a rolling basis no later than three business days after the entry of this scheduling order or by the close of business on Tuesday, September 24, 2013, whichever is sooner, and shall confer in good faith concerning ESI searches and production;
- b. All parties shall confer in good faith concerning a schedule to govern the depositions of fact witnesses, but agree such depositions shall commence no earlier than Thursday, September 26, 2013 conclude no later than Monday, September 30, 2013;
- c. Subsequent to reaching an agreement concerning the schedule of the depositions of fact witnesses, the parties shall confer in good faith concerning a schedule for the briefing and argument of a motion for preliminary injunction;
- d. The parties reserve all rights, including Plaintiffs' right to seek expedited proceedings, and Defendants' rights to file dispositive motions and/or oppose expedited proceedings.
- e. The parties may agree in good faith to modify the above schedules.

2. This Stipulated Proposed Order is without prejudice to the right of any party to raise any and all substantive arguments or defenses concerning the claims of Plaintiffs and/or any other Astex stockholder.

SO STIPULATED: September 19, 2013

FARUQI & FARUQI, LLP

/s/ Peter B. Andrews

Peter B. Andrews (ID No. 4623)
Craig J. Springer (ID No. 5529)
20 Montchanin Road, Suite 145
Wilmington, DE 19807
(302) 482-3182

Counsel for Plaintiff Schwartz

RIGRODSKY & LONG, P.A.

/s/ Brian D. Long

Seth D. Rigrodsky (ID No. 3147)
Brian D. Long (ID No. 4347)
Gina M. Serra (ID No. 5387)
2 Righter Parkway, Suite 120
Wilmington, Delaware 19803
(302) 295-5310

Counsel for Plaintiffs Dewan, Davis, and Wilson

O'KELLY ERNST & BIELLI, LLC

/s/ Ryan M. Ernst

Ryan M. Ernst (ID No. 4788)
901 N. Market Street, Suite 1000
Wilmington, DE 19801
(302) 778-4000

Counsel for Plaintiffs Bushansky and Kuss

SEITZ ROSS ARONSTAM & MORITZ
LLP

/s/ Bradley R. Aronstam

Collins J. Seitz, Jr. (ID No. 2237)
Bradley R. Aronstam (ID No. 5129)
Eric D. Selden (ID No. 4911)
100 S. West Street, Suite 400
Wilmington, Delaware 19801
(302) 576-1600

OF COUNSEL:

WILSON SONSINI GOODRICH &
ROSATI

Catherine Moreno
Steven M. Schatz
650 Page Mill Road
Palo Alto, CA 94304
(650) 493-9300

Counsel for Defendants James S.J. Manuso, Harren Jhoti, Charles J. Casamento, Peter Fellner, Thomas V. Girardi, Ismail Kola, Allan R. Goldberg, Timothy Haines, Walter J. Lack, and Astex Pharmaceuticals, Inc.

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP

/s/ Jenness E. Parker

Edward B. Micheletti (ID No. 3794)
Jenness E. Parker (ID No. 4659)
One Rodney Square
P.O. Box 636
Wilmington, Delaware 19899-0636
(302) 651-3000

OF COUNSEL:

Amy S. Park
SKADDEN, ARPS, SLATE,

MEAGHER & FLOM LLP
525 University Avenue
Palo Alto, California 94301
(650) 470-4500

*Attorneys for Defendants
Otsuka Pharmaceutical Co., Ltd. and
Autumn Acquisition Corporation*

IT IS SO ORDERED this ____ day of September, 2013.

Vice Chancellor Laster

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: Multi-Case

File & Serve

Transaction ID: 54246788

Current Date: Sep 20, 2013

Case Number: Multi-Case

Case Name: Multi-Case

Court Authorizer: Laster, J Travis

Court Authorizer

Comments:

Shareholders litigation? Under what state's corporate law do you believe you are litigating?

/s/ **Judge Laster, J Travis**