

## *Amylin Pharmaceuticals, Inc. Shareholder Litigation*

**COURT:** Delaware Court of Chancery

**CASE NUMBER:** C.A. No. 4446-VCL

This is a shareholder class action against the biopharmaceutical company, Amylin Pharmaceuticals, Inc. ("Amylin" or "the Company"), and its board of directors (the "Board") (collectively, the "Amylin Defendants") for violations of their fiduciary duty of care arising from their adoption of defensive measures in two debt instruments, which are currently depriving shareholders of the opportunity to freely exercise their fundamental franchise rights to elect a new board majority (the "Proxy Puts"). The action also names Bank of America, N.A. and the Bank of New York Trust Company, N.A. as defendants solely for the purpose of obtaining declaratory relief concerning the Proxy Puts.

In 2007, Amylin embedded the Proxy Puts in its indenture agreement for \$575 million of convertible notes and its \$140 million credit agreement. The Proxy Puts expose the Company to immediate repayment and repurchase obligations if Amylin shareholders elect a board of directors that does not include a majority of the incumbent directors, or directors approved by the incumbent directors. These obligations could require Amylin to remit more than \$900 million – an amount exceeding one-half of the Company's current \$1.7 billion market value.

The possibility of triggering the Proxy Puts only recently became an issue. In January 2009, two shareholders, Icahn Capital LP and affiliated funds ("Icahn") and Eastbourne Capital Management ("Eastbourne"), separately announced their intention to nominate five-person slates for election at Amylin's next annual meeting, which was tentatively scheduled for May 27, 2009.

On March 24, 2009, BLB&G filed a Complaint against Amylin and the Board on behalf of Plaintiff The San Antonio Fire and Police Pension Fund, and other Amylin shareholders (the "Complaint"). The Complaint sought to invalidate the Proxy Puts, and require the Board to approve the nomination of the Icahn and Eastbourne slates for shareholder consideration at the Company's 2009 annual meeting.

On March 26, 2009, Plaintiff sought expedited discovery and an expedited trial schedule. The Court granted, in part, Plaintiff's Motion for Expedited Proceeding, and set a trial date for May 4-5, 2009. On April 10, 2009, Plaintiff filed a Motion for Partial Summary Judgment concerning the Board's ability to "approve" the Icahn and Eastbourne director nominees under the indenture agreement, and seeking a declaration that the Proxy Puts are invalid as a matter of Delaware law. On April 13, 2009, the Amylin Defendants also moved for partial summary judgment concerning the Board's ability to approve the insurgent nominees under the indenture agreement. The Amylin Defendants and Plaintiff also reached a partial settlement on April 13, 2009.

On May 4, 2009, a trial was held and oral arguments were heard on all outstanding motions for summary judgment regarding the Indenture. On May 12, 2009, the Court issued its decision. BLB&G has since filed its opening appellate brief on June 5, 2009, further fueling the national debate on poison puts and shareholder rights as exemplified in the recent article, "Poison Puts, Shareholder Voting Rights and the Need for an Even Stronger Shareholder Bill of Rights: San Antonio Fire & Police v. Amylin Pharmaceuticals (Amending the Shareholder Bill of Rights)." On September 30, 2009, the Delaware Supreme Court sitting en banc heard Plaintiff's appeal, and then reaffirmed the Vice Chancellor's decision. The day before the en banc hearing, the bank lenders executed a complete and cost-free waiver of the proxy put in Amylin's credit agreement. In November 2009, Amylin's Board approved the two shareholder-nominated directors, who were elected at its 2009 annual meeting, under the terms

of the proxy put in Amylin's indenture agreement. Consequently, Amylin stockholders are free to re-elect those directors and elect five new directors (a new board majority) without fear of triggering the Proxy Put in Amylin's indenture agreement.

## Case Documents

- August 5, 2009 - Appellant's Reply Brief (Public Version)
- July 23, 2009 - Appellees' Answering Brief (Public Version)
- June 5, 2009 - Appellant's Opening Brief (Public Version)
- May 20, 2009 - Reply Memorandum in Further Support of Plaintiff's Motion for Partial Summary Judgment
- May 20, 2009 - Plaintiff's Reply Pre-Trial Brief (Public Version)
- May 13, 2009 - Plaintiff's Motion for Expedited Appeal
- May 12, 2009 - Memorandum Opinion and Order
- May 4, 2009 - Index to Trial Transcript
- May 4, 2009 - Trial Transcript
- April 29, 2009 - Amylin Defendants' Corrected Answering Pre-Trial Brief (Public Version)
- April 29, 2009 - Defendant Bank of America's Pre-Trial Brief (Public Version)
- May 1, 2009 - Exhibit 2 to Letter From Margot F. Alicks
- May 1, 2009 - Exhibit 1 to Letter From Margot F. Alicks
- May 1, 2009 - Letter to Vice Chancellor Lamb From Margot F. Alicks
- May 1, 2009 - Letter to Vice Chancellor Lamb from Margot F. Alicks
- April 30, 2009 - Plaintiff's Opening Pre-Trial Brief (Public Version)
- April 16, 2009 - Status and Scheduling Telephone Conference and Ruling of the Court on Plaintiff's Motion to Amend
- April 15, 2009 - Letter to Vice Chancellor Lamb From Thad J. Bracegirdle
- March 24, 2009 - Exhibit C to Complaint
- March 24, 2009 - Exhibit B to Complaint
- April 15, 2009 - Letter to Vice Chancellor Lamb From J. Travis Laster
- March 23, 2009 - Exhibit A to Complaint
- April 15, 2009 - Order Granting Plaintiffs' Motion to Amend
- April 15, 2009 - Plaintiffs' Motion For Leave to Amend
- April 15, 2009 - Fourth Amended Complaint

- April 13, 2009 - Declaration of Thad J. Bracegirdle
- April 13, 2009 - Defendant's Memorandum in Support of Its Motion for Partial Summary Judgment
- April 13, 2009 - Defendant's Motion for Partial Summary Judgment
- April 13, 2009 - Letter to Vice Chancellor Lamb from Joel Friedlander
- April 10, 2009 - Exhibit A-C to Declaration of Mark Lebovitch in Support of Plaintiff's Motion for Partial Summary Judgment
- April 10, 2009 - Exhibit A-C to Memorandum of Law in Support of Plaintiff's Motion for Partial Summary Judgment
- April 10, 2009 - Declaration of Mark Lebovitch in Support of Plaintiff's Motion for Partial Summary Judgment
- April 10, 2009 - Plaintiff's Motion for Partial Summary Judgment
- April 10, 2009 - Memorandum of Law in Support of Plaintiff's Motion for Partial Summary Judgment
- April 7, 2009 - Defendants' Answer to Complaint
- April 7, 2009 - Transcript of Oral Argument on Plaintiffs' Motions to Amend and Expedite Proceedings
- April 6, 2009 - Third Amended Complaint
- April 3, 2009 - Letter to Vice Chancellor Lamb from Raymond DiCamillo
- April 3, 2009 - Letter to Vice Chancellor Lamb from Joel Friedlander w/Exhibit
- April 3, 2009 - Plaintiffs' Motion for Leave to Amend and Expedite
- April 3, 2009 - Second Amended Complaint
- April 1, 2009 - Letter to Vice Chancellor Lamb from Raymond DiCamillo
- March 30, 2009 - Letter to Vice Chancellor Lamb from Raymond DiCamillo
- April 1, 2009 - Order Granting in Part and Denying in Part Motion to Expedite
- April 1, 2009 - Letter to Vice Chancellor Lamb from Joel Friedlander
- March 31, 2009 - Transcript of Hearing on Motion to Expedite
- March 27, 2009 - Amended Class Action Complaint
- March 26, 2009 - Opening Brief in Support of Plaintiff's Motion for Expedited Proceedings
- March 26, 2009 - Letter to Vice Chancellor Lamb from Andre Bouchard
- March 26, 2009 - Exhibits A - C to Brief
- March 26, 2009 - Exhibit D - Plaintiff's First Request for Production of Documents