

## In re Dura Pharmaceuticals, Inc. Securities Litigation

**COURT:** United States District Court, Southern District of California  
**CASE NUMBER:** 99-cv-00151  
**JUDGE:** Hon. Janis L. Sammartino  
**CLASS PERIOD:** 04/15/1997 - 02/24/1998

Securities fraud class action on behalf of purchasers of Dura Pharmaceuticals, Inc. ("Dura" or "Company") securities between April 15, 1997 and February 24, 1998 ("Class Period"). Dura pursued a business strategy of marketing niche pharmaceutical drugs. Plaintiffs allege that by 1995, it had become obvious to Dura's management that the Company could not achieve continued revenue and earnings per share growth by marketing these drugs alone. Thus, it began developing the Spiros drug delivery system ("Spiros"), a project which was plagued by problems from its inception. Nonetheless, Dura insiders embarked on a scheme to falsely persuade investors that Dura was successfully completing development and clinical trials for Spiros. The Company also made false public statements regarding strong sales of certain pharmaceutical products.

On February 24, 1998, Dura revealed that it expected much lower than forecast 1998 revenues and 1998 earnings per share. Dura also subsequently revealed that the FDA would not approve Spiros as a result of the same problems Dura concealed from investors during the Class Period.

On January 27, 1999, Plaintiffs filed the initial complaint in this action, and on June 18, 1999, the Court appointed BLB&G as Co-Lead Counsel for the class. On September 25, 2000, Plaintiffs filed a Second Amended Complaint against Dura and certain of its officers. On November 2, 2001, the District Court dismissed the case. Plaintiffs appealed the decision to the Court of Appeals for the Ninth Circuit. On August 5, 2003, the Ninth Circuit reversed the decision of the lower court and remanded the case for further proceedings. Defendants subsequently petitioned the United States Supreme Court for a writ of certiorari to review the Ninth Circuit's standard for pleading loss causation.

On June 28, 2004, the Supreme Court granted Defendants' petition. On April 19, 2005, after briefing and oral argument, the Supreme Court reversed the Ninth Circuit and remanded the case for further proceedings. In so doing, the Supreme Court reaffirmed that to plead loss causation, stating that investors need only plead a short, plain statement to provide "fair notice of what the plaintiff's claim is and the grounds upon which it rests." On August 26, 2005, Plaintiffs filed a Third Amended Complaint.

On June 2, 2006, after briefing and oral argument, the District Court granted in part and denied in part Defendants' motion to dismiss the Third Amended Complaint. The Court found that Plaintiffs had adequately alleged loss causation, but granted Plaintiffs leave to amend in order to provide additional source information. On July 21, 2006, Plaintiffs filed a Fourth Amended Complaint.

On February 20, 2008, after briefing and oral argument, the Honorable Janis L. Sammartino issued an order on Defendants' motion to dismiss the Fourth Amended Complaint. The Court upheld Plaintiffs' section 10(b) claims related to Spiros against defendants Dura and Cam L. Garner. The Court also upheld Plaintiffs' section 20(a) claims related to Spiros against Garner, James W. Newman and Walter F. Spath. With the two District Court orders in place, Plaintiffs had sustained claims against four of the five Defendants named in the Fourth Amended Complaint. On May 16, 2008, Defendants answered the Fourth Amended Complaint, and discovery began.

On October 23, 2008, the parties notified the Court that they had reached an agreement to settle this action for \$14 million in cash. They also notified the Court that the settlement was contingent upon the approval of the Board of Directors of Elan Corporation, plc ("Elan"), which came on December 5, 2008. On March 23, 2009, Lead Plaintiffs filed an

unopposed motion requesting an order granting preliminary approval of the settlement. A hearing on this motion was held before Judge Sammartino on May 6, 2009. On July 31, 2009, the Court granted preliminary approval of settlement, and scheduled a final approval hearing for December 3, 2009. On December 4, 2009, Judge Sammartino granted Plaintiffs' motion for final approval of the settlement, and issued a Final Judgment And Order Of Dismissal With Prejudice. Additionally, on December 5, 2009, the Court issued an Order Approving of Plan of Allocation of Settlement Proceeds which found the Plaintiffs' plan of allocation "in all respects fair and reasonable."