

Winston Defeats Class Certification in Pharmaceutical Company Shareholder Challenge

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On January 12, 2016, a Winston & Strawn team successfully defeated class certification in Delaware Chancery Court on behalf of DAVA Pharmaceuticals Inc. (DAVA) and its former directors. DAVA was a privately held generic pharmaceutical manufacturer headquartered in New Jersey that was acquired by a subsidiary of Endo Pharmaceuticals, Inc. for \$600 million in August 2014.

Following the merger, a minority shareholder of DAVA filed a suit alleging the company's directors breached their fiduciary duties by failing to provide adequate financial disclosures to shareholders prior to the merger. Further, the suit claimed that the majority of stockholders had consented to the merger when, according to the plaintiff, their consent was deficient under Delaware law. The plaintiff sought rescission of the merger or rescissory damages, as well as a quasi-appraisal remedy to determine the fair value of DAVA's shares. The plaintiff also sought to certify a class consisting of all DAVA stockholders except the director defendants.

In its decision denying class certification, the Chancery Court adopted the Winston team's argument that, with a potential class of only 28 eligible stockholders, the plaintiff was required (but failed) to demonstrate that special circumstances made the class too numerous to make joinder of all potential members impracticable. Because the Court denied the plaintiff's motion for class certification on numerosity grounds, it did not need to reach the defendants' remaining arguments concerning the typicality and adequacy requirements for class certification.

DAVA and its former directors were represented by Partner Matthew DiRisio.

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