

# SHAREHOLDERS SHUT OUT

New York, New York August 22, 1996

## No Damages Awarded In Insider Trading Suit

A jury sitting in the United States District Court for the Southern District of New York rejected seven claims and deadlocked on the other six claims brought by a group of disgruntled shareholders against ICN Pharmaceuticals. The jury's verdict marked the end of nearly a decade of contentious securities litigation against ICN that had emerged from the early days of the AIDS crisis.

ICN is a publicly-traded company headed by Milan Panic, who was Prime Minister of Yugoslavia before losing an election to Slobodan Milosevic. The company manufactures and distributes a broad-based antiviral drug known as Virazole. In the mid-1980's, Virazole was the subject of clinical trials for the treatment of HIV, having already been approved in a number of countries for a variety of viral indications. In 1987, based on the results of these clinical trials, the United States Food and Drug Administration declined to grant regulatory approval to the drug as an AIDS treatment. As a result of the FDA decision, the price of ICN's stock suffered a substantial decline. A class action was commenced alleging that public statements relating to the prospects for FDA approval had been exaggerated and that the Company failed to disclose what it knew about significant flaws in the research data presented to the FDA. The Class contended that insiders at the Company, including Panic, avoided losses by selling their stock in advance of the public disclosure of the FDA's decision. This group of insiders purportedly profited by approximately \$18 million. Claiming extensive market losses, the Class sought damages exceeding \$300 million.

ICN was able to back up its belief that the research and track record of Virazole confirmed both its safety and efficacy and that the FDA deviated improperly from the standards of its own proposed approval process when it declined to grant Virazole status for broader clinical testing.

The complex trial raised issues including securities regulation, federal drug approval practices, and the conduct of officers and directors in a public company during a period of great business and scientific volatility.

After nearly two months of trial before Judge Kimba Wood, the jury began deliberations. Those deliberations resulted in the jury finding no liability on seven of the claims and reaching no decision on the remaining six claims.

Jurors were interviewed in the jury room immediately after rendering their verdict. Tension was thick in the air. Deliberations had gone on for five days and several of the jurors were upset that they had not agreed on six of the charges against ICN. As the picture of the deliberation process emerged from the discussion with the jurors, it became clear that one juror had been the lone holdout for the defense. This young woman, who did not stay for the discussion, and who was, at the time, a third-year law student at Harvard and a summer intern at a prestigious New York law firm, had refused to agree with the other jurors that statements that ICN had made about Virazole were material. As it turned out, this particular juror was the last to make it onto the jury. Plaintiffs' counsel had the opportunity to strike her from the panel with his last peremptory challenge, but instead, chose to remove a gentleman in his sixties, who had a background in public relations. Because a press conference and press releases were integral parts of plaintiffs' case, plaintiffs' counsel presumably thought this potential juror's background, which included stock ownership, would bias him in favor of the defense. With that single decision, plaintiffs' counsel lost the case. Had the jury agreed on the materiality of the last six issues before them, the foreperson said that he would have had "no problem" agreeing on how to calculate the damages, which would have totaled over \$100 million.

Litigation Strategies provided pre-trial jury research, opening statement consultation, jury selection assistance, and consultation throughout the trial process to the ICN defense team headed by Arnold Burns and Steven Obus of New York's Proskauer Rose.



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