



Galena Biopharma: A Twist On The Classic “Pump & Dump”

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Galena is a biopharmaceutical company that develops targeted cancer-fighting drugs. This case began as a fairly typical ‘pump & dump’ situation whereby promoters used blogs and digital media to sing the praises of a low priced, thinly traded stock, in order to inflate the price before selling their shares into the inflated price and then ceasing the promotion. They reap the profit, after which the share price collapses, leaving investors who’d bought during the promotion holding the bag. The case soon became more complicated however, and turned on the finer points of applicable law.

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Plaintiffs (investors) alleged that Galena officers (defendants) executed a pump and dump scheme by: a.) hiring a promotional firm to publish bullish articles on various web sites and message boards under false aliases to boost Galena’s stock price; b.) failing to disclose to the investing public that the articles were *paid promotions*, as required by securities laws; and c.) subsequently selling their personally-held shares into the inflated stock price, earning proceeds of more than \$16 million. Conversely, Galena convened a special committee consisting of two board members and outside counsel to study some 140,000 documents relating to the allegations, and concluded in a special committee report that there was no evidence that anyone at Galena actually committed fraud in connection with the paid promotional articles, or any evidence that the promotional articles had a material effect on the price of Galena stock. Plaintiffs however, reviewed the very same documents and found inconsistencies and other issues that the special committee had missed, which showed that *other* insiders had actually committed fraud and that the promotional articles *did* have a material effect on the price of Galena stock

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Plaintiffs’ claims required them to show that Galena had *made a statement*. The U.S. Supreme Court has held that the person who makes a statement typically is the one who delivers it. Therefore, for all practical purposes the *promoters* and not Galena were the speakers whom Plaintiffs could hold liable-- in fact that is what a different court had held only weeks before. [1] Seems pretty clear-cut.....well, not quite.

Plaintiffs convinced the Court that because Galena and its officers closely controlled the promotion, [2] *they* had ultimate authority over the promotion and therefore *they* were the speakers who could be held responsible for false statements made in the promotion. [3]

Settlement-

The Rosen Law firm, on behalf of the Plaintiffs, reached a settlement with Galena officers and directors after the parties engaged in hard-fought and arm's length settlement negotiations before a former U.S. district judge in two mediations over six months. *The Court's decision rejecting Galena's arguments gave the Plaintiffs excellent negotiating leverage.* The proposed settlement is for \$20 million, consisting of \$19 million cash and \$1 million in Galena stock. If approved, it will be one of the largest settlements in a stock promotion case. The case continues against the promoters.

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1. Janus Capital Group, Inc. vs. First Derivative Traders, 131 S. Ct. 2296, 2302 (2011)
2. CytRx Corp. Sec. Litig., 2015 WL 5031232, at *6 (C.D. Cal July 13, 2015)
3. In re Galena Biopharma Inc., Sec. Litig., 117 F. Supp. 3d 1145, 1187 (D. Or. 2015)

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