



# Securities Litigation and Regulation in the COVID Era: Recent Developments and Expected Trends

June 4, 2020

**Seyfarth Shaw LLP**

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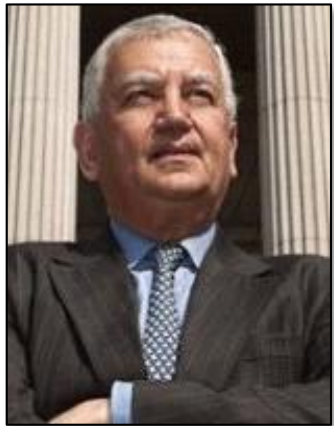
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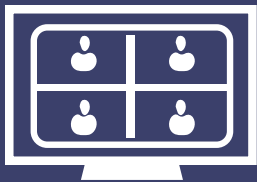
# COVID-19 Securities Lawsuits



- Norwegian Cruise Lines

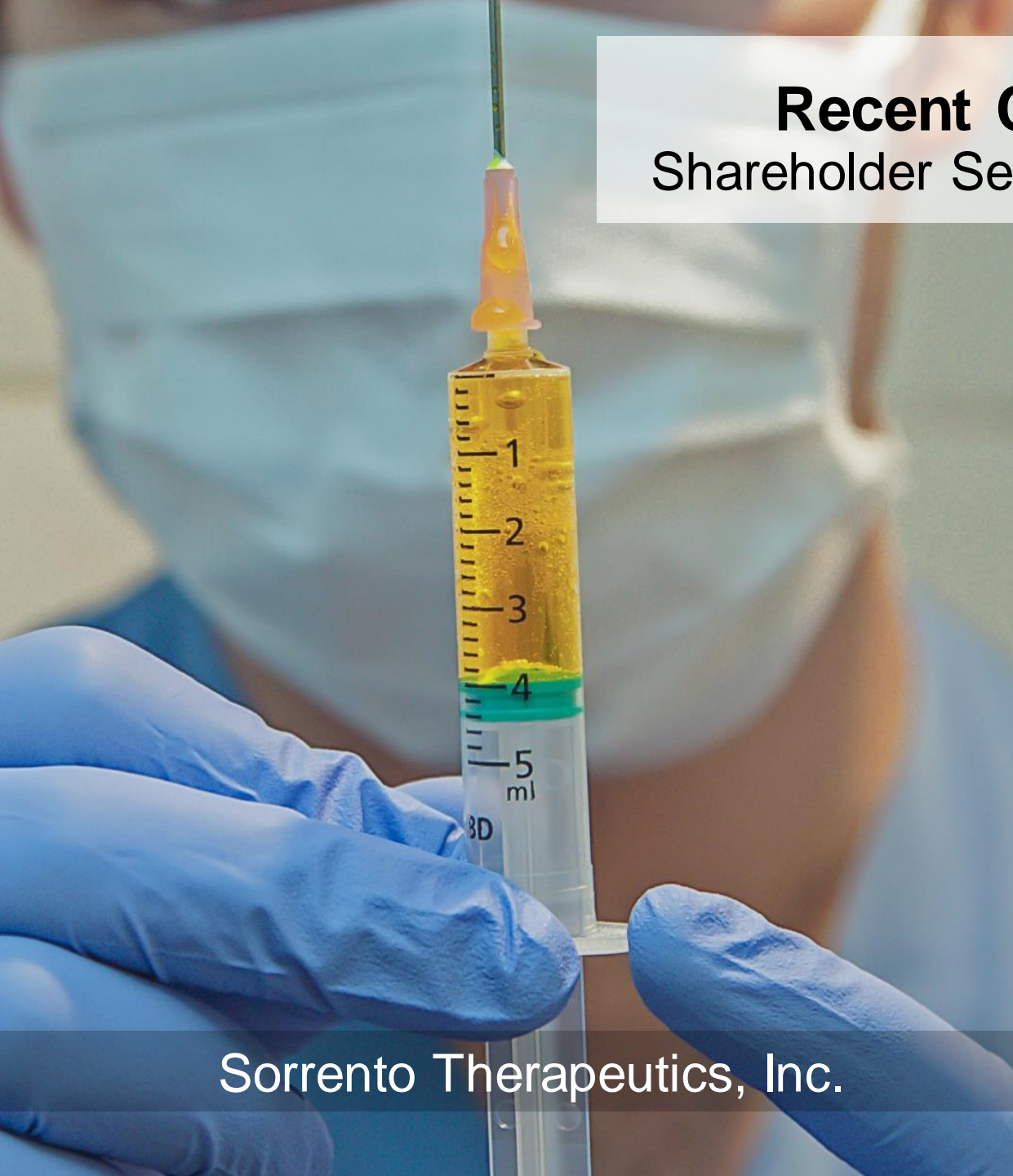


- Inovio Pharmaceuticals, Inc.



- Zoom Video Communications, Inc.

# Recent COVID-19 Shareholder Securities Lawsuits



Sorrento Therapeutics, Inc.



Carnival Corporation

**Recent COVID-19**  
Shareholder Securities  
Lawsuits



Property Operator in China

Allegations that the company failed to accurately disclose the impact of COVID-19 on its business.

## Recent COVID-19 Shareholder Securities Lawsuits



### iAnthus Capital Holdings

Four class actions were filed in the Southern District of New York in April alleging misrepresentations regarding the company's ability to meet interest payment obligations.

## Recent COVID-19 Shareholder Securities Lawsuits



### SCWorx Corp.

Two putative class actions filed against SCWorx alleging material misrepresentations related to the company's announcement of a large purchase order for COVID-19 rapid testing kits.



## Recent COVID-19 Shareholder Securities Lawsuits



### Elanco Animal Health Inc.

Allegations that the company made materially false statements and failed to disclose material adverse facts, including the impact of COVID-19 on business, operations and prospects.

## M&A Suits In the Time of COVID-19

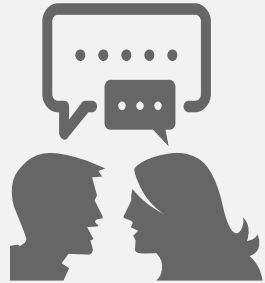


- As long as M&A deals continue to go forward, plaintiffs will continue to file suit.
- As of the end of May, there were over 60 deal-related federal securities suits alleging violations of the Securities Exchange Act of 1934 filed in 2020.
- Over **50** of these cases have been filed jointly by the same two law firms in Delaware District Court.

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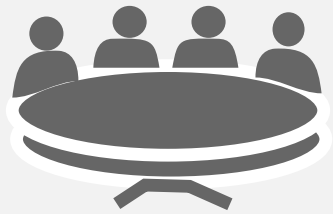
**RIGRODSKY & LONG, P.A. | RM LAW**

## **SEC Guidance** on COVID-19 Disclosures



- On March 25, 2020, the SEC's Division of Corporation Finance released guidance indicating that it believes that disclosures for public companies affected by COVID-19 are required under the securities laws.
- While the SEC recognizes that predicting the precise impact of COVID-19 on business operations is difficult and that the actual impact will depend on factors outside the company's control or current knowledge, the SEC expects companies to disclose its analysis of material risks to its business from COVID-19 and its response to those risks.
- The SEC also recommends that companies proactively revise and update disclosures as facts and circumstances change.

# SEC Coronavirus Steering Committee



- The SEC announced the formation of a Coronavirus Steering Committee focused on identifying key areas of potential market and investor risk and actively monitoring for potential misconduct, including attempts to use the COVID-19 crisis as a basis for investment scams.
- These risk areas include:
  - Microcap fraud
  - Insider trading/market manipulation
  - Financial statement fraud
  - Retail Investor Fraud

# Recent SEC COVID-19 Enforcement Actions



- Praxsyn
- Applied Biosciences Corp.
- Turbo Global Partners, Inc.



## **SEC CARES Act Investigations**

The SEC Division of Enforcement has been requesting information from certain recipients of Paycheck Protection Program (PPP) and appears to be scrutinizing eligibility for these funds and misstatements or inconsistencies between application certifications and SEC filings.

# Whistleblower Cases in the COVID-19 Period



- Under the SEC Whistleblower Program eligible whistleblowers who report violations of the federal securities laws to the SEC are entitled to an award of between 10% and 30% of the monetary sanctions collected in successful actions brought by the SEC or related actions brought by certain other regulatory and law enforcement authorities.
- The Program also prohibits retaliation by employers against employees who provide us with information about possible securities violations.

# Trading Windows and Blackout Periods in the COVID-19 Period

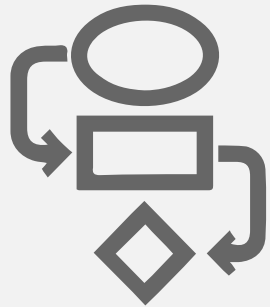


- March 23, 2020 Statement: Insiders likely to have material, non-public information about the effect of the virus on their business
- Consider revisiting trading windows
- Disclose impact of virus, projections, and (among other things) PPP, before opening trading window



# Insurance Considerations

in the Time of COVID-19



- Unprecedented catastrophic/negative economic loss; extending into foreseeable future
- Lower underwriting risk if companies are conducting best practices vs. recent wave of D&O claims/liability
- More D&O claims with higher insolvency
- D&O renewals were already tough and expensive before the pandemic

# Insurance Considerations in the Time of COVID-19

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- Changes to placement processes: timing, pricing, capacity, terms, conditions, increased questioning, ability to respond to UW questions with business disruption, higher retentions
- Self-insured/alternatives to traditional D&O package
- SEC investigations – look to definitions of “claim,” “insured person,” “wrongful act”/”conduct” exclusion, “investigation,” “prior or pending” litigation and remedies in *entire* tower
- Current exclusions and potential new exclusions
- Other insurance issues that may result in secondary D&O losses
  - Cyber-related loss - purpose built or silent cyber policies
  - Business interruption



**Questions?**

Thank you



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