

# BuyersStrike!

## It Was Dark Over Westphalia

### Update Update: Who's Suing Cytodyn Now And Who is Admitting The Plaintiffs Are Right? (CYDY)

We're now in mid-December 2020, and thought it would be a good time for an update on one of the more curious stories of 2020. No, not Coronavirus, but rather everyone's favorite reverse-merger pink sheet Coronacraper, Cytodyn (CYDY), its clown crew of kreme de la kreme managers including The NaDDir\* and the rather interesting lawsuit filed against them by a group of former directors. This particular suit was filed in late April. Missed it? Well, that might not be your fault, as Cytodyn has done its best to avoid disclosing it. Here is the litigation section from CYDY's latest 10Q (<https://content.equisolve.net/sec/0001193125-20-266805/d271253d10q.htm>), filed in October for the period ending in August 2020.

#### Item 1. Legal Proceedings.

As of August 31, 2020, we were not a party to any material pending legal proceeds except as described below and as described in Part I, Item 3 of our 10-K for the fiscal year ended May 31, 2020. From time to time, we may become involved in claims and suits that arise in the ordinary course of our business. Management currently believes that the resolution of any such claims against us, if any, will not have a material adverse effect on our business, financial condition or results of operations.

On June 29, 2020, the Company issued the note holder of our January 2019 note 4,000,000 shares of common stock with a settlement value of \$22.5 million, in settlement of a claim filed by the note holder against the Company alleging that the note holder was owed additional shares upon conversion of the January 2019 Note.

On April 29, 2020, Torrey Capital LLC ("Torrey") filed an arbitration claim against the Company demanding payment of a transaction fee in the amount of \$600,000 plus attorney fees, for the Company's alleged failure to pay a transaction fee to Torrey under the terms of the engagement letter with the Company. The Company denied Torrey's right to a fee pursuant to the terms of the engagement. On September 17, 2020, Torrey amended its claim to add an additional transaction fee claim, increasing its demand to \$1.74 million. The Company similarly denied Torrey's contractual right to any fee. The parties filed dispositive motions in August and September, which the arbitrator denied on October 5, 2020. The Company continues to vigorously defend this action.

On July 26, 2019, our Board of Directors terminated the employment of Dr. Richard G. Pestell, our former Chief Medical Officer, for cause pursuant to the terms of his employment agreement. On August 22, 2019, we received notice that a lawsuit naming the Company and its Chief Executive Officer and the Chairman of the Board was filed by Dr. Pestell in the United States District Court for the District of Delaware, alleging breach of Dr. Pestell's employment agreement, among other claims, and seeking damages in the amount of certain severance entitlements thereunder pertaining to non-cause termination, among other relief. The treatment of those entitlements and of certain previously granted unvested stock options and shares of restricted common stock, which were subject to a repurchase option, may be determined by the outcome of this litigation. On September 17, 2019, Cytodyn and the other defendants moved to dismiss the complaint. On September 27, 2019, Dr. Pestell amended his complaint. On October 10, 2019 the Company moved to dismiss certain wage and hour and defamation claims, and on June 12, 2020, the Court dismissed the wage and hour claims. Shortly thereafter, the Company filed an answer and counterclaims. On July 10, 2020, Dr. Pestell moved again to amend the dismissed wage claims, which the Company again moved to dismiss on July 24, 2020. The motion to dismiss the wage claims remains pending. The Company disputes all of Pestell's claims and intends to vigorously defend the action.

(<https://buyersstrike.files.wordpress.com/2020/12/legalproceedings10kOctober.png>)

While they do mention a suit filed on April 29, 2020 against the company, they fail to mention a different suit filed on April 24th, 2020. Which is very strange because Bloomberg News ran a story about it (<https://news.bloomberglaw.com/corporate-governance/cytodyn-executives-sued-for-oversized-stock-awards>) on April 30th. Fear not. We have it for you. Read the unredacted lawsuit the current Board of Directors and the company obviously do not want people to see right here (<https://www.scribd.com/document/488600269/Alpha-Venture-Capital-Partners-LP-v-Cytodyn-CYDY-Pourhassan-et-al>). Catch up on some commentary about it here (<https://buyersstrike.wordpress.com/2020/04/29/whos-suing-cytodyn-now-cydy/>) and here (<https://buyersstrike.wordpress.com/2020/07/22/update-whos-suing-cytodyn-now-and-what-has-dr-scott-kelly-been-doing-about-it-cydy/>).

The suit concerns a breach of fiduciary duty, bad faith, unjust enrichment, and corporate waste. Specifically, it has to do with a series of stock, option, and warrant grants in December of last year and January of 2020.

Here is a list of the December grants, and the lucky recipients:

Name	No. Stock Options/Warrants	Grant Date Fair Value
Pourhassan	4,000,000	\$1,161,288
Kelly	1,250,000	\$362,903
Klump	750,000	\$217,742
Naydenov	750,000	\$217,742
Welch	750,000	\$217,742
Mulholland	700,000	\$203,225
Ray	600,000	\$174,193
Rae	300,000	\$87,097
Bruce Patterson	200,000	\$58,064

(<https://buyersstrike.files.wordpress.com/2020/12/dec19optiongrants.png>).

And some background on the timing:

98. The December 2019 Awards are undeserved and unfair. As described above, the Board's non-employee directors and executive officers already received their annual stock option award for the 2020 fiscal year. Just prior to December 19, 2019, the Board was not planning on making any additional equity awards. As revealed in the documents produced in the Section 220 Demand and described in more detail below, the December 2019 Awards were the result of a hastily called telephonic meeting arranged by Pourhassan so that he could propose granting himself 4,000,000 stock options/warrants. To procure Board approval, he proposed at the same time that the Board's non-employee directors likewise award themselves a massive amount of stock options, more stock options than they had been awarded in any previous year for their service as non-employee directors. In

(<https://buyersstrike.files.wordpress.com/2020/12/dec19awardstext.png>).

These December grants are also the subject of a spring-loading claim. They were hastily granted immediately before the release of some bullshit stock pumping nonsense (<https://www.cytodyn.com/investors/news-events/press-releases/detail/370/cytodyn-reports-early-but-strong-positive-clinical>) two days later. Spring-loading is not taken lightly by the Delaware courts, as can be seen here (<https://blog.vcxexperts.com/2019/06/18/chancery-addresses-spring-loading-of-options/>).

The January 2020 grants are also interesting. Take a look at the massive awards they handed out to themselves just a month after pillaging the shareholders in December:

Name	"Performance" Shares	Grant Date Value
Pourhassan	6,000,000	\$6,300,000
Kelly	2,500,000	\$2,625,000
Welch	1,500,000	\$1,575,000
Naydenov	1,500,000	\$1,575,000
Eastwood	150,000	\$157,500
<b>Total</b>	<b>11,650,000</b>	<b>\$12,232,500</b>

<https://buyersstrike.files.wordpress.com/2020/12/januaryoptionsgrants.png>

Why else might the company not want to alert shareholders to this lawsuit? Perhaps Paragraph 67 gives a clue?

67. At almost every Board meeting, Pourhassan would begin with a presentation about all the things he was doing for the Company and the financial sacrifices he had purportedly made—such as giving up a jewelry business—to complain that he was underpaid and entitled to additional (but undeserved)

<https://buyersstrike.files.wordpress.com/2020/12/p67-shareholdersuit.png>

Or maybe Paragraph 71?

71. Pourhassan even floated the idea that he should be compensated based on a percentage of funds that "he" purportedly raised for the Company. Not only did Pourhassan unjustifiably take credit for all of the Company's fund-raising, and unfairly disregard the fund-raising efforts of others within the Company and Paulson Investment Bankers, to whom the Company already paid a 7% commission, his proposal also was deceptive and illegal. Even when Gould and others analyzed Pourhassan's proposal, and explained to Pourhassan that he already received a higher percentage of the Company's total overhead compared to its peers, and that compensating executives with a commission on funds raised was *illegal*, Pourhassan reacted negatively and insisted that he was being treated unfairly by certain directors who would not accede to his demands.

<https://buyersstrike.files.wordpress.com/2020/12/p91-shareholdersuit.jpg>

Of course the company will deny these claims, say they are untrue, without merit. Perhaps The NaDDir\* will whine and scream and shout that he is being singled out by nefarious forces. Or will they?

Readers may recall that in early May **Cytodyn** created a “**Special Litigation Committee**” (SLC) and hired the rather pricey West Coast law firm **Wilson Sonsini** to represent the SLC and conduct an investigation. We are pleased to report that the lawyers have completed their investigation and we have, as **The NaDDir\*** might say, “a VERY exciting news for you!”

The investigation is now complete. The SLC has concluded that the Plaintiffs’

claims have merit and, therefore, it will not be moving to terminate the litigation.

([https://buyersstrike.files.wordpress.com/2020/12/image\\_2020-12-18\\_094014.png](https://buyersstrike.files.wordpress.com/2020/12/image_2020-12-18_094014.png))

This may be the first time that anyone at **BuyersStrike! HQ** has seen an internal investigation vindicate the plaintiffs in a suit of this type. Remember, these lawyers are paid to show the company and management are NOT guilty.

At this point it would be prudent for the defendants and the company to settle the suit. But that might not be so easy. Unfortunately for **The NaDDir\*** those shares he issued to himself in December 2019 had already been sold at the end of April 2020. This was disclosed in the infamous Form 144 filing (<https://buyersstrike.wordpress.com/2020/05/01/who-else-is-selling-stock-now-cydy/>) from early May 2020.

The sale of that stock is the subject of a different lawsuit (Case #: 3:20-cv-05909-JLR in the US District Court for the Western District of Washington), which has also not been disclosed to investors. It should be quite interesting to watch. It may be difficult to rescind a grant that has already been sold into the marketplace. Even if **The NaDDir\*** was forced to return the ill-gotten gains, the shareholders still absorb the dilution that has already occurred. Of course, if they had any sense at all, they wouldn’t be **Cytodyn** shareholders.

\*Spelled thusly for a **double dose** of that sweet sweet **stock pimping**.

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Posted in [Bad Directors](#), [Bio-Dreck](#), [CoronaCrap](#), [Fail](#), [Reverse Mergers](#) on [December 18, 2020](#) by [BuyersStrike!](#) [10 Comments](#)

## 10 comments

1. **Charles** says:

[December 18, 2020 at 4:56 pm](#)

Shameful garbage.

[Correct Charles, the behavior of the Klown Krew at Cytodyn is shameful, and they are garbage. Their own lawyers even agree. Don’t believe that? Just look up the court documents yourself, the case information has been provided. – Editor]

[REPLY](#)

2. **Teresa** says:

[December 18, 2020 at 5:24 pm](#)

Lol, your “hit piece” is comical. Laughing alllllll the way to the bank.

[It is true, Teresa, The NaDDir’s antics, as exposed in this lawsuit, are funny. – Editor]

[REPLY](#)

3. **R. Swartz** says:

[December 18, 2020 at 8:24 pm](#)

The Severe/Critical group being tested with Leronlimab is now fully populated and underway. Thus far, it appears to be the only effective treatment to reach this stage of testing. The DSMC results, done midway into the study, encouraged its continuation – which is a very encouraging sign. Covid is only one of the numerous applications of leronlimab. So, take your article (don’t even see a byline = guess you aren’t too proud of yourself) put it in your hat, now pull it firmly over your head, and feel some dribbling down the sides of your face?

[Wow, the Severe-to-critical trial of loserlimab is completely meaningless, and has been since at least the night of October 22, 2020. Do you understand why? If not, you need to read about [Section 564 of the FD&C Act](#). For reasons that should be obvious, loserlimab has exactly zero applications outside of blocking one (and only one) strain of HIV. Competing drugs are already on the market that block both strains. There is no hope for loserlimab in any indication. – Editor]

[REPLY](#)

4. Pingback: [Christmas Week Quick Take: What Misleading BS is Cytodyn Spewing Today? \(CYDY\) | BuyersStrike!](#)

5. Pingback: [Christmas Week Quick Take 2: What NASDAQ Listing Nonsense Are The Cytodyn Shills Spewing Today? \(CYDY\) | BuyersStrike!](#)

6. Pingback: [Christmas Eve Quick Take: Who clearly has no clue what an Open Label Extension is? \(CYDY\) | BuyersStrike!](#)

7. Pingback: [Who’s Suing Cytodyn Now? \(CYDY\) | BuyersStrike!](#)

8. Pingback: [Which Country Will Not Be Granting Cytodyn an EUA Anytime Soon? \(CYDY\) | BuyersStrike!](#)

9. Pingback: [What Other Disease Won’t Cytodyn Be Curing Today? \(CYDY\) | BuyersStrike!](#)

10. Pingback: [NYE Quick Take: What Journal Article Did Cytodyn Pay To Get Published Today? \(CYDY\) | BuyersStrike!](#)

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