

# BuyersStrike!

## It Was Dark Over Westphalia

### Who's Suing Cytodyn Now? (CYDY)

[UPDATE – Readers can find a mid-December 2020 update on the lawsuit [here](https://buyersstrike.wordpress.com/2020/12/18/update-update-whos-suing-cytodyn-now-and-who-is-admitting-the-plaintiffs-are-right-cydy/) (<https://buyersstrike.wordpress.com/2020/12/18/update-update-whos-suing-cytodyn-now-and-who-is-admitting-the-plaintiffs-are-right-cydy/>). And can read the full, unredacted text of the lawsuit [here](https://www.scribd.com/document/488600269/Alpha-Venture-Capital-Partners-LP-v-Cytodyn-CYDY-Pourhassan-et-al) (<https://www.scribd.com/document/488600269/Alpha-Venture-Capital-Partners-LP-v-Cytodyn-CYDY-Pourhassan-et-al>).]

Last night a curious 8K (read it [here](https://www.otcmartets.com/filing/html?id=14101923&guid=ZxNHUWNHuR57Xyh) (<https://www.otcmartets.com/filing/html?id=14101923&guid=ZxNHUWNHuR57Xyh>)) was filed by flavor-of-the-weak(minded) AIDS-turned-Cancer-turned-Coronacrappier Cytodyn (CYDY). Says the company:

*On April 24, 2020, certain stockholders of CytoDyn Inc. (the "Company"), including two former directors and a company controlled by a former director (Anthony D. Caracciolo of the Caracciolo Family Trust, Gregory A. Gould, and Alpha Venture Capital Partners L.P., controlled by Carl C. Dockery, respectively), filed a derivative stockholder complaint in the Court of Chancery of the State of Delaware, alleging claims for breach of fiduciary duty and unjust enrichment against the Company's CEO, current and former CFO, CMO, and current and former members of the Company's board of directors in connection with certain equity grant awards to these individuals in December 2019 and January 2020. The Company disclosed these awards in the Company's Current Reports on Form 8-K filed with the U.S. Securities and Exchange Commission on December 27, 2019 and February 3, 2020.*

There is a lot here to dissect. Firstly, the company is basically being sued by the following people: **Anthony Caracciolo, Gregory Gould and Carl Dockery**. Who are they?

Not your ordinary shareholders, and not even just ordinary directors, because both **Caracciolo** and **Gould** had previously served as Chairmen of Cytodyn!

Name	Age	Start	End	Tenure
<b>Chairman</b>				
1) Anthony D. Caracciolo	69	06/17/2013	11/16/2019	6.4
2) Gregory A. Gould "Goug"	81	07/01/2012	06/30/2019	6.9
<b>Board Member</b>				
3) Gregory A. Gould "Goug"	81	06/17/2013	06/16/2019	6.7
4) Michael A. Klump	54	08/16/2018	1/7/2019	0.3
5) Dr. Scott A. Kelly	50	07/18/2017	1/7/2019	1.6
6) Carl C. Dockery	58	09/28/2018	11/16/2018	1.2
7) Dr. Nader Z. Pourhassan	52	09/28/2018	11/16/2018	0.2
8) Jordan G. Naydenov	58	06/20/2019	11/16/2018	5.4
9) Dr. David P. Buehler	77	02/07/2011	02/11/2018	7.4
10) Dr. Alan Gross Neangomye	65	07/27/2011	07/17/2018	7.3
11) Prof. S. Michael Nihal	61	12/13/2012	09/27/2018	2.7
12) Anthony D. Caracciolo	68	12/26/2011	06/17/2018	7.5

The plaintiffs are claiming unjust enrichment and breach of fiduciary duty with regards to certain option and share grants given to management and the current directors. Specifically grants in December 2019 and January 2020.

Here are the details of the option grants from December:

*Board approved grants to certain of its directors and executive officers of options and warrants to purchase shares of its Common Stock. The options and warrants each have a per share exercise price of \$0.63, which was the closing sale price of Common Stock on the date of grant, and a ten-year term and, unless noted otherwise below, vested immediately upon the date of grant. The options were granted pursuant to the CytoDyn Inc. 2012 Equity Incentive Plan, as amended (the "Plan").*

*In connection with the foregoing, on December 19, 2019, the Company granted the following awards to members of its Board: (i) to Scott A. Kelly, M.D., Chairman of the Board, an option to purchase 1,250,000 shares of Common Stock; (ii) to David Welch, Ph.D., an option to purchase 750,000 shares of Common Stock; (iii) to Michael A. Klump, an option to purchase 750,000 shares of Common Stock; and (iv) to Jordan G. Naydenov, an option to purchase 750,000 shares of Common Stock. In addition, the Company granted the following awards to certain of its executive officers: (i) to Nader Pourhassan, Ph.D., Chief Executive Officer and a member of the Board, an option to purchase 2,000,000 shares of Common Stock and a warrant to purchase 2,000,000 shares of Common Stock; (ii) to Michael D. Mulholland, Senior Vice President of Finance, an option to purchase 700,000 shares of Common Stock; and (iii) to Nitya G. Ray, Ph.D., Chief Technology Officer—Head of Process Sciences, Manufacturing & Supply Chain, an option to purchase 600,000 shares of Common Stock. 500,000 of the options granted to Dr. Kelly an one-half of the options granted to Mr. Mulholland and 400,000 options granted to Dr. Ray will vest upon the achievement of certain additional strategic milestones specified by the Board and documented in the relevant award agreements. The warrant granted to Dr. Pourhassan will vest upon the achievement of certain additional strategic milestones specified by the Board.*



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And the January stock grants:

*On January 28, 2020, the Compensation Committee of the Board of Directors (the "Compensation Committee") of the Company approved the award of performance shares to certain of its directors and executive officers outside of the Company's 2012 Equity Incentive Plan, which awards will vest and be settled in shares of Common Stock of the Company if the Company achieves breakthrough designation within 6 months of the award date and if certain other requirements have been met.*

*In connection with the foregoing, the following awards were approved by the Compensation Committee: (i) Scott A. Kelly, M.D., Chairman of the Board, was approved 2,500,000 performance shares; (ii) David Welch, Ph.D., Director, was approved 1,500,000 performance shares; (iii) Jordan G. Naydenov, Director, was approved 1,500,000 performance shares; (iv) Nader Pourhassan, Ph.D., Chief Executive Officer and a member of the Board, was approved 6,000,000 performance shares; and (v) Craig S. Eastwood, Chief Financial Officer, was approved 150,000 performance shares.*

Let's aggregate the awards, shall we?

- o Scott Kelly 2,500,000 shares + 1,250,000 options @ 63c
- o David Welch 1,500,000 shares + 750,000 options @ 63c
- o Michael Klump 1,500,000 shares + 750,000 options @ 63c
- o Jordan Naydenov 1,500,000 shares + 750,000 options @ 63c
- o Craig Eastwood 150,000 shares
- o Michael Mulholland 700,000 options @ 63c
- o Nitya Ray 600,000 options @ 63c
- o Nader "The Nadir" Pourhassan 6,000,000 shares + 2,000,000 options + 2,000,000 warrants.

The case, for those interested, is **Alpha Venture Capital Partners LP v. Nader Z. Pourhassan (2020-0307-PAF)**.

Only yesterday the former CEO of ProPharma/Galectin was caught touting (<https://buyersstrike.wordpress.com/2020/04/28/whos-touting-cytodyn-now-cydy/>). Galectin (& CYDY) stock, today two former Chairmen of Cytodyn, and the number 3 holder of the stock (Dockery through his Alpha entity), are suing Cytodyn.

Holder Name	Shares Out	% Out	Rest/Shares Out	Source	Del	Position	% Out	Unlocked	Chg	
1. ARGONNE TRADING LLC				Form 4			1.1	1,047,139	2.54	5,149,999
2. Pestell Richard				Form 4			13.09	12,095,393	2.83	4,799,724
3. Alpha Advisors LLC				Form 4			9.88	9,431,245	1.97	0
4. Veleh David J				Form 4			7.68	7,382,162	1.59	0
5. Patel Samir				Form 4			7.2	6,974,874	1.50	2,218,874
6. Naydenov Jordan G				Form 4			6.13	5,875,825	1.27	834,333
7. PROSPECTIVE LLC				Form 4			5.88	5,637,775	1.16	106,703
8. Garofalo Anthony D				Form 4			2.82	2,732,103	0.59	4,393,008
9. Kelly Scott A				Form 4			2.05	1,995,538	0.43	75,000
10. Donagan Nadia Z				Form 4			1.53	1,467,167	0.32	155,978
11. Klum Michael A				Proxy			0.87	842,500	0.18	0
12. Diversified Trust Co Inc				Form 4			0.86	832,500	0.18	0
13. Hubbard Richard D				Form 4			0.81	784,000	0.16	16,959
14. Glenfield Trust Co Inc/The				Form 4			0.82	790,000	0.17	100,000
15. Gould Gregory A				Proxy			0.30	293,776	0.06	0

But maybe these are just a couple of disgruntled folks, upset that they missed out on Coronamania? Or is it a pattern? Take a look at the number two holder above, Richard Pestell. He isn't just some retail sucker. He's the former CMO and Vice Chairman of CYDY.



And he has ALSO sued the company, in a case from last August, **Pestell v. CytoDyn Inc. et al (Case 1:19-cv-01563-UNA)**, well before any Coronahype. Check it out [here](https://www.scribd.com/document/458956431/Pestell-v-Cytodyn-CYDY-1-19-cv-01563-RGA) (https://www.scribd.com/document/458956431/Pestell-v-Cytodyn-CYDY-1-19-cv-01563-RGA). These paragraphs (65-68) are particularly interesting:

- 65. Specifically, on June 20, 2019, the CEO, who has no medical training, demanded that the clinical trial office at Amarex Clinical Research LLC ("Amarex") "submit the IND and protocol that you had made for colon cancer for submission to the FDA by tomorrow and let [Professor] John [Marshall, Consultant to CytoDyn] know that we are not waiting for him any longer."
- 66. Dr. Pestell pushed back on the CEO's attempts to rush the submission because, the week prior, on June 12, 2019, Dr. Pestell had determined that the protocol was unsafe because it would likely lead to a higher incidence of side effects, placing patients at unnecessary risk. For those reasons, Dr. Pestell and Professor Marshall, a colon cancer subject matter expert who had previously worked with Dr. Pestell from 2002 to 2005 and is currently a consultant to CytoDyn, agreed that changes should be made to the protocol.
- 67. Dr. Pestell, Professor Marshall, and Amarex recommended a safer and more efficacious revised protocol, which adjusted the dose and timing of the chemotherapeutic agents to be provided to patients. The initial draft study proposed a daily 160 mg starting dose of regorafenib, plus weekly subcutaneous administration of leronlimab. However, regorafenib can have severe side effects at that starting dosage, which research has shown are lessened by starting with a lower dose, which is then gradually escalated. The protocol revision endorsed by Dr. Pestell, Professor Marshall, and Amarex accordingly recommended a dose escalation of 80, 120, and 160 mg of regorafenib, in combination with the administration of leronlimab.
- 68. Despite this recommendation from experts in the field, and despite Dr. Pestell's authority for leading and implementing the Company's clinical programs, the CEO instead proposed submitting the original protocol with Dr. Pestell's name removed. This interference with Dr. Pestell's authority and performance of his duties constituted a breach of Section 2.2 of the Employment Agreement.

Two different plaintiffs (all insiders) with different suits against the same crapco within a year? Might be a first for us here at HQ. We are all very excited to see what Cytocraziness tomorrow might bring.

[Did you know **Loserlimab** (<https://buyersstrike.wordpress.com/2020/08/28/but-teh-science-be-so-gud-part-1-a-brief-history-of-loserlimab-cydy/>) has virtually no chance of ever getting an EUA in the United States? Want to know why? See [here](https://buyersstrike.wordpress.com/2020/10/23/quick-take-what-cytodelusion-actually-died-last-night-cydy/) (https://buyersstrike.wordpress.com/2020/10/23/quick-take-what-cytodelusion-actually-died-last-night-cydy/).]

[Did you know **Cytodyn's** claims of **non-dilutive** financings (with notorious penny stock player **John M. Fife** (<https://www.sec.gov/litigation/litreleases/2020/lr24886.htm>)) are complete bullshit? They are highly dilutive. Learn more [here](https://buyersstrike.wordpress.com/2020/12/21/what-did-cytodyne-bury-in-the-mid-december-s3-filing-cydy/) (https://buyersstrike.wordpress.com/2020/12/21/what-did-cytodyne-bury-in-the-mid-december-s3-filing-cydy/).]

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8 comments

1. **GarbageSpotter** says:  
[April 29, 2020 at 6:52 pm](#)  
Pure garbage.

[Yes we believe Cytodyn is. – Editor]

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