

SUPREME COURT OF THE STATE OF NEW YORK

NEW YORK COUNTY

PEOPLE OF THE STATE OF NEW YORK,  
by LETITIA JAMES, Attorney General  
of the State of New York

Plaintiff,

- against -

Robert G. Kramer,

Defendant

## COMPLAINT

Index number:

Plaintiff, People of the State of New York, by its attorney, Letitia James, Attorney General of the State of New York (“OAG” or “Plaintiff”), alleges as follows against Defendant Robert G. Kramer (“Kramer” or “Defendant Kramer”):

### NATURE OF THE ACTION

1. In the midst of the COVID-19 crisis, Defendant Kramer, the then-CEO of Emergent BioSolutions Inc. (“Emergent”), engaged in illegal insider trading of Emergent stock. Kramer entered into the illegal trades while in possession of material nonpublic information regarding serious and unresolved contamination issues Emergent faced in manufacturing COVID-19 vaccine drug substance for AstraZeneca PLC (“AstraZeneca”).

2. Kramer sold over \$10 million worth of Emergent stock while the contamination and production problems remained undisclosed to the public and just days before the stock’s price began a steady decline following analyst concerns about production.

3. Operation Warp Speed was an effort by the U.S. government to support the rapid development of COVID-19 vaccine candidates. On June 1, 2020, Emergent joined the federal government’s effort by committing space in Emergent’s plant located in Bayview, Maryland, to

support the rapid development and distribution of COVID-19 vaccines. Emergent also entered into lucrative partnerships with both AstraZeneca and Johnson & Johnson to produce drug substance for the companies' COVID-19 vaccine candidates.

4. On June 11, 2020, Emergent publicly announced an agreement, valued at \$87 million, to provide development and manufacturing services for AstraZeneca's COVID-19 vaccine candidate, ChAdOx1 nCoV-19 (AZD1222) (the "Product" or "AZD1222"), at Emergent's Bayview facility.

5. On July 27, 2020, Emergent announced a second contract with AstraZeneca, publicly valued at \$174 million, which provided for contract development and manufacturing ("CDMO") services for vaccine drug substance production by Emergent between July 2020 and June 2021 at large scale for commercial supply. Emergent's two contracts with AstraZeneca were worth a combined value of \$261 million.<sup>1</sup>

6. In the week following Emergent's announcement of its CDMO contract with AstraZeneca, Emergent's stock price climbed 29.5%, going from \$94.78 on July 27, 2020, to close at \$134.46 on August 5, 2020.

7. As development of the manufacturing process progressed over the fall of 2020, Emergent experienced serious manufacturing difficulties, particularly with contamination of AZD1222. Specifically, Emergent discovered excess bioburden (bacteria) and elevated endotoxin (a type of toxin released by bacteria) in multiple drug substance batches, as early as

---

<sup>1</sup> The manufacturing and production contracts Emergent secured with AstraZeneca were its second foray into manufacturing a COVID-19 vaccine substance. On April 23, 2020, prior to the U.S. government's announcement of Operation Warp Speed, Emergent secured a contract to manufacture vaccine substance for Johnson & Johnson also at Emergent's Bayview facility. On July 2, 2020, the parties entered into a second large scale drug substance manufacturing agreement which expanded the term of the agreement and was valued at more than \$480 million. The two vaccines would later become cross-contaminated.

September 26, 2020. Kramer, as CEO, knew of the contamination at least as early as October 6, 2020.

8. In early October, these contamination issues led to the rejection and destruction of multiple batches of vaccine drug substance, each containing potentially millions of dose-equivalents of vaccine.

9. Because of the serious, continuing and unresolved contamination, Emergent and AstraZeneca agreed to pause production of AZD1222 to investigate the root cause, and ultimately aborted, rejected or destroyed multiple batches. These manufacturing issues led to Emergent's inability to meet the rapid production schedule anticipated in its contracts with AstraZeneca.

10. In mid-October 2020, shortly after learning of the contamination problems at Emergent, Defendant Kramer asked his investment adviser to complete a Rule 10b5-1 stock trading plan (the "Trading Plan") which would allow Kramer to exercise stock options and simultaneously sell the acquired shares. Kramer had not implemented such a Trading Plan since 2016.

11. On November 13, 2020, while Emergent was in an all-hands-on-deck manufacturing crisis and still in the midst of an internal investigation of the unresolved contamination and manufacturing problems that had not been disclosed to the public, Defendant Kramer finalized and entered into the Trading Plan. The terms of the Trading Plan required the immediate sale of shares upon Emergent's stock reaching a preset price.

12. The Martin Act, New York General Business Law § 352 *et seq.*, forbids fraudulent practices, including the trading of stock by company insiders in possession of material nonpublic information. No statute, rule or law permits Rule 10b5-1 trading plans to be used as a

way of evading insider trading laws when an insider is aware of material nonpublic information at the time the trading plan is adopted.

13. Defendant Kramer realized proceeds of \$10,121,079.50 on the sale of Emergent stock under his Trading Plan. On January 15, January 20, January 21 and February 8, 2021, Defendant Kramer exercised various Emergent stock options to purchase Emergent stock at prices ranging from \$25.62 to \$30.86 per share. Pursuant to the Trading Plan, Defendant Kramer then immediately sold multiple lots of the shares he had acquired. Kramer sold 19,026 shares on January 15, then sold 2,232 shares on January 20, another 21,900 shares on January 21, followed by the sale of an additional 45,397 shares on February 8, 2021. These Emergent stock sales were consummated at weighted average sales prices ranging between approximately \$106 and \$120 per share, significantly higher than Kramer's purchase price.

14. Shortly after Kramer completed these sales of stock on February 8, 2021, information about some of Emergent's struggles was revealed to the public. After reaching a high of \$125.19 per share on February 12, 2021, Emergent's stock price began a steady decline from which it has not recovered. As of the date of this filing, Emergent stock currently trades at approximately \$12 per share.

15. Defendant Kramer's actions violated the Martin Act.

### PARTIES

16. Plaintiff is the People of the State of New York, represented by Letitia James, Attorney General of the State of New York, and is authorized to bring this action in the name and on behalf of the People of the State of New York pursuant to the Martin Act.

17. Defendant Kramer was employed by Emergent for more than two decades in multiple roles. He joined Emergent as its Chief Financial Officer in 1999. In that role, he was

responsible for financial accounting and reporting, budgeting and analysis, and investor relations. From March 2018 to April 2019, Defendant Kramer was Emergent's Chief Operating Officer, responsible for supervising manufacturing operations, among other duties. Defendant Kramer became the CEO of Emergent on April 1, 2019. As CEO, Defendant Kramer was responsible for management of the entire company. Kramer retired from Emergent on August 1, 2023.

### **JURISDICTION AND VENUE**

18. This Court has jurisdiction over the subject matter of this action, jurisdiction over Defendant Kramer, and authority to grant the relief requested pursuant to the Martin Act.

19. The Martin Act authorizes the Attorney General to commence a civil action for restitution, disgorgement and other relief against any person or corporation engaging or participating in fraudulent practices in the issuance, exchange, purchase, sale, promotion, negotiation, advertisement, investment advice, or distribution of securities or commodities within or from New York State.

20. The transactions complained of were arranged and executed for Kramer by Defendant Kramer's investment adviser, Merrill Lynch, on the New York Stock Exchange through its block trading desk in New York. The stock sales at issue were made pursuant to a Trading Plan which provided that it be governed by New York law. On November 13, 2020, Defendant Kramer signed the Trading Plan and agreed that his transactions were governed by New York law.

21. New York investors, including New York State employee retirement funds, bought, sold, and held hundreds of thousands of shares in Emergent stock during the relevant period.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.