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GIBSON DUNN


**Securities Enforcement Update** January 20, 2026

# New York Attorney General Brings Unusual Insider Trading Action Relating to CEO's Stock Sales Pursuant to Rule 10b5-1 Plan

*This case could potentially be a harbinger of expanded efforts by the NYAG and other state attorneys general to pursue insider trading and other securities fraud cases as the current Administration's enforcement priorities change.*

**Takeaways**

- *NYAG brings unusual insider trading action against CEO and public company under NY's Martin Act which NYAG (and most courts) interpret as not requiring proof of intent.*
- *Even though company and CEO were not based in NY, NYAG asserts jurisdiction based on trades executed on NYSE and trades executed through an adviser based in NY.*
- *CEO's trading was pursuant to a Rule 10b5-1 plan that included a cooling off period and that was allegedly approved by company after review by in-house counsel.*
- *Company agreed to pay $900,000 penalty for approving CEO's trading plan but did not admit or deny NYAG's allegations.*

On January 15, 2026, the New York Attorney General (NYAG) sued Emergent BioSolutions, Inc.'s former CEO in New York State court for allegedly engaging in insider trading in violation of New York's Martin Act.

[1] The NYAG's complaint alleges that the CEO sold Emergent stock pursuant to an SEC Rule 10b5-1 trading plan that he entered into while purportedly in possession of material non-public information relating to Covid vaccine manufacturing problems.[2] The NYAG simultaneously announced a settlement with Emergent for approving the CEO's Rule 10b5-1 plan while allegedly knowing that he possessed material non-public information.[3]

**NYAG Allegations**

In 2020, as part of Operation Warp Speed, Emergent publicly announced that it had entered into two contracts with AstraZeneca to help develop and manufacture a Covid-19 vaccine. In the week following these announcements, Emergent's stock price nearly doubled. Later in the year, Emergent allegedly experienced manufacturing issues, including a cross-contamination of a vaccine batch, which prevented Emergent from meeting its production schedule.

In an unsettled civil action against the CEO, the NYAG alleges that Emergent's CEO was aware of and continuously updated on manufacturing issues. In October 2020, the CEO started to implement an SEC Rule 10b5-1 trading plan for the exercise and sale of his Emergent stock options. In November 2020, while the alleged non-public manufacturing crisis continued, Emergent's in-house counsel reviewed, and Emergent allegedly approved, the CEO's Rule 10b5-1 plan.

The Rule 10b5-1 plan had a 60-day cooling-off period before the CEO could begin to trade.[4] In January 2021, after the cooling-off period expired, the CEO started to exercise his stock options and sell the shares he acquired pursuant to the 10b5-1 plan, completing the sales in February 2021 before the manufacturing issues had been disclosed to the market. The NYAG alleged that the CEO received total proceeds of about $10.1 million from the sale of stock, while Emergent received about $2.5 million from the CEO upon his exercise of his Emergent stock options at the designated exercise price. After concerns about Emergent's production issues became public, Emergent's stock price declined.

The NYAG charged the CEO with securities fraud in violation of New York's Martin Act, which the NYAG (and most courts) interpret as not requiring proof of intent. The NYAG is seeking disgorgement, damages, and injunctive relief.

**Company Settlement**

Notably, the NYAG reached a settlement with Emergent for alleged Martin Act violations related to the CEO's alleged insider trading. Emergent agreed to pay a $900,000 penalty and to amend its insider trading policy to require officers and directors who seek approval of a Rule 10b5-1 plan to complete an enhanced trading pre-clearance form requiring them to make several representations. These representations include that the officer or director is aware of Emergent's insider trading policy, aware that it is unlawful to trade or enter into or modify a Rule 10b5-1 plan while in possession of material non-public information, and does not possess such information. Notably, the settlement includes a pre-clearance form that defines what must be considered a "material incident" for the executives or officers certifying that they do not have such information in their possession—an area that is often subject to significant ambiguity and not clearly defined parameters. Emergent also agreed to provide quarterly reports to the NYAG for three years, which will include information relating to its directors' and officers' Rule 10b5-1 plans.

**Significance**

The case is extraordinary in multiple respects. First, it is unusual to bring charges against a company for the alleged insider trading of an officer or director. Companies are typically considered to be harmed by any such insider trading. The NYAG suggested Emergent benefited from the CEO's trading because Emergent received about $2.5 million in proceeds from the CEO's exercise of his stock options even though these proceeds represent a miniscule percentage of Emergent's roughly $1.8 billion in revenue in 2021. Moreover, when a CEO exercises options, the company typically issues new shares that dilute the ownership percentage of existing shareholders and may slightly reduce earnings per share.

Second, it is rare for state attorneys general to bring insider trading cases, which are the traditional purview of the United States Department of Justice and the Securities and Exchange Commission. It is particularly surprising that the NYAG did so here, where the alleged insider trading involves an SEC Rule 10b5-1 plan and Emergent had entered into a negligence-based settlement with the SEC for alleged disclosure violations relating to the manufacturing issues.[5] It is also notable that the NYAG's settlement requires the company's executives and officers to sign a pre-clearance trading form that defines what is a "material incident" in a unique manner when seeking approval to trade the company's stock. There are significant benefits to a national standard when applying the SEC's rules and history of applying those rules in investigations and enforcement actions.

Third, it is unusual to charge an executive with insider trading when the executive obtained company counsel approval to enter into a 10b5-1 plan. The complaint against the CEO alleges that "[t]he investment adviser . . . sent an email to Emergent Senior Counsel requesting an update on Kramer's vesting schedule and asked him to review the Trading Plan." The NYAG's assurance of discontinuance with Emergent alleges that "[o]ver November 11 and 12, 2020, Emergent's Senior Counsel reviewed the CEO's Rule 10b5-1 Trading Plan and coordinated with the investment advisor for the CEO to sign." The charging documents do not reflect the process that company counsel applied in the review of the 10b5-1 plan or what company counsel told the CEO and his investment advisor. Nor do the charging documents allege that the CEO possessed information that the Emergent Senior Counsel did not possess. These will be important issues in the litigation. Normally prosecutors and regulators are hesitant to bring charges against an officer or director who relies in good faith on company counsel to make determinations regarding whether the officer or director is in possession of material, nonpublic information. This is because, while it is far easier to identify whether the nonpublic information is material in hindsight based on the impact of subsequent disclosures on the stock price, it is often very complicated to assess at a time when it is unknown how the information will be received by the market.

Fourth, the allegations in the charging documents raise a number of questions regarding the declining performance of the company's stock price after the CEO's sales of stock and before any allegedly adverse public disclosures relating to the manufacturing problems. According to the NYAG's complaint, the company's stock price had already dropped significantly between the time of the CEO's stock sales and the disclosures, and this continuous decline was due to a number of developments unrelated to nonpublic contamination issues. This may pose an obstacle to proving the materiality of nonpublic information about the contamination at the time that the CEO entered into his 10b5-1 trading plan.

Perhaps most concerning, this case could potentially be a harbinger of expanded efforts by the NYAG and other state attorneys general to pursue insider trading and other securities fraud cases as the current Administration's enforcement priorities change.

According to a published statement by the Emergent CEO's lawyer, the DOJ and SEC both declined to bring charges in these circumstances. The NYAG's actions in this case stand in contrast to the approach the federal government has taken in the rare instances of enforcement actions involving Rule 10b5-1 plans. In 2024, the DOJ successfully prosecuted the former CEO of Ontrak for insider trading through a 10b5-1 plan adopted while in possession of material non-public information. In that case, the executive adopted a plan that provided for selling stock beginning immediately, notwithstanding advice the executive received from financial advisers that the plan should contain a cooling off period. In 2023, the SEC brought a settled enforcement action against Charter Communications for using Rule 10b5-1 for stock buyback plans that permitted the company to change the amount and timing of the buybacks in correlation to debt offerings to fund the buybacks. The SEC contended that the company's plan violated the internal controls provision of Section 13(b)(2)(B) of the Securities Exchange Act because the plan did not conform to the board's authorization of a plan that complied with Rule 10b5-1. The Republican Commissioners dissented from the settled enforcement action as exceeding the scope of Section 13(b)(2)(B).

The NYAG alleges that it has jurisdiction to sue the CEO because the trades were executed on the New York Stock Exchange by his investment adviser's trading desk in New York, the Rule 10b5-1 plan was governed by New York law, and New York investors (including New York State employee retirement funds) traded Emergent stock during the relevant period. Based on these jurisdictional theories, the NYAG could have jurisdiction over an enormous number of public companies and their executives, such that the NYAG could set securities-related compliance requirements for SEC-reporting companies. This could lead to different and contradictory case law in state and federal courts regarding important securities enforcement issues.

Public companies and their executives need to know exactly what the rules are where their officers and directors live and engage in securities transactions. A patchwork of attorneys general applying different (and potentially inconsistent) state laws to those rules—much like in the "Blue Sky Law" days before the SEC's creation—would create adverse collateral consequences to the capital markets. Among other things, shareholders benefit when rules are applied consistently and on a national basis. The NYAG's actions raise the specter that public companies and their executives face a widely expanded and variable regulatory landscape when adopting and approving Rule 10b5-1 plans.

[1] *See* Press Release, Office of the New York State Att'y Gen., Attorney General James Sues Former CEO of Emergent BioSolutions for Insider Trading (Jan. 15, 2026), https://ag.ny.gov/press-release/2026/attorney-general-james-sues-former-ceo-emergent-biosolutions-insider-trading.

[2] *See* Complaint, *New York v. Kramer*, No. __ (Sup. Ct. N.Y. Cnty. Jan. 15, 2026), https://ag.ny.gov/sites/default/files/court-filings/new-york-v-robert-g-kramer-complaint-2026.pdf.

[3] *See* Assurance of Discontinuance, *In re Emergent BioSolutions, Inc.*, Assurance No. 26-001

(Jan. 15, 2026), https://ag.ny.gov/sites/default/files/settlements-agreements/emergent-biosolutions-inc-assurance-of-discontinuance-2026.pdf.

[4] In 2022, the SEC amended Rule 10b5-1 to require that plans for officers and directors contain a cooling-off period that is the later of (a) 90 days after the adoption or modification of the plan or (b) two business days following the filing of the Form 10-Q or Form 10-K for the fiscal period in which the plan was adopted or modified.

[5] *See* Emergent BioSolutions, Inc., Securities Act Release No. 11371 (Apr. 7, 2025), https://www.sec.gov/files/litigation/admin/2025/33-11371.pdf.

**The following Gibson Dunn lawyers assisted in preparing this update: Reed Brodsky, David Woodcock, Mark Schonfeld, Osman Nawaz, Tina Samanta, Jina Choi, and Jonathan Seibald.**

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these issues. Please contact the Gibson Dunn lawyer with whom you usually work, any leader or member of the firm's Securities Enforcement, White Collar Defense & Investigations, or Securities Regulation & Corporate Governance practice groups, or the following:

Reed Brodsky – New York (+1 212.351.5334, rbrodsky@gibsondunn.com)

Jina L. Choi – San Francisco (+1 415.393.8221, jchoi@gibsondunn.com)

Osman Nawaz – New York (+1 212.351.3940, onawaz@gibsondunn.com)

Tina Samanta – New York (+1 212.351.2469, tsamanta@gibsondunn.com)

Mark K. Schonfeld – New York (+1 212.351.2433, mschonfeld@gibsondunn.com)

Jonathan Seibald – New York (+1 212.351.3916, mseibald@gibsondunn.com)

David Woodcock – Dallas/Washington, D.C. (+1 214.698.3211, dwoodcock@gibsondunn.com)