



Athenex – Bonus Round

Buffalo Soldiers vs the system, and a summary of Viceroy’s reports this week.



October 25, 2019 – This report serves as a summary to Viceroy’s work over this week, alongside data we have collated on Athenex’s dealing with the NY State Government

The Buffalo Billion is a commitment to the Buffalo, NY area to create jobs, spur investment and promote economic activity¹. The ambitious plan was committed to by New York governor Andrew Cuomo and first announced in the 2012 “State of the State” address.

The company’s response to Viceroy’s research is a further slap in the face to investors: **the company has failed to address a single issue highlighted in any of our reports:**

- **Where are the purported “inaccuracies” in Viceroy’s reports?**
- Did managements/directors transactions, **netting Directors millions of dollars of shareholder capital, not occur?**
- Were Athenex’s management team not involved in Sino Forest, Suntech, GCL Silicon/Poly, China Lumena?
- Are Athenex’s Oraxol clinical studies using the current USA standard of care for its control base? If not, how can this ever be commercial?

Athenex, Inc.		
Exchange		NASDAQ
Ticker		ATNX
Shares Outstanding	m	77.3
Share Price*	US\$	10.58
Market Cap	US\$m	817.834
Net Cash	US\$m	78.7
NCI	US\$m	11.7
EV	US\$m	727.434
NTA	US\$m	131.6
Licensing Revenue	US\$m	87.2
Revenue multiple	X	1.1
Viceroy Valuation		218.8
Viceroy Price Target	US\$	2.83053
Downside	%	-73.2%
*As at close of market - Oct 24, 2019		
NB: LTM/balance from Jun 30, 2019		

Athenex has called out Viceroy as inaccurate, but have failed to identify a single inaccuracy in any of our reports. Viceroy remains short Athenex with high conviction. The number of red flags uncovered within the business and management team surpass any other company we have previously analyzed purely within data sourced from the public domain.

We reiterate our target price of US\$2.83, now representing a 75% downside, and will continue to keep investors informed through further reporting.

We conclude that Athenex exists to abuse capital markets and enrich its management through **related party transactions and licensing deals rather than bring revolutionary drugs into the market.** This activity is carried out through overpromising the prospects of its flagship drug Oraxol and its purported “supply-chain” businesses like Polymed.

Athenex is a perfect storm of investor deception, insider enrichment and clinical trial risks. Investors should demand a full investigation of the issues discussed within this report: we are confident there is more to this story given how much was available purely through the public domain.

In light of the data Viceroy have presented, shareholders must question managements’ corporate governance and protect their rights through independent investigations.

Report 1:

<https://viceroyresearch.org/2019/10/22/athenex-too-little-too-late/>

Report 2:

<https://viceroyresearch.org/2019/10/23/athenex-where-theres-smoke/>

Report 3:

<https://viceroyresearch.org/2019/10/24/athenex-no-integrity/>

¹ <https://buffalobillion.ny.gov/about-buffalo-billion>

Attention: Whistleblowers

Viceroy encourage any parties with information pertaining to misconduct within Athenex, its affiliates or any other entity to file a report with the appropriate regulatory body.

We also understand first-hand the retaliation whistleblowers sometimes face for championing these issues. Where possible, Viceroy is happy act as intermediaries in providing information to regulators and reporting information in the public interest in order to protect the identities of whistleblowers.

You can contact the Viceroy team via email on viceroy@viceroyresearch.com.

About Viceroy

Viceroy Research are an investigative financial research group. As global markets become increasingly opaque and complex – and traditional gatekeepers and safeguards often compromised – investors and shareholders are at greater risk than ever of being misled or uninformed by public companies and their promoters and sponsors. Our mission is to sift fact from fiction and encourage greater management accountability through transparency in reporting and disclosure by public companies and overall improve the quality of global capital markets.

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Bonus Round – Buffalo Soldiers

The Buffalo Billion is a US\$1B commitment to the Buffalo, NY area to create jobs, spur investment and promote economic activity². The ambitious plan was committed to by New York governor Andrew Cuomo and first announced in the 2012 “State of the State” address.

Athenex has received assistance from the program, with certain conditions which are laid out in the company’s annual filings. The company agreed to maintain its headquarters at Coventus for rent equal to 35% of the operating costs for the space for a 10-year term.

**Strategic Public- Private Partnerships
New York State Partnership**
In May 2015, we entered into an agreement with Fort Schuyler Management Corporation, or FSMC, a not-for-profit corporation owned by the State of New York, for a medical technology research, development, innovation, and commercialization alliance. Under the agreement, FSMC will pay up to \$25 million for the construction of our North American headquarters and formulation lab and equipment in Buffalo, New York. We moved into the North American Headquarters in October 2015 and will lease from FSMC for a 10- year term, with an option to extend the term for an additional 10 years. For the first three years of the lease, we will pay rent to FSMC equal to 35% of FSMC’s operating costs for the space and thereafter will pay 100% of FSMC’s operating costs for the space for the remainder of the term. Under the agreement, we are obligated to spend \$100 million in the Buffalo area over the initial 10- year term of the lease, and an additional \$100 million during the second 10- year term, if we elect to extend the lease. We also committed to hiring 250 permanent employees in the Buffalo area within the first 5 years of completion of the project. Under the same May 2015 agreement, FSMC also agreed to fund the costs of construction of a new manufacturing facility in Dunkirk, New York. Under the current arrangement, we have selected a general contractor for the project and we will oversee the development of the facility. ESD, the parent entity of FSMC, is responsible for the costs of construction and all equipment for the facility, up to an aggregate of \$200 million, and FSMC, not us, will own the facility and equipment. We are entitled to lease the facility and all equipment at a rate of \$1.00 per year for an initial 10- year term, and for the same rate if we elect to extend the lease for an additional 10- year term. We are responsible for all operating costs and expenses for the facility. In exchange, we have committed to spending \$1.52 billion on operational expenses in our first 10- year term in the facility, and an additional \$1.5 billion on operational expenses if we elect to extend the lease for a second 10- year term. We also committed to hiring 450 employees at our Dunkirk facility

Figure XX Athenex 2017 10-K

The company also committed to the construction of a manufacturing facility in Dunkirk New York, the cost of which will be funded from the Buffalo Billions program up to US\$200m. In exchange Athenex has committed to US\$1.52B in operational expenses over a 10-year term but will not own the facility or equipment.

This commitment, in itself, is ridiculous given Athenex burns >\$100m a year in cash and cannot feasibly fulfil.

Due to endemic corruption and embezzlement in the Buffalo Billions program, work has slowed or stopped. In an article published August 31, 2016 by the Buffalo News it was revealed that while work on the Dunkirk plant had not officially stopped, supplies and equipment for the site were not being delivered.

‘Uncertainty’ on payments

“While work never officially stopped, equipment and other necessary items were not purchased because of the uncertainty of the payments,” Schuler said.

Empire State Development said the \$25 million for the Coventus project was approved by its board in February 2016, and by the Public Authorities Control Board in March.

The payments had to flow through additional layers of approval, including Empire State Development staff and, in a new wrinkle, Guidepost Solutions’ Bart M. Schwartz, the independent investigator hired by the Cuomo administration to investigate the Buffalo Billion program, officials said.

A payment approval process that once was measured in weeks now has become months. “It’s not clear to us where the logjams are,” Besecker said.

Figure XX Athenex projects hit roadblocks in Buffalo, Dunkirk – The Buffalo News

² <https://buffalobillion.ny.gov/about-buffalo-billion>



This tightening of the governmental purse strings is a reaction to the graft that occurred between state officials, bidders and contractors. Top state aid, Joe Percoco, was convicted in 2018 of bribery and wire fraud in relation to bribery in the states contract bidding process³. The New York Post wrote that the program was beyond corrupt on revelations that “nanotech czar” Alain Kaloyeros had charges of bid-rigging brought against him.

Other “state of the art” projects who have received “grants” from the Buffalo Billions project include Solar City (pre-acquisition). The plant opened in 2017 after several hold ups, and cash-strapped Tesla have rattled state officials with its inability to deliver employment promises it made in exchange for US\$750m in subsidies.

The program has largely been viewed as a failure with regards to the job creation and economic expansion promises. Recent coverage makes it unlikely that the program will continue. At this stage it is uncertain if Athenex will be able to complete its Dunkirk plant by relying on further assistance from the State of New York.

The effect on Athenex is significant. As we pointed out in our previous report the company’s Chongqing factory is non-operational for reasons that are not voluntary, contrary to their claims.

For those playing at home, Viceroy have produced this handy chart to keep track of Song-Yi Zhang’s history:

Zhang’s “Rinse-&Repeat” Bankruptcy Playbook				
	Athenex Inc,	Sino-Forest Corp	SunTech Power Holdings	China Lumena New Materials
Exchange Listing/ Ticker	Nasdaq: ATNX	TSX: TRE	NYSE: STP	HK: 0067
Operations in China?	✓	✓	✓	✓
Resulted in Bankruptcy/ Fraud?	?	✓	✓	✓
Song-Yi Zhang as Investor?	✓	✓	✓	✓
Song-Yi Zhang as Board Member?	✓		✓	✓
Use of Related Parties in business dealings?	Conducting clinical trials, raw materials & ingredients	Acquisition of forestry acreage	Purchases of key raw materials.	Purchases of major CapEx operations
Acquisition of Financially Struggling Related Parties?	William Zuo’s Polymed in default, acquired by Athenex at ridiculous multiples	Song-Yi Zhang’s Mandra Forestry in default, acquired by Sino Forest	Global Solar Fund/debt/guarantee/claims it was defrauded.	
Received Subsidies or Govt Economic Incentives?	✓		✓	✓
Lead Investment Banker(s)?	Credit Suisse (Lead banker joined ATNX Board)	Morgan Stanley/Credit Suisse	Credit Suisse	Credit Suisse

³ <https://www.nytimes.com/2018/07/12/nyregion/kaloyeros-guilty-buffalo-billion-cuomo.html>



A summary/conclusion

Management – A Company of Rogues

- Several members of **Athenex's management team** have a history of what appears to be either gross incompetence in fiduciary duties or clever mismanagement in **infamous frauds** internationally, collectively resulting in billions of dollars of write-offs including **Sino Forest, Suntech, GCL Silicon/Poly, and China Lumena**.
- Associates of former director and key Athenex figure Song-Yi Zhang in previous shady ventures are now embedded in the Athenex organization including the Audit committee.
 - **Athenex Audit Committee member John Koh was also a director of several investment vehicles of Song-Yi Zhang, with direct fiduciary obligation to oversee Sino Forest.**
- **Athenex directors have acted as onsellors and drop-shippers to rip off Athenex shareholders with margin-stealing exercises through their investment entity: Avalon Global.** Cash has consistently exited the business via similar related-party deals.
- Breaches in corporate governance principles: **Athenex directors screwed investors by purchasing CDE for themselves and flipping it to Athenex for a 262% profit in 6 weeks.** The company failed to report the circumstances of the transaction in any meaningful way.
- In another instance, **Directors pocketed a 3,300% profit by flipping an "anti-cancer mechanism" license to Athenex for US\$5m, for which they paid just US\$150,000 just 6 months earlier.**
- **Directors award themselves millions of dollars worth of stock at no cost** through the issuance of promissory notes that are cancelled on a time-vested basis.
- Athenex directors have an uncanny ability to **avoid any disclosure or reference to their involvement in historical fraud or related party deals.** It's Viceroy's view that if investors were aware, they **would not have bought Athenex in the first place.**
- Athenex's CFO J. Nick Riehle **left unexpectedly for a "planned" retirement,** just 10 months after joining the company but is now seeking work as a consultant.
- Our investigations have found ties between Athenex subsidiary Polymed and its management team to the **largest taxol smuggling ring in history, Yunnan Hande, which resulted in 50 arrests and 32 imprisonments.** Taxol is a key ingredient in anti-cancer drug paclitaxel and its harvesting is heavily controlled.
- William Zuo, President of China Operations **appears to have been the US liaison of the taxol smuggling ring mentioned above.** Athenex, through Polymed, appears to employ Xiaojin Wu Li an investor in Yunnan Hande and sister to its jailed chairman.

Oraxol – Flagship or Shipwreck?

Athenex has been reliant on the marketed prospect of Oraxol in order to obtain access to capital, having received going concern qualifications from Deloitte since 2016 and current yearly cash-burn rates of ~\$100m. The company has raised ~US\$360m in equity and US\$80m in debt since 2017. Even if R&D costs are removed from the equation, Athenex's licensing and consulting segments are operationally loss-making.

- After consultation with industry specialists and oncologists, Viceroy believes Athenex's flagship paclitaxel drug, **Oraxol, cannot compete with the current standard of care available in the USA.**
- Oraxol's clinical trials **control dosing regimen of IV paclitaxel as monotherapy is an outdated treatment schedule dating from the 1990's.**
- **Oraxol's marketed quality of life improvements are redundant.** Patients will still require IV treatment/post-treatment, alongside gastrointestinal complications from oral treatment.



- Oraxol's side effects appear more severe than those of the current US standard of care, Abraxane, and **may require hospitalization due to their life-threatening nature.** Reported adverse effects grade 4 neutropenia, grade 3 vomiting and unspecified GI complications were more severe than the IV paclitaxel group.
- **None of Oraxol's clinical trials have included a US patient component.** While the FDA does allow data overseas trials, these results are treated with much higher scrutiny. **Viceroy believe ATNX studies are being conducted in South America due to a lower local standard of care:** US patients could not be enticed to trial a drug against an outdated active control regimen.
- Athenex's Orascovery program – key to its marketed value proposition – was purchased for just US\$7.5m upfront in 2011 after its previous owner experienced **decade-long development delays with little headway into development. The Orascovery platform is busted.**
- Through consultation with experts, we believe Athenex's pursuit of the 505b(2) pathway for Oraxol will be hampered by the fact that its paclitaxel delivery mechanism, **HM30181A, has never been approved by the FDA. The FDA may require Athenex to pursue a further NDA for HM30181A.**
- Viceroy have identified what we believe to be **Intellectual Property Theft from UK company Immunocore.** XLifeSc's flagship technology (in which ATNX put US\$35m upfront) **may already be owned by GSK and further along the development pipeline:** GSK's solution is currently undergoing phase 2 trials in the US.
- With a BONUS round of issues in Buffalo where Athenex issues are mired with State issues of fraud and corruption. Although Athenex won't find that being an issue, as investors can see with Viceroy's **Zhang's "Rinse-&-Repeat" Bankruptcy Playbook."**

Factory Shutdown

- An investigation into Chinese regulatory notes from the Ministry of Emergency Management and Polymed's history of objectionable site inspections by Chinese regulators and the FDA lead us to believe that **Polymed's manufacturing facility suspension not voluntary.** In any event, Athenex's Chongqing manufacturing facility does not manufacture anything.
- Viceroy dismantles **photoshopped Polymed advertisements for its facilities and expose chemical manufacturing facilities we believe are non-existent or outsourced.**

Collectively, our research, informed by discussions with industry specialists, leads us to believe that Athenex's **Oraxol is obsolete in modern world medicine.** Athenex claims to "take pride" in the integrity of its management team. This same management team has overseen the evaporation of billions of dollars from shareholder capital in past ventures.

We reiterate our belief that Athenex exists to abuse capital markets and enrich its management through **related party transactions and licensing deals rather than bring revolutionary drugs into the market.**

*Viceroy value ATNX stock at **US\$2.83 – a 71% downside** –the sum of its tangible book value and 1x valuation on its licensing & consulting revenue streams, for the year ending June 30, 2019. With ATNX's questionable license acquisitions and management's precedent for overstated top line figures in previous ventures: this is optimistic.*
