THE WALL STREET JOURNAL. ONLINE

June 26, 2000 12:40 a.m. EDT

A Short-Seller Trades Blows With a Target Who Won't Fold

By CHARLES GASPARINO and ROBERT MCGOUGH
Staff Reporters of THE WALL STREET JOURNAL
June 26, 2000 12:40 a.m.

At a medical conference on chronic fatigue syndrome in 1998, a big investor spotted William Carter, head of a company developing a drug as a treatment for CFS. The investor strode over to shake hands, but it wasn't a friendly greeting.

His opening line? "I'm Manuel Asensio. You belong in jail."

That's the hardball approach of a Wall Street tough guy who is no ordinary investor. Mr. Asensio, age 45, is a short-seller. He makes money when stocks sink. Unlike other shorts, who tend to keep a low profile, however, Mr. Asensio trumpets his "strong sell" calls on a Web site, and mocks his targets as "frauds."

His short-selling earned him more than $6 million a year in 1997 and 1998. Several companies whose stock he successfully attacked were subsequently delisted. Regulators have viewed him as an ally in the fight against misleading stock promotions.

In Dr. Carter, however, Mr. Asensio met a formidable adversary. The 62-year-old is chief executive of **Hemispherx Biopharma** Inc., a Philadelphia biotechnology firm that has incurred significant losses since 1987. For about 15 years, it has been in and out of clinical trials, seeking a disease that its main drug, Ampligen, could treat. In September 1998, Mr. Asensio launched his standard attack on the stock. Dr. Carter retaliated with a legal and public-relations assault of his own.

The conflict has left both adversaries bloodied financially. It also has dragged in surprising bystanders, including Oprah Winfrey, Securities and Exchange Commission Chairman Arthur Levitt and AIDS activist David Scondras.

Shorts -- and their targets -- often will go to unusual lengths, relying on a network of allies, to push the price of a stock down -- and up. In this kind of speculation, short-sellers borrow the shares of the target company from a broker and sell them, hoping to buy back the shares later at a lower price, return the shares to the lender, and pocket the difference. While many shorts have lost money and gone out of business during the bull market -- scores have shorted pricey Internet and technology stocks that became even more expensive -- Mr. Asensio has thrived by targeting companies he believes are misrepresenting their business to investors.

Whether or not Mr. Asensio was right about these companies -- they typically disputed his charges -- it often turned out that those he targeted were in bad shape financially. The stocks of companies such as Diana Corp., ErgoBilt Inc. and Turbodyne Technologies Inc. were delisted after Mr. Asensio's attacks. Two others, Solv-Ex Corp. and SyQuest Technology Inc., filed for bankruptcy protection from creditors. (Solv-Ex has since emerged from bankruptcy.)

Shorts argue that they bring efficiency to the pricing of stocks. Mr. Asensio, going further, once exulted: "God has given me this power -- it's the power of good vs. evil." Yet shorts are reviled for profiting from other investors' misery. They also are accused of spreading innuendo and falsehoods to torpedo targets.

That, in essence, is Dr. Carter's allegation. A former academic and medical researcher, he has vigorously pursued a lawsuit filed in 1998 by Hemispherx against Mr. Asensio in the U.S. District Court for the Eastern District of Pennsylvania. The lawsuit sought damages over allegations of illegal short-selling, defamation and interference with business relations. Mr. Asensio denied the charges, and successfully argued that regulators, not Hemispherx, could sue over illegal short-selling. He also claimed the remaining charges weren't in the court's jurisdiction.

Hemispherx also has hired a detective agency to look into Mr. Asensio's background and has conducted its own PR campaign. Dr. Carter has told investors that Mr. Asensio's reports were written with a Ouija board. "We have indisputable evidence" that Mr. Asensio manipulated Hemispherx stock, Dr. Carter says in an interview.

Mr. Asensio denies the allegation. But the doctor's counterattack blunted the short-seller's assault, costing him $2 million in legal fees, forcing him to postpone a planned initial public offering of his holding company, Asensio.com, and frightening away clients of his Asensio & Co. brokerage unit. Hemispherx stock "went from $2 to $19 while I've been there," Mr. Asensio fumed in a deposition taken in April. "No company has ever done that."

Mr. Asensio's statement refers to low and high points since his attack on Hemispherx began. More recently, the company's stock price has plunged about 61% from its peak of $19 on March 2 to $7.50. The stake held by Dr. Carter, the largest single shareholder, has fallen $37 million during the past three-and-a-half months.

A Cuban immigrant, Mr. Asensio spent a stretch of his childhood with relatives in Venezuela, separated from his parents in Cuba. He still recalls eating rice and ketchup, while classmates ate rice and meat. After he got an M.B.A. from Harvard in 1982, he worked as a financial adviser helping to get financing for small, speculative companies -- like many of those that make his short-selling list now. This experience taught him how "fraudulent stock promotions" work, he said in an August 1999 deposition. He became hooked on short-selling after a successful 1996 foray into General Nutrition Cos., a once-high-flying health-food and vitamin chain.

Dr. Carter, who graduated from the Duke University School of Medicine and did postgraduate work at Johns Hopkins University School of Medicine, is also a fighter. In the late 1970s, he was forced out of his job as chairman of the department of microbiology at State University of New York at Buffalo, when he videotaped a student who he believed had sabotaged his experiments. He was one of the early researchers working on interferons, chemicals the body uses to bolster the immune system. Later, Dr. Carter developed Ampligen, a drug he claimed induced production of interferon in the body.

Since the mid-1980s, Hemispherx had been struggling unsuccessfully to get approval for

Ampligen as a marketable treatment for AIDS, chronic fatigue syndrome, hepatitis B and various forms of cancer. There were repeated setbacks, including expressions of concern by the Food and Drug Administration in October 1991 about what the agency called "serious and potentially life-threatening reactions" to Ampligen. Since 1998, the drug has been in the final phase of trials to apply for FDA approval as a treatment for CFS.

But the shares of the company, which went public in 1995, started to rise in mid-1998 after word spread that a segment of the "Oprah Winfrey Show" would discuss Ampligen's effectiveness as a treatment for chronic fatigue syndrome, a malady that is difficult to diagnose and doesn't respond to most treatments.

Ms. Winfrey did discuss the syndrome on a July 1998 show, but neither Ampligen nor Hemispherx was mentioned. Nevertheless, the stock jumped more than 50%, to as high as $13 a share in September.

An Easy Target

To Mr. Asensio, Hemispherx looked like an easy target. One of his first steps was to attack Ms. Winfrey. On Sept. 10, 1998, he sent a letter to Ms. Winfrey, saying he was concerned about "a large, public securities fraud scheme involving 'the Oprah Winfrey Show.' " Says Ms. Winfrey's lawyer, Marshall Eisenberg: "He made a series of threats, which of course were baseless."

Mr. Asensio then turned his attention to Hemispherx. He published three negative reports about it on his Web site on Sept. 22, 1998, including a "strong sell recommendation," and said Ampligen "has no medical or economic value."

The following day, Dr. Carter held an investor conference call to counter the accusations. He later told investors that patients who had taken Ampligen have shown "statistical improvement in physical performance and mental skills." But when the FDA got wind of Dr. Carter's remarks, officials there warned Hemispherx in a letter: stop promoting Ampligen as a "safe and effective drug prior to its approval for marketing." Hemispherx says it believed it was not in violation of the FDA regulation and felt it needed to defend itself.

Mr. Asensio also benefited from a new front in the war on Hemispherx when the SEC began examining Hemispherx as part of a "confidential non-formal order inquiry," according to SEC documents. Mr. Asensio believes his complaints triggered the probe, and Hemispherx stated in a later regulatory filing that the SEC's inquiry followed lines laid down by Mr. Asensio's reports.

Within months, the "inquiry" grew into an "investigation," examining whether Hemispherx had improperly promoted its drug and misled investors about the stock. (The SEC declines to comment on the investigation, which is continuing.)

Before that, in late 1998, Dr. Carter and Hemispherx filed their lawsuit against Asensio & Co. Mr. Asensio shrugged off the suit; other targets of his short-selling had sued him without success. But regulators took it seriously. As Mr. Asensio conceded in later court testimony, the National Association of Securities Dealers launched a "broad inquiry" into his short-selling tactics. The NASD declines to comment.

'Questions About Ampligen'

The two adversaries met for the first time at the October 1998 conference on chronic fatigue syndrome. Someone handed out a questionnaire to patients at the conference titled: "Questions About Ampligen," including: "Why ... do a majority of the patients who have taken the drug say that they had awful side effects?"

Mr. Asensio denies he was the source of the handouts. But he quickly was confronted by people suffering from CFS, who were irate at Mr. Asensio when it became known at the conference that he was a short-seller going after Hemispherx. One woman in a wheelchair followed Mr. Asensio around the hotel, repeating a line uttered by Charlie Sheen's character from the movie "Wall Street": "How many yachts can you water-ski behind?" Mr. Asensio says he tried to reason with her.

Dr. Carter's suit subpoenaed a broad swath of Asensio clients and others. John Paulson, a hedge-fund manager and old friend of Mr. Asensio's, was flabbergasted when he received a subpoena demanding that he turn over all trading documents relating to Mr. Asensio. Mr. Paulson, who soon stopped doing business with Mr. Asensio, declined to elaborate.

Hemispherx wasn't faring much better. Dr. Carter testified in a deposition that an equipment-leasing company refused to do business with Hemispherx: "They had read about the allegations of Asensio, that the company they might be dealing with ... was run by crooks, and they decided not to get involved."

Despite the pressure, Hemispherx stock began to recover. In the wake of Mr. Asensio's initial attack, the stock tumbled 60% from a peak of $13.1875 on Sept. 9 to as low as $4.8125 on Sept. 25. But in the spring of 1999, the stock more than doubled from a low of $4.6875 on Feb. 18, to a shade over $10 on April 29, before starting to fade again. As a small-capitalization stock being fought over by bulls and bears, it was subject to sharp swings.

Resistant Strains

Meanwhile, with his legal bills mounting, it became harder for Mr. Asensio's firm to continue churning out successful short-selling campaigns. The last two firms he targeted, Internet registrar Network Solutions Inc. (now part of **VeriSign** Inc.) and video-and-telecommunications firm **ParkerVision** Inc., proved resistant to his attacks. Mr. Asensio stopped making new "strong sell" recommendations.

In December 1999, Dr. Carter said new laboratory tests showed Ampligen might have some benefits for people infected with HIV. In a news release, Hemispherx said it had presented findings at a meeting in Boston, sponsored by the AIDS-outreach organization Search for a Cure.

Mr. Asensio again went on the attack. He called David Scondras, executive director of the organization, demanding details of his ties with Dr. Carter and Hemispherx. According to Mr. Scondras, Mr. Asensio said during the call, " 'You are associating yourselves with known scum.' "

Mr. Scondras says he later complained to the New York State attorney general's office, asking officials there to provide help in getting Mr. Asensio's "teeth out of our necks." Mr. Scondras said he just suffered from a heart attack, and that "Mr. Asensio's loud, officious, threatening and uncalled-for behavior threatens my health."

Mr. Asensio says he didn't yell, and did not threaten Mr. Scondras: "He's hysterical; I never had problems with David." After some prodding from Mr. Asensio, Mr. Scondras sent a letter to

Hemispherx demanding a correction to the news release because Hemispherx "did not make a presentation at the conference." (Dr. Carter attributes it to Mr. Asensio's "successful intimidation.")

As Mr. Asensio fought to dismiss the suit, Hemispherx on Feb. 17 issued a news release stating that it had filed an application with the FDA to test Ampligen as a treatment for HIV. Such applications are routine, but Hemispherx stock soared to as high as $19 on March 2 from as around $9 at the start of February.

Short-selling is a risky game, as Mr. Asensio discovered with Hemispherx. While investors who are "long" a stock can lose 100% of their investment, short-selling magnifies losses because there's potentially no end to just how high a stock can climb. One big client of Mr. Asensio's, holding 300,000 shares of the stock, lost about $3 million in just one month, he says, when Hemispherx rose from around $9 a share in early February to around that $19 mark in early March. The rise forced the client to meet margin calls along the way to make up for the losses.

Mr. Asensio, squeezed by the soaring stock, lashed out at securities regulators, his old friends. He called the SEC, demanding to speak with Chairman Levitt. When an SEC lawyer called him back, an agitated Mr. Asensio snapped: "There is a widely held view on Wall Street that Chairman Levitt would prefer there not to be a scandal involving Hemispherx" and the American Stock Exchange, where Hemispherx trades. (Mr. Levitt was chairman of the exchange years ago.) The response from the SEC lawyer: "We'll make a determination based on what the [SEC's] division of enforcement thinks."

Mr. Asensio continued firing off salvos. In March, he published excerpts from Mr. Scondras's letter to Dr. Carter on the Asensio.com Internet site. He blasted the company when its auditor, KPMG LLP, resigned. Shares of Hemispherx slid as low as $5.25. On Friday, it traded at $7.50.

Legal Wrangling

The two men continue to battle. Hemispherx's lawsuit was dismissed this month in federal court for jurisdictional reasons; the company's lawyers have asked the judge to reconsider, and if the dismissal holds, they say they will bring suit in Pennsylvania state court. Mr. Asensio last month issued, as the first step in pursuing a countersuit, a summons to Dr. Carter alleging slander, among other things, in New York state court in Manhattan.

All the wrangling has taken its toll: Mr. Asensio says he recently has given up his firm's short position on Hemispherx, though he continues to sell the stock short on behalf of clients.

A lot of investors must be listening to his advice. As of mid-June, investors had sold short nearly 3.9 million shares of Hemispherx. Given the stock's average daily volume, it would take 40 days of normal trading for the short sellers to close their positions -- a length of time that currently gives Hemispherx the third-highest "short-interest ratio" on the American Stock Exchange.

And Mr. Asensio remains obsessed with Dr. Carter -- even on vacation. This month, Mr. Asensio had his office issue a news release about Hemispherx while he was climbing Mount McKinley.

As for Dr. Carter, a Hemispherx spokesman says the company plans to announce Monday that it received FDA approval to conduct another study involving Ampligen as an AIDS treatment.