CYTODYN INC
Form 10QSB
January 14, 2005

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington D.C. 20549

FORM 10-QSB

QUARTERLY REPORT UNDER SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

For Quarter Ended: November 30, 2004 Commission File Number 000-49908

CYTODYN, INC.

(Exact name of small business issuer as specified in its charter)

COLORADO	75-3056237
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

200 W. DeVargas Street, Suite 1, Santa Fe, New Mexico	87501
(Address of principal executive offices)	(Zip code)

(505) 988-5520
(Registrant's telephone number, including area code)

Check whether the issuer (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes X No

Indicate the number of shares outstanding of each of the issuer's classes of common equity, as of the latest practicable date.

Class	Number of shares outstanding at January 5, 2004
Common stock, no par value	8,069,307

Transitional Small Business Disclosure Format: Yes No X

This document is comprised of 10 pages.

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Part I, Item 1. Financial Statements

CYTODYN, INC.
(A Development Stage Company)
Condensed Balance Sheet
(Unaudited)

November 30, 2004

Assets

Current Assets:	
Cash	$ 14,836
Total current assets	14,836
Property and equipment, less accumulated depreciation of $955	5,547
Deposit	495
	$ 20,878

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Liabilities and Shareholders' Deficit	
Current Liabilities:	
Accounts payable	$ 74,758
Accrued liabilities	44,953
Indebtedness to related parties (Note 2)	132,979
Total current liabilities	252,690
Commitments and contingencies (Note 4)	--
Shareholders' deficit:	
Preferred stock, no par value; 5,000,000 shares authorized, -0- shares issued and outstanding	--
Common stock, no par value; 25,000,000 shares authorized, 8,069,307 shares issued and outstanding	1,916,334
Additional paid-in capital	24,014
Outstanding stock awards (Note 4)	11,928
Accumulated deficit	(1,601,912)
Deficit accumulated during development stage	(582,176)
Total shareholders' deficit	(231,812)
	$ 20,878

See accompanying notes to condensed financial statements

CYTODYN, INC.
(A Development Stage Company)
Condensed Statements of Operations
(Unaudited)

	Three Months Ended November 30,		Six Months Ende November 30,	
	2004	2003	2004	20
Operating expenses:				
General and administrative	$ 110,941	$ 45,686	$ 231,350	$ 4
Stock-based compensation (Note 4):				
Financial consulting services	11,928	--	11,928	
Legal fees, related party	--	--	--	
Depreciation	459	--	751	
Total operating expenses	123,328	45,686	244,029	4
Operating loss	(123,328)	(45,686)	(244,029)	(4

Interest income	51	3	227	
Interest expense	(148)	(145)	(330)	
Loss before income taxes	(123,425)	(45,828)	(244,132)	(4
Income tax provision (Note 3)	--	--	--	
Net loss	$ (123,425)	$ (45,828)	$ (244,132)	$ (4
Basic and diluted loss per share	$ (0.02)	$ (0.01)	$ (0.03)	$
Basic and diluted weighted average common shares outstanding	8,069,307	5,659,307	8,069,307	5,51

See accompanying notes to condensed financial statements

CYTODYN, INC.
(A Development Stage Company)
Condensed Statements of Cash Flows
(Unaudited)

	Six Months Ended November 30,	
	2004	2003
Net cash used in operating activities ...	$(169,473)	$ (4,511)
Cash flows from investing activities:		
Property and equipment purchases	(3,167)	--
Net cash used in investing activities ...	(3,167)	--
Cash flows from financing activities:		
Capital contributions by president (Note 2) .	512	--
Proceeds from notes payable issued to related parties (Note 2)	--	13,452
Repayment of notes payable to related parties	--	--
Proceeds from the sale of common stock	--	--
Payment of offering costs	--	--
Net cash provided by financing activities ...	512	13,452
Net change in cash	(172,128)	8,941

Cash, beginning of period	186,964	3,238
Cash, end of period	$ 14,836	$ 12,179
Supplemental disclosure of cash flow information:		
Income taxes	$ --	$ --
Interest	$ 330	$ --

See accompanying notes to condensed financial statements

CYTODYN, INC.
(A Development Stage Company)

Notes to Condensed Financial Statements
(Unaudited)

Note 1: Basis of Presentation

The condensed financial statements presented herein have been prepared by the Company in accordance with the instructions for Form 10-QSB and the accounting policies in its Form 10-KSB filed for the year ended May 31, 2004 and should be read in conjunction with the notes thereto.

In the opinion of management, the accompanying condensed financial statements contain all adjustments (consisting only of normal recurring adjustments) which are necessary to provide a fair presentation of operating results for the interim periods presented. The results of operations presented for the three months ended November 30, 2004 are not necessarily indicative of the results to be expected for the year.

The Company is in the development stage in accordance with Statements of Financial Accounting Standards (SFAS) No. 7 "Accounting and Reporting by Development Stage Enterprises".

Financial data presented herein are unaudited.

Note 2: Related Party Transactions

During the six months ended November 30, 2004, the Company's president paid administrative expenses on behalf of the Company totaling $512. The payment has been recorded as contributed capital and is included in the accompanying condensed financial statements as "Additional paid-in capital".

As of May 31, 2004, the Company owed two officers promissory notes totaling of $71,694. The notes are due on demand and carry no interest rate. The balance due of $71,694 remained unpaid at November 30, 2004 and is included in the accompanying condensed financial statements as Indebtedness to related parties.

As of May 31, 2004, the Company owed a director $61,285 for legal services provided to the Company. As of November 30, 2004, no arrangements had been made for the Company to repay this obligation. There is no interest carried on this loan is due on demand. The Company anticipates that the director will continue to provide legal services in the future. The balance due of $61,285 is included in the accompanying condensed financial statements as Indebtedness to related

parties.

Note 3: Income taxes

The Company records its income taxes in accordance with SFAS No. 109, "Accounting for Income Taxes". The Company incurred net operating losses for all periods presented resulting in a deferred tax asset, which was fully allowed for by a valuation allowance; therefore, the net benefit and expense resulted in $-0- income taxes.

Note 4: Stock Awards

During the year ended May 31, 2004, the Company committed to grant a financial representative warrants to purchase 426,000 shares of the Company's common stock. The warrants carry an exercise price of $.30 per share, vest on the date of grant and expire after five years from the date of grant. The warrants were granted on November 25, 2004 and were included in the registration for the public offering under our SB-2 filing. No warrants have yet been exercised.

The Company's common stock had no traded market value on the date of grant. The market value of the stock was determined to be $.30 per share base on contemporaneous sales of common stock to unrelated third party investors. The weighted average exercise price and weighted average fair value of these options as of November 30, 2004 were $0.30 and $0.028, respectively.

The fair value for the options granted during the six months ended November 30, 2004 was estimated at the date of grant using the Black-Scholes option-pricing model with the following assumptions:

Risk-free interest rate	2.00%
Dividend yield	0.00%
Volatility factor	0.00%
Weighted average expected life	5 years

The following schedule summarizes the changes in the Company's outstanding stock options:

	Awards Outstanding and Exercisable		Weig
	Number of Shares	Exercise Price Per Share	Exe P
Balance at May 31, 2004	150,000	$0.50 to $1.50	$
Awards granted	426,000	$0.30	$
Awards exercised	-	$0.00	$
Awards cancelled/expired	-	$0.00	$
Balance at November 30, 2004	576,000	$0.30 to $1.50	$

Note 5: Commitments

The Company has signed Personal Service Agreements with three officers that cover the two years ended May 31, 2005 and 2006. Under the terms of the agreements, if an officer is terminated by the Company without cause or terminates service for good cause within three months of a change in control, the Company is required to pay the officer the balance of the base salary for the term of the agreement and for an additional 12 months after the expiration of the term.

Note 6: Financial Information - Development Stage

Following is the Statement of Operations for the period in which the Company has been in the development stage as required by SFAS No. 7.

	October 28, 2003 Through November 30, 2004
Operating expenses:	
General and administrative	$ 549,030
Stock-based compensation (Note 4):	
Financial consulting services .	11,928
Legal fees, related party	20,050
Depreciation	955
Total operating expenses	581,963
Operating loss	(581,963)
Interest income	570
Interest expense	(783)
Loss before income taxes	(582,176)
Income tax provision	--
Net loss	$ (582,176)

Following is the Statement of Cash Flows for the period in which the Company has been in the development stage as required by SFAS No. 7.

	October 28, 2003 Through November 30, 2004
Net cash used in operating activities	$ (526,368)

Cash flows from investing activities:	
Equipment purchases	(6,502)
Net cash used in investing activities	(6,502)
Cash flows from financing activities:	
Capital contributions by president	512
Proceeds from notes payable issued to related parties (Note 2)	111,194
Repayment of notes payable to related parties (Note 2)	(50,000)
Proceeds from the sale of common stock (Note 4)	540,000
Payment of offering costs (Note 4)	(54,000)
Net cash provided by financing activities	547,706
Net change in cash	14,836
Cash, beginning of period	--
Cash, end of period	$ 14,836
Supplemental disclosure of cash flow information:	
Income taxes	$ --
Interest	$ 783

Note 7: Litigation

CytoDyn of New Mexico, Inc. et al., v. Amerimmune Pharmaceuticals, Inc. et al., Case number BC 290154, California Superior Court in and for the County of Los Angeles.

The First Amended and Supplemental Complaint alleged causes of action for unfair business competition, inducement of breach of contract, fraud and unjust enrichment, and declaratory and equitable relief. This case was dismissed due to the attorney's lack of attention to the case. The judge stated that the evidence was not presented in an orderly and logical fashion..

Rex H. Lewis, a Defendant and former director and C.E.O. of Amerimmune Pharmaceuticals, Inc. has filed a First Amended Cross-Complaint against CytoDyn of New Mexico, Inc., Allen D. Allen, Corinne E. Allen, Ronald J. Tropp, Brian J. McMahon , Daniel M. Stickland, M.D. and unknown others designated as "Does 101-150".

Mr. Lewis alleges, among other things, misrepresentations or failure to make disclosures related to Cytolin and its development, approval and marketing; interference with Amerimmune's attempt to complete clinical research related to Cytolin and Mr. Lewis' actual or prospective business relationships; and libel and slander of Mr. Lewis.

Currently the Cross-Complaint asserts causes of action for fraud, interference with prospective business interests, libel and slander. The requested relief includes damages (alleged to range from $3 million to $20 million or more), punitive damages, costs and other "just and proper" relief.

The outcome of litigation is uncertain. Management believes that an unfavorable result is unlikely with respect to the claims raised by the Complaint, and that the claims raised by the Cross-Complaint are without merit. The defendants have retained new counsel which are the same attorney's that represented us in the following case that was decided in our favor.

Discovery is continuing. Trial is scheduled for June 2005.

CytoDyn, Inc., et al. v. Amerimmune, Inc. et al., Case number SC039250, California Superior Court in and for the County of Ventura.

The Declaratory Relief Sought and Attorneys' Fees Were Awarded.

The action was filed on April 21, 2004. CytoDyn and Allen D. Allen were the plaintiffs. The defendants were Amerimmune Inc., its parent Amerimmune Pharmaceuticals, Inc., and unknown others designated as "Does 1-100".

The action concerned a Conditional License Agreement, dated February 24, 2000, between Allen D. Allen and CytoDyn of New Mexico, on one hand, and Amerimmune, Inc., on the other. The complaint alleged that the Conditional License Agreement licensed to the defendants technology and patents related to Cytolin and assigned to defendants an FDA approved investigational new drug application related to Cytolin. Further, it alleged that the defendants breached the Conditional License Agreement, resulting in its termination.

The principal relief sought was a declaration that the license granted and the assignment of the technology, patents and drug application made pursuant to the Conditional License Agreement were terminated no later than September 12, 2001, and that Allen and we are the owners of the technology, patents and investigational new drug application, free of any claims of the defendants. Costs, attorney's fees, and other "just and proper" relief also were sought.

This case was decided in favor of the plaintiffs, CytoDyn and Allen October 4, 2004.

Symbion Research International, Inc., v. Amerimmune, Inc. et al., Case number SC035668, California Superior Court in and for the County of Ventura.

The complaint was filed on March 14, 2003. Symbion Research International, Inc was the plaintiff. Amerimmune, Inc. was the remaining defendant. We were not a party to this action, however the action affects intellectual property which will be purchased by us.

A default judgment was entered on December 18, 2003. A judgement was entered in favor of Symbion Research International ("Symbion") on September 17, 2004 granting the declarative relief sought by Symbion .

The action concerned intellectual property generated in connection with services provided by Symbion with respect to early phase FDA clinical trials of Cytolin, including research data and a patent application filed in 2002. The complaint

alleged that Symbion performed early phase FDA trials (designated in the Complaint as "Phase Ia" and "Phase Ib/II", on behalf of Amerimmune pursuant to an oral agreement, and that Amerimmune failed to pay Symbion for its services, and otherwise breached its obligations under the agreement.

The complaint asserted causes of action for breach of oral contract, account stated, work and labor done, fraud, and declaratory and injunctive relief. The relief sought included a declaration that Symbion is the owner of the intellectual property resulting from the services provided by Symbion.

The intellectual property generated in the early phase FDA clinical trials is necessary to obtain approval for, and to conduct, further FDA clinical tests of Cytolin. Because a satisfactory result was obtained in this action, we have negotiated an agreement with Symbion that will allow the use in subsequent phases of clinical test of Cytolin of the research data generated in the early phases. CytoDyn will purchase this data from Symbion in order to apply for FDA registration of Cytolin for $362,000 in cash and stock options.

Part I. Item 2. Management's Discussion and Analysis or Plan of Operation

Plan of Operation

During the next 12 months, our objectives are:

- To continue our clinical trials of Cytolin,
- To continue our efforts to protect our technology by obtaining additional patents in The United Kingdom European Union and Hong Kong. o To develop an established market for our shares,
- To raise funds to support our research and development efforts, the clinical trials relating to Cytolin, and our general and administrative expenses, and
- To explore joint venture arrangements for other possible pharmaceutical products.

Continuing Clinical Trials. Phase I clinical trials were conducted by Symbion Research International under the sponsorship of Amerimmune, Inc. during 2002. Symbion became the owners of that clinical data which will be purchased by us for $362,000 See Exhibit 10.5.2. We believe that the data from these trials support approval by the FDA of Phase II trials, and we intend to seek approval for the Phase II trials. We will work with Symbion International and their Phase I trial data and we plan to submit our application for approval of Phase II/III pivotal studies. If the Phase II/III study is approved, we expect it, together with the pre-Phase II/III efforts, to cost an estimated $2,050,000 to $3,350,000, plus estimated manufacturing and supply costs of $350,000 to $400,000. These trials can take anywhere from 29 to 42 months. Until we have met with the FDA, which we plan to do within the next 6 months, we cannot be certain what additional studies, assuming that Phase II/III study supports the efficacy and safety of Cytolin, will be required to receive marketing approval.

If we are unable to complete clinical trials on a timely basis, with favorable results, our costs will increase significantly and we may not have enough capital to support further research and development and continue in business. Also, if we incur significant delays in being able to market our product, even if we are ultimately able to do so, we will be delayed in earning revenues and probably will require additional financing to continue in business.

Patents

During fiscal year 2004, several European patents were granted with respect to our technology. The new patents are covered by our License Agreement with Allen D. Allen, our president. These patents are designated European Patent No. 94 912826.8, for the United Kingdom, Germany, France, Switzerland, Italy, the Netherlands, Portugal, Spain, and Sweden, and are the counterparts to our United States Patent No. 5424066. Patents are pending in those same countries which, if granted, will be the equivalent of our United States Patent No. 5651970. We

estimate the costs associated with these pending patents to be approximately $65,000, including amounts we have already spent. We may file additional patents during the current fiscal year including Hong Kong, if our research and development efforts warrant them. We do not have any other potential patents identified at this time.

Litigation

For a thorough discussion of our pending litigation, please see the section entitled "Legal Proceedings." In Part 2, Item 1.

We were plaintiffs in two pending cases, CytoDyn of New Mexico, Inc. et. al., v. Amerimmune Pharmaceuticals, Inc. et al., Case number BC290154 and the other in Ventura County, in a case captioned CytoDyn, Inc., et al. v. Amerimmune, Inc. et al., Case number SC039250., each involving our rights to the patented technology underlying Cytolin and any other products we might wish to develop. The first case was dismissed and the second case was decided in our favor.

Establishing a Market and Obtaining Funding

We will require funding during the 2005 fiscal year in order to continue our research and development efforts and to stay in business. The amount of that funding is directly related to the clinical trials we are able to conduct and the amounts we will need for our company operations.

We filed a registration statement on Form SB-2 on June 1, 2004, covering the sale of 250,000 shares of common stock at $0.75 per share, for total proceeds of $187,500, to be used primarily for general and administrative expense, SEC compliance costs, and legal and accounting fees. This registration statement has not yet gone effective, and we cannot assure that it will or that the shares that would be offered would sell. We intend, if this offering does go effective and if the shares sell, to seek an established market for our securities on an established quotation system, such as the NASD over-the-counter bulletin board, which we hope would give us a wider base of investors. We may not, however, be able to achieve our goals.

In addition to operating funds, we will need from approximately $2,700,000 to $4,100,000 for research and development, including clinical trials, and manufacturing and supply costs, depending upon whether we are approved by the FDA to conduct a Phase II/III pivotal study.

We do not have any of this funding arranged or secured, and we do not yet have plans for raising the funding we require. We anticipate that we will seek the funding through further equity offerings, either by private placement or by registered offering, or by possible joint venture arrangements with other parties. If we are unable to secure the necessary funding, we will not be able to conduct our research and development activities or to continue in business.

Exploring Joint Ventures

While we continue to pursue FDA approval of our Cytolin product, we are also considering entering into joint ventures to develop other types of products. We have, for instance, entered into a nondisclosure agreement with another development stage biotech company to discuss the possibility of the joint development of drugs to treat neuropsychiatric diseases or disorders. These discussions are in the early stages and we do not know if we will enter into a joint venture or other arrangement with this company or if any products might ensue from our efforts.

We may also pursue joint ventures or other arrangements to obtain funding for our Cytolin-related endeavors, but we have not pursued this possibility and do not have any prospects at this time.

Other Matters

We do not expect, in the next 12 months, to make any significant expenditures for equipment. We expect to hire additional management once additional funding is secured. Otherwise we do not expect to make any significant changes in the number of employees that we have. We have no off-balance sheet arrangements.

Part I. Item 3. Controls and Procedures

(a) Evaluation of disclosure controls and procedures

We maintain controls and procedures designed to ensure that information required to be disclosed in the reports that we file or submit under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission. Based upon their evaluation of those controls and procedures performed within 90 days of the filing date of this report, our chief executive officer and the chief financial officer concluded that our disclosure controls and procedures were adequate.

(b) Changes in internal controls

There were no significant changes in our internal controls or in other factors that could significantly affect these controls subsequent to the date of the evaluation of those controls by the chief executive officer and chief financial officer.

Part 2. Other Information

Item 1 - Legal Proceedings.

CytoDyn of New Mexico, Inc. et al., v. Amerimmune Pharmaceuticals, Inc. et al., Case number BC 290154, California Superior Court in and for the County of Los Angeles

The First Amended and Supplemental Complaint alleged causes of action for unfair business competition, inducement of breach of contract, fraud and unjust enrichment, and declaratory and equitable relief. This case was dismissed due to the attorney's lack of attention to the case. The judge stated that the evidence was not presented in an orderly and logical fashion. The company may appeal this case given the costs associated with it and the relief awarded to us in the case below.

Rex H. Lewis, a Defendant and former director and C.E.O. of Amerimmune Pharmaceuticals, Inc. has filed a First Amended Cross-Complaint against CytoDyn of New Mexico, Inc., Allen D. Allen, Corinne E. Allen, Ronald J. Tropp, Brian J. McMahon , Daniel M. Stickland, M.D. and unknown others designated as "Does 101-150".

Mr. Lewis alleges, among other things, misrepresentations or failure to make disclosures related to Cytolin and its development, approval and marketing; interference with Amerimmune's attempt to complete clinical research related to Cytolin and Mr. Lewis' actual or prospective business relationships; and libel and slander of Mr. Lewis.

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The outcome of litigation is uncertain. Management believes that an unfavorable result is unlikely with respect to the claims raised by the Complaint, and that the claims raised by the Cross-Complaint are without merit. The defendants have retained new counsel which are the same attorney's that represented us in the following case that was decided in our favor.

Discovery is continuing. Trial is scheduled for June 2005.

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California Superior Court in and for the County of Ventura.

The principal relief sought was a declaration that the license granted and the assignment of the technology, patents and drug application made pursuant to the Conditional License Agreement were terminated no later than September 12, 2001, and that Allen and we are the owners of the technology, patents and investigational new drug application, free of any claims of the defendants. Costs, attorney's fees, and other "just and proper" relief also were sought.

This case was decided in favor of the plaintiffs, CytoDyn and Allen, on October 4, 2004 and the plaintiffs were awarded the declaratory relief sought and attorneys' fees.

Symbion Research International, Inc., v. Amerimmune, Inc. et al., Case number SC035668, California Superior Court in and for the County of Ventura. We were not a party to this action; however the action affects intellectual property which is important to us.

A default was entered against Amerimmune, Inc. on December 18, 2003. A judgment was entered in favor of Symbion International on September 17, 2004 granting the declarative relief sought.

The intellectual property generated in the early phase FDA clinical trials is necessary to obtain approval for, and to conduct, further FDA clinical tests of Cytolin. Because a satisfactory result was obtained in this action, we anticipate negotiating an agreement with Symbion that will allow the use in subsequent phases of clinical test of Cytolin of the research data generated in the early phases. CytoDyn will purchase this data for $362,000 as stated under a purchase agreement, $25,000 will paid from the SB-2 registration proceeds, 83,122 stock options will be granted with an exercise price of $0.75 per share and $275,000 will be due and payable once the secondary round of financing has

been received. Please see Exhibit 10.5.2.

Item 2 - Changes in Securities and Small Business Issuer Purchases of Equity Securities.

No response required.

Item 3 - Defaults Upon Senior Securities.

No response required.

Item 4 - Submission of Matters to a Vote of Security Holders.

No response required.

Item 5 - Other Information.

No response required.

Item 6 - Exhibits and Reports on Form 8-K.

(a) Exhibits:

1.	10.5.2:	Buy-Sell Agreement Between CytoDyn, Inc. and Symbion Research International, Inc.
2.	31.1:	Certification by the CEO
3.	31.2:	Certification by the CFO
4.	32.1:	Certification Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 - CEO
5.	32.2:	Certification Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 - CFO

(b) Reports on Form 8-K:

None.

SIGNATURES

The financial information furnished herein has not been audited by an independent accountant; however, in the opinion of management, all adjustments (only consisting of normal recurring accruals) necessary for a fair presentation of the results of operations for the three and six months ended November 30, 2004 have been included.

Pursuant to the requirements of the Securities and Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

CYTODYN, INC.

(Registrant)

DATE: January 5, 2005

BY: /s/ Allen D. Allen

Allen D. Allen
President and CEO