

Cogentix Medical, Inc. / Laborie Medical Technologies Canada ULC Merger Litigation

On March 11, 2018, Cogentix Medical, Inc. (“Cogentix”) and certain affiliates of Laborie Medical Technologies Canada ULC (“Laborie”), LM US Parent, Inc. (“Parent”) and Camden Merger Sub, Inc. (“Merger Sub”), entered into an Agreement and Plan of Merger (the “Merger Agreement”) pursuant to which Cogentix would become a wholly-owned subsidiary of Parent (the “Merger”). Pursuant to the terms of the Merger Agreement, Merger Sub commenced a tender offer (the “Tender Offer”) to purchase all of the outstanding shares of Cogentix’s common stock. On March 26, 2018, in connection with the Tender Offer, Cogentix filed a Schedule 14D-9 Solicitation/Recommendation Statement with the United States Securities and Exchange Commission (the “SEC”).

Subsequent to the commencement of the Tender Offer and the filing of the Schedule 14D-9, Cogentix’s directors, Laborie, Parent, and Merger Sub were named as defendants in a purported class action lawsuit related to the proposed Merger that was filed in the Delaware Court of Chancery (*Franchi v. Uri Geiger, et al.*, C.A. No. 2018-0258-AGB). The lawsuit generally alleged that Cogentix’s directors breached their fiduciary duties to Cogentix’s stockholders, and that Laborie, Parent, and Merger Sub aided and abetted the alleged breaches. The plaintiff also filed a motion to expedite proceedings and a preliminary injunction motion to enjoin the close of the Tender Offer and proposed Merger. After defendants produced certain confidential documents to plaintiff and Cogentix filed with the SEC an amendment to the Schedule 14D-9 on April 10, 2018 that contained additional disclosures relating to the Merger (the “Supplemental Disclosures”), plaintiff determined that the claims asserted in the complaint were mooted and plaintiff withdrew the pending expedition and injunction motions.

The Tender Offer expired on April 20, 2018, and the Merger was consummated on April 23, 2018, whereby Cogentix became a wholly-owned subsidiary of Parent and Cogentix’s common stock was delisted from the Nasdaq Capital Market. Subsequent to the closing of the Merger, plaintiff informed defendants that plaintiff had determined to dismiss the action with prejudice as to himself and without prejudice as to Cogentix’s other stockholders, and that plaintiff would seek an award of attorneys’ fees and expenses in connection with the Supplemental Disclosures. After plaintiff informed defendants of his determination to dismiss the action, the parties engaged in discussions regarding a potential resolution of plaintiff’s anticipated fee and expense application, and ultimately agreed to a payment made directly by Laborie to plaintiff’s counsel in the amount of \$137,500.

The Delaware Court of Chancery subsequently entered an Order that required the parties to provide notice of the dismissal of the action on mootness grounds and the agreed payment of plaintiff's counsel's fees and expenses to allow Cogentix and/or Laborie stockholders the opportunity to object. Pursuant to the Court's Order, following the expiration of a thirty-day notice period, the parties will inform the Court regarding any responses to the notice and, if appropriate, submit a proposed order providing that the action and the claims asserted therein are dismissed with prejudice as to the named plaintiff only, and without prejudice as to members of the putative class of Cogentix stockholders. With the exception of considering any potential objections to the payment of plaintiff's counsel's fees and expenses, the Court of Chancery has not been asked to review, and will pass no judgment on, the payment of a fee or its reasonableness.

Any objections to the dismissal of the action on mootness grounds and the proposed payment of plaintiff's counsel's fees and expenses should be sent within thirty days of the posting of this notice to counsel for plaintiff, Brian D. Long, at bdl@rl-legal.com or 300 Delaware Avenue, Suite 1220, Wilmington, DE 19801, and counsel for defendants, Steven L. Caponi, at steven.caponi@klgates.com or 600 N. King Street, Suite 901, Wilmington, DE 19801.