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Hansen Medical Must Face Shareholder Suit Over Merger

By **Dave Simpson**

Law360 (June 18, 2018, 10:08 PM EDT) -- A suit alleging that controlling investors of Hansen Medical Inc. pushed through a squeeze-out merger and secured benefits for themselves at the expense of a putative class of minority holders survived a motion to dismiss Monday in Delaware Chancery Court.

Vice Chancellor Tamika Montgomery-Reeves found that the suing shareholders stated valid breach of fiduciary duty claims in their complaint against Hansen executives and shareholders, but that they did not state a reasonable claim for aiding and abetting a breach of fiduciary duty against Auris Surgical Robotics Inc., which agreed to purchase Hansen in 2016.

"Defendants offer reasonable explanations for some of the connections, parallel investments, and actions of the purported control group," Vice Chancellor Montgomery-Reeves said. "One might even argue that they offer a more compelling version of events. It may well be that defendants' version prevails at a later stage of litigation. At the motion to dismiss stage, however, the question is not whether plaintiffs offer the only, or even the most, reasonably conceivable version of events."

The suit alleges that before the Hansen-Auris merger went through, the controlling investors were given an opportunity to "roll over" their stock Hansen stock into their preferred Auris stock, an opportunity minority stock owners did not have. As a result, they say, they received an unfairly low price.

The defendants argued that they are not, in fact, a control group or a controller as it pertained to the deal.

Rebutting this, the minority stockholders laid out an alleged history of cooperation and coordination between the defendants, dating back almost a quarter century.

"The history continued for another twenty-one years and included coordinating their investment strategy in at least seven different companies," Vice Chancellor Montgomery-Reeves said. "This history culminated, at least for the purposes of this action, in 2011 when they were the only participants in a private placement that made them the largest stockholders of Hansen."

In 2013 and 2015, they were defined as "Principal Purchasers" in the private placement of Hansen stock and were given control over various aspects of those agreements, the minority stockholders alleged.

During the early stages of negotiation with Auris, the defendants were identified as key stockholders, allowing them to negotiate directly.

The judge listed several other instances in which the minority stockholders alleged that the defendants had control.

"Although each of these factors alone, or perhaps even less than all these factors together, would be insufficient to allege a control group existed, all of these factors, when viewed together in light of the controller defendants' twenty-one-year coordinated investing history, make it reasonably conceivable that the controller defendants functioned as a control group during the merger," she said.

She did, however, grant Auris' motion for dismissal, finding that the minority shareholders did not plead facts that made Auris' alleged involvement with the breach of duty conceivable.

"The complaint does not include well-pled facts that Auris took part in any 'nefarious' activity," the judge said. "The facts in the complaint show only that Auris negotiated a not-uncommon agreement to reduce its cash outlay by having the major investors in Hansen roll over their stock."

The plaintiffs are represented by Carmella P. Keener of Rosenthal, Monhait & Goddess PA and Carl L. Stine of Wolf Popper LLP.

Controller defendants are represented by Young Conaway Stargatt & Taylor LLP, Willkie Farr & Gallagher LLP, Potter Anderson & Corroon LLP, and Sidley Austin LLP.

Auris is represented by Richards, Layton & Finger PA and Ropes & Gray LLP.

The case is *In re Hansen Medical, Inc. Stockholder Litigation*, case number 12316-VCMR, in the Court of Chancery of the State of Delaware.

--Editing by Peter Rozovsky.

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