

## HP Investor Suit Over Hurd's \$40M Payout Dismissed

By **Juan Carlos Rodriguez**

*Law360, New York (June 22, 2012, 4:20 PM ET)* -- A Delaware judge on Thursday dismissed a Hewlett-Packard Co. shareholder's lawsuit against the company's directors alleging they harmed the company by giving former CEO Mark Hurd a \$40 million severance package and not having a successor ready in waiting.

The judge said plaintiff Lawrence Zucker did not either make a demand on the board to instigate the legal action that he sought to bring on the corporation's behalf or allege why such a demand is excused. Hurd was fired by HP's board after details of his romantic involvement with a subordinate surfaced, but he was given a hefty severance package upon his departure.

"There is no dispute that the plaintiff decided not to make a presuit demand," Delaware Chancery Court Judge Donald F. Parsons said. "Hence, the issue before the court is whether the [complaint] alleges a basis to excuse presuit demand."

In regard to Zucker's first claim, that by approving the severance agreement for allegedly nominal consideration the HP board committed waste, Judge Parsons said pleading waste requires a "showing that the board's decision was so egregious or irrational that it could not have been based on a valid assessment of the corporation's best interests."

The judge said Zucker sufficiently pled that the board was not required to give Hurd a severance package and could have avoided paying him anything by terminating him for his inaccurate expense reports or his disclosure of a major deal to the woman he was involved with before it was public.

But the judge did not find that was reason to let his claim proceed.

"While Zucker is entitled to the presumption for purposes of this motion that the board could have decided to terminate Hurd for cause, there is no allegation from which the court reasonably can infer that Hurd necessarily would have acquiesced in such a decision," the judge said.

The judge said HP had many possible reasons to compensate Hurd at the time of his departure, and the amount he received was not necessarily out of line with what might be expected.

Tackling Zucker's second claim, that the HP board failed to act for the benefit of the company by not having a succession plan in place, Judge Parsons said in order to plead demand futility, a plaintiff must allege particularized facts which create a reasonable doubt that the board of directors could have properly exercised its independent and disinterested business judgment in responding to a demand.

"Therefore, for the HP directors to suffer a disabling likelihood of personal liability, the alleged breach of care for failing to implement a succession plan must rise to the level of bad faith, such as a conscious disregard of a known duty to act," he said.

But the judge said Zucker did not cite, nor is the judge aware of, any Delaware precedent that stands for the proposition that failure to adopt a long-term succession plan amounts to a breach of duty.

"Plaintiff has not identified any case law or alleged any facts that suggest that directors have been or are on notice that such a failure is a breach of fiduciary duty. Accordingly, the board could not have consciously disregarded a known duty to act sufficient to rise to the level of bad faith," the judge said.

Counsel for the parties did not immediately respond to requests for comment.

Zucker is represented by Michael W. McDermott and David B. Anthony of Berger Harris LLC, Eduard Korsinsky and Eric M. Andersen of Levi & Korsinsky LLP and Gregory M. Nespole and Stacey T. Kelly of Wolf Haldenstein Adler Freeman & Herz LLP

The board members are represented by Collins J. Seitz Jr. and Bradley R. Aronstam of Seitz Ross Aronstam & Moritz LLP.

HP is represented by Peter J. Walsh, Stephen C. Norman, Christian R. Walker and Matthew D. Stachel of Potter Anderson & Corroon LLP, Marc J. Sonnenfeld and Karen Pieslak Pohlmann of Morgan Lewis & Bockius LLP and Steven M. Schatz, Boris Feldman, Katherine L. Henderson and Brian Danitz of Wilson Sonsini Goodrich & Rosati PC.

The case is Lawrence Zucker v. Marc L. Andreesen et al., number 6014-VCP, in the Court of Chancery of the State of Delaware.

--Editing by Lindsay Naylor.