



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

OPENWAVE SYSTEMS INC. and BERNARD :
PUCKETT, :

Plaintiffs, :

v. :

C. A. No. 2690 - N

HARBINGER CAPITAL PARTNERS :
MASTER FUND I, LTD., HARBINGER :
CAPITAL PARTNERS SPECIAL :
SITUATIONS FUND, L.P., JAMES L. ZUCCO :
and ANDREW BREEN, :

Defendants. :

COMPLAINT UNDER 8 DEL. C. § 225

Plaintiffs Openwave Systems Inc. ("Openwave" or the "Company") and Bernard Puckett ("Puckett") by and for their complaint, allege upon knowledge as to them, and upon information and belief as to all other matters, as follows:

Nature of Action

1. This is an action pursuant to 8 Del. C. § 225 for declaratory and injunctive relief.
2. This action presents a straightforward issue: Whether Defendants properly complied with the Company's bylaws relating to the advance nomination of directors for election. If the Court determines that Defendants did not comply with these bylaws in advance of the

Company's annual shareholder meeting, held on January 17, 2007, then Defendants' nominations were invalid, their nominees did not properly stand for election, and the votes cast in their favor were of no effect.

3. Based on preliminary vote counts to date, if the Court determines that the Defendants' nominations were invalid, then incumbent directors David C. Peterschmidt ("Peterschmidt") -- Openwave's President and Chief Executive Officer -- and Gerald Held ("Held") will have received a plurality of the votes cast at the annual meeting and, thus, would win the election. However, if the Court determines that Defendants' nominations are, in fact, valid and, as a result, the votes cast in favor of Defendants' purported nominees are valid, then based on preliminary vote counts to date, Mr. Peterschmidt and Defendant James L. Zucco ("Zucco"), one of Defendants' purported nominees, would win the election.

4. Prompt resolution of this action is necessary to determine the outcome of the election held at the Company's annual meeting.

The Parties

5. Plaintiff Openwave is a Delaware corporation with its headquarters in Redwood City, California. Openwave makes software for mobile phones, and its software is used by many of the leading cellular telephone equipment companies in the world. Plaintiff Puckett is Chairman of Openwave's board of directors and brings this action in his capacity as a director of Openwave.

6. Defendants Harbinger Capital Partners Master Fund I, Ltd. ("Master Fund"), and Harbinger Capital Partners Special Situations Fund, L.P. ("Special Situations Fund") (collectively "Harbinger"), are purported shareholders of Openwave.

7. Defendant James L. Zucco was purportedly nominated by Harbinger as a candidate for a seat on the Openwave board of directors.

8. Defendant Andrew Breen ("Breen") was purportedly nominated by Harbinger as a candidate for a seat on the Openwave board of directors.

Harbinger Fails To Comply With The Company's Advance-Notice Bylaws

9. On December 1, 2006, the Company announced in a press release that its annual shareholder meeting would be held on January 17, 2007 (the "Annual Meeting"). Indeed, the headline of the press release, in large bold letters, declared: "**Annual Meeting Scheduled for January 17, 2007.**"

10. Two separate Company bylaws require that any stockholder seeking to nominate a slate of directors at the annual shareholder meeting must provide the Company with timely, advance notice of such nominations. Harbinger failed to comply with either of the Company's advance notice bylaws.

11. Section 2.2(c) of the Company's bylaws, which addresses both stockholder proposals and nominations of directors to be brought before an annual meeting of the Company, states, in pertinent part, that:

In addition to the requirements of Section 2.5, for nominations or other business to be properly brought before an annual meeting by a stockholder . . . the

stockholder must have given timely notice thereof in writing to the secretary of the Corporation and such business must be a proper matter for stockholder action under the General Corporation Law of Delaware. **To be timely, a stockholder's notice shall be delivered to the secretary at the principal executive offices of the Corporation not less than 20 days nor more than 90 days prior to the first anniversary of the preceding year's annual meeting of stockholders;** provided, however, that in the event that the date of the annual meeting is more than 30 days prior to or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the 90th day prior to such annual meeting and not later than the close of business on the later of the 20th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made.

(Emphasis added.)

12. The Annual Meeting was held not more than 30 days prior to nor more than 60 days after the anniversary of last year's meeting, which took place on November 22, 2005. Therefore, Harbinger had the opportunity pursuant to Section 2.2(c) to provide notice of their director nominees by November 2, 2006.

13. Section 2.5 of the Company's bylaws, which is entitled "Advance Notice of Stockholder Nominees," provides an additional, "fail-safe" option for the nomination of directors. Specifically, that section requires, in relevant part, that:

To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation not less than 60 days nor more than 90 days prior to the meeting; provided, however, that in the event that less than 60 days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so received **not later than the close of business on the 10th day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made.**

(Emphasis added.)

14. Because the December 1, 2006, press release was issued less than 60 days before the January 17, 2007, meeting, Harbinger had an additional opportunity pursuant to Section 2.5

to provide notice of their director nominees, this time by December 11, 2006 (*i.e.* 10 days following the public announcement of the meeting date).

15. At no time did Harbinger provide advance notice to the Company of its intent to nominate directors at the Annual Meeting in accordance with the Company's bylaws.

Harbinger Purports To Nominate Directors At The Annual Meeting

16. On December 28, 2006, Harbinger claimed in its proxy materials that it had nominated two directors – Zucco and Andrew Breen ("Breen") – for election at the Annual Meeting. Harbinger, however, never provided notice to the Company of these purported nominations in the manner required by the Company's bylaws.

17. Also on December 28, 2006, nearly four weeks after the Company announced the date of the Annual Meeting, Harbinger brought an action, styled Harbinger Capital Partners Master Fund I. Ltd. v. Openwave Systems, Inc., C.A. No. 2646-N, seeking to have this Court (i) declare that their nomination of Zucco and Breen for election at the Annual Meeting was "effective"; and (ii) enjoin Openwave from "taking any steps to prevent or interfere" with these nominations at the Annual Meeting.

18. Harbinger did not take any further steps to prosecute this action or seek its requested relief before the Annual Meeting. Instead, in their definitive proxy materials, Harbinger took the position that it intended to pursue litigation in Delaware following the Annual Meeting in the event that Harbinger's nominations were declared invalid.

19. On January 15, 2007, in advance of the Annual Meeting, the Company's board of directors held a meeting at which it concluded that Harbinger failed to provide the Company

with notice of its stockholder nominations in the form, manner or timing required by the Company's bylaws for the Annual Meeting and, as a result, the Harbinger nominations were invalid. The Company's board also determined that it would permit the provisional nomination of Zucco and Breen solely for purposes of the conduct of business at the Annual Meeting and without waiver of any of the Company's rights to challenge Harbinger's nominations in a court proceeding. These determinations were communicated to Harbinger promptly following the board meeting and in advance of the Annual Meeting. In response, Harbinger told the Company that it too reserved its rights to challenge the results of the election after the Annual Meeting was held.

20. On the morning of January 16, 2007, the Company announced that its board had extended the offer of a board seat to Zucco, one of Harbinger's director nominees. Harbinger rejected this offer.

21. On January 17, 2007, the Company held its Annual Meeting. Two board seats (out of six) were up for election at the Annual Meeting. Pursuant to Delaware law, the winners of those board seats would be determined by a plurality of the votes cast at the annual meeting, and pursuant to the Company's certificate of incorporation, they would serve as Company directors for a three-year term.

22. At the meeting, Peterschmidt and Held were properly nominated as the board's nominees for re-election to Openwave's board of directors. The Chairman of the meeting explained at the meeting that, as had been previously communicated to Harbinger, the board of Openwave had determined to permit Zucco and Breen to be placed in nomination at the Annual Meeting on a provisional basis only, pending the final adjudication of the lawsuit filed by

Harbinger against the Company in which Harbinger has sought to have this Court declare that its nominees are validly before the stockholders. The Chairman further explained that the board had expressly reserved the position that Zucco and Breen were not properly placed in nomination due to the failure to comply with the advance notice bylaws.

23. Based on preliminary vote counts to date, it appears that Peterschmidt and Zucco received the most votes at the annual meeting. IVS Associates Inc., the independent inspector of elections, has indicated that, after a customary review and challenge period, it will certify the final vote.

24. The Company maintains that Harbinger failed to comply with the Company's advance notice bylaws and, therefore, Harbinger's purported nominees, including Zucco, were not validly nominated and properly before the stockholders for vote at the Annual Meeting. Thus, the votes cast in favor of Zucco and Breen were invalid.

25. As a result, Peterschmidt and Held were properly elected to continue to serve on the Company's Board of Directors, and Defendants' purported nominees, including Zucco, were not.

26. The Company has no adequate remedy at law.

WHEREFORE, the Company respectfully requests that this Court enter an order:

- (a) Declaring that Harbinger did not comply with the Company's bylaws and therefore its candidates were not properly nominated at the Annual Meeting;
- (b) Declaring that Peterschmidt and Held were rightfully elected to serve on Openwave's board of directors;
- (c) Declaring that Zucco and Breen were not validly elected to Openwave's Board of Directors;
- (d) Preliminarily and permanently enjoining Defendants from taking any actions contrary to, inconsistent with or which fail to recognize the validity of, the board's actions;
- (e) Granting the Company such other and further relief as the Court deems just and proper; and
- (f) Awarding the Company its costs and disbursements, including reasonable attorneys' fees, incurred in the prosecution of this action.

/s/ Edward B. Micheletti

Edward P. Welch (I.D. No. 671)

Edward B. Micheletti (I.D. No. 3794)

Rachel I. Jacobs (I.D. No. 4876)

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Dated: January 22, 2007

VERIFICATION

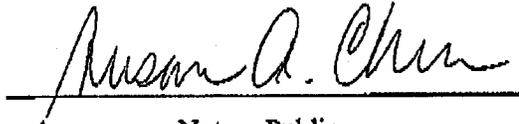
I, David C. Peterschmidt, on behalf of Openwave Systems Inc., declare that I have read the foregoing Verified Complaint and that the matters set forth therein are true and correct to the best of my knowledge, information and belief.

Dated: January 22, 2007



David C. Peterschmidt

SWORN TO AND SUBSCRIBED before me
This 22nd day of January, 2007.



Notary Public

