



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

RENA A. KASTIS and JAMES E. )  
CONROY, )  
 )  
Plaintiffs, )  
v. )  
 )  
WILLIAM A. CARTER et al., ) C.A. No. 8657-CB  
 )  
Defendants. )

**PLAINTIFFS' MOTION FOR EXPEDITED PROCEEDINGS  
CONCERNING HEMISPHERX BIOPHARMA, INC.'S  
FEE-SHIFTING AND SURETY BYLAW**

Plaintiffs Rena A. Kastis and James E. Conroy ("Plaintiffs") move pursuant to Court of Chancery Rules 4, 12(a), 30, 34 and 173, for an order setting an expedited schedule, including: (i) shortening defendants' time to answer Plaintiffs' Verified Amended Complaint (the "Amended Complaint"); (ii) directing defendants to provide expedited discovery; and (iii) setting a merits hearing on Counts IV through VIII of the Amended Complaint, pertaining to the validity, applicability and enforcement of § 5.07 of the Amended and Restated Bylaws of defendant Hemispherx Biopharma, Inc. (the "Bylaw"). The reasons for the motion are as follows:

1. This case was commenced as a stockholder derivative action on June 18, 2013 seeking to invalidate approximately \$2.5 million in bonuses paid in November 2012 (the "Bonuses"). On August 26, 2013, Defendants moved to stay

the action pending investigation by a newly constituted special litigation committee (“SLC”). The December 20, 2013, SLC report recommended that the Company move to dismiss the action. The SLC filed its opening brief in support of its motion to dismiss on January 20, 2014. Plaintiffs’ discovery concerning the SLC’s investigation is ongoing.

2. On July 10, 2014, Hemispherx filed an 8-K announcing that on July 3, 2014, the Board had amended the Company’s bylaws to impose one-sided fee-shifting and a bond requirement on stockholders. Because the Bylaw applies to any stockholder who maintains or continues any litigation or claim after the date of the adoption of the Bylaw (July 3, 2014), the Bylaw applies retroactively to existing litigation, including this derivative action.

3. By letter dated July 18, 2014, the Company informed Plaintiffs that the defendants are invoking the Bylaw in this action and threatened Plaintiffs with liability under the Bylaw if they continue this litigation.

4. On July 21, 2014, Plaintiffs filed a Motion to Invalidate Retroactive Fee-Shifting and Surety Bylaw or, in the Alternative, to Dismiss and Withdraw Counsel (the “Motion to Invalidate”). On August 15, 2014, following the filing of a response by Hemispherx and Plaintiffs’ reply, the Court held a scheduling conference (the “Scheduling Conference”). During the Scheduling Conference, Hemispherx’s counsel agreed that defendants will not impose the Bylaw on

Plaintiffs with respect to a challenge to the Bylaw, provided that Plaintiffs sought only “reasonable and limited discovery.”<sup>1</sup>

5. The Court offered Plaintiffs the option of amending their complaint to challenge the Bylaw and ruled that if the Plaintiffs exercised that option the Court would consider the Bylaw issues while holding the SLC issues in abeyance.<sup>2</sup> Plaintiffs have chosen to amend their complaint and, pursuant to the Court’s direction, have filed a Motion for Leave to File an Amended Complaint asserting their claims against the Bylaw. As the Court suggested, Plaintiffs seek expedited consideration of their Bylaw claims.<sup>3</sup>

Wherefore, Plaintiffs respectfully request the Court enter the proposed order submitted herewith setting a prompt schedule on Plaintiffs’ claims challenging the Bylaw.

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<sup>1</sup> *Kastis v. Carter*, C.A. No. 8657-CB, Scheduling Conf. at 38 (Del. Ch. Aug. 15, 2014) (TRANSCRIPT) (hereinafter “Scheduling Conf.”).

<sup>2</sup> *Id.* at 45-46.

<sup>3</sup> *Id.* at 46.

**PRICKETT, JONES & ELLIOTT, P.A.**

By: /s/ Paul A. Fioravanti, Jr.

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Date: August 26, 2014

## CERTIFICATE OF SERVICE

I, Paul A. Fioravanti, Jr. do hereby certify that on August 26, 2014, I caused a true and correct copy of the foregoing to be filed and served upon the following counsel of record via File & Serve*Xpress*:

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