

FIRM NEWS

Schulte secures significant victory against Masimo Corp. for \$17.75 million “mootness” fee

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Last week, Schulte secured a significant victory against Masimo Corp. in the Delaware Court of Chancery on a request for a \$17.75 million “mootness” fee as reimbursement for legal expenses incurred in Politan Capital Management’s lawsuit against Masimo.

“I don’t think it would be an exaggeration to say that Politan blew this case out of the water in terms of achieving pretty much all of the very substantial corporate benefits that it set out to achieve by filing this litigation,” said Vice Chancellor Nathan A. Cook during his ruling.

Schulte, along with its co-counsel, sought the fee in connection with costs incurred before Masimo repealed its preclusive advance notice bylaw amendments and rolled back change in control provisions in its CEO’s employment agreement.

“Zero question, they would never have done that had we not sued them,” said Schulte partner Michael Swartz, representing Politan during oral argument.

Vice Chancellor Cook determined that Politan’s suit opened the path for Masimo shareholders to change control of the company’s board of directors and removed costly provisions that would have required a special payment (in RSUs and cash) valued in excess of \$445 million to Masimo CEO Joe Kiani upon the election of Politan’s two nominees to Masimo’s board.

“This court recognizes the obvious fundamental benefit of preserving stockholders’ right to vote and elect directors of their choosing — even if litigation to enforce that right ends up benefiting the plaintiff,” he said.

Michael explained that the stakes for the Politan lawsuit were tremendous; many in the hedge fund industry feared that other companies would follow Masimo’s corporate governance changes if they were allowed to stand.

“Part of the reason we fought so hard was it had implications for the entire industry,” he told the court. “My phone was ringing off the hook by other hedge fund counsel saying, ‘You guys have to win this because we’re out of business if the Delaware Chancery Court somehow upholds these bylaws.’”

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