

\$10M In Atty Fees Sought From \$35M Occam Merger Suit Deal

By **Jeff Montgomery**

Law360, Wilmington (August 2, 2016, 7:40 PM ET) -- Attorneys who secured a tentative \$35 million settlement over the troubled Occam Networks Inc.-Calix Inc. merger after a multiyear shareholder fight in Delaware have proposed taking \$9.9 million, or 30 percent, of the amount for fees, saying benefits from the five-year battle warrant the award.

The proposal by attorneys for Smith, Katzenstein & Jenkins LLP and Levi & Korsinsky LLP, filed late Monday, follows mediated settlements in April on a range of alleged failures and fiduciary breaches by Occam's managers and some board members. Also entangled in the case was Wilson Sonsini Goodrich & Rosati PC, Occam's legal adviser until 2014.

One of the April settlements severed Wilson Sonsini from a trial that would have seen testimony on accusations that the firm aided and abetted the fiduciary breaches and committed discovery misconduct. The other settlement ended an already-in-progress trial against the Occam parties, who had filed a cross-claim against Wilson after the firm reached its separate settlement with the shareholders.

Those named in the suit were accused of "utterly failing to get the best price" for Occam and misrepresenting or failing to disclose important facts when seeking approval of the deal.

"Class counsel achieved a benefit of \$35 million, or approximately \$2.31 - \$2.67 per share for the class (before any fee or expense awards)," a Chancery Court brief in support of the award said. "The benefit was achieved after many years of litigation in which the defendants consistently maintained that they had no risk of liability."

Vice Chancellor J. Travis Laster is scheduled to hold a hearing on the settlement Aug. 26. If approved, a process will be opened to distribute settlement proceeds to all Occam stockholders of record as of the merger closing.

Both Occam and Calix are telecommunications companies, with Occam at the time operating mostly in smaller or rural markets. Although shareholders argued that Occam was poised for growth, the company said it sought the merger in part because it had lagged in deployment of newer fiber networks to replace older wire-based lines.

Calix paid about \$171 million, or \$3.83 in cash plus 0.2925 shares of Calix common stock per Occam share. A shareholder group unhappy with the price sued in October 2010 in an attempt to block the

deal, with class attorneys awarded \$1 million in September 2011 for corrective and supplemental disclosure prior to the merger settlement.

As the shareholder dispute continued, class attorneys called at one point for a corrected per-share price as high as \$14.59, including damages, nearly double the original total \$7.75 per share paid.

Since the initial filing, the shareholders attorneys said, more than 1 million document pages were reviewed and 45 depositions were taken, most in California.

Included in the multiyear litigation were efforts that led up to a third complaint amendment adding to the lawsuit both Wilson and Jefferies & Co. Inc., which issued a disputed fairness opinion on the merger terms.

“This case was plagued by discovery problems from the outset, with the 2012 projections not being produced in the expedited phase and incorrect factual statements made to the court regarding the existence of those projections,” a court filing detailing the settlement plan said.

In U.S. Securities and Exchange Commission filings and public statements, Calix said that neither it nor any of its officers or directors would be required to contribute to the \$35 million settlement.

But Calix acknowledged significant legal fees and costs, reporting in mid-July that its Occam-related defense billings had exhausted the company’s available liability insurance for directors and officers in the first quarter of this year. Calix’s obligations included indemnification of each of the former Occam directors and officers against judgments, fines, settlements and expenses.

The plaintiffs are represented by Robert J. Katzenstein, David A. Jenkins and Kathleen M. Miller of Smith Katzenstein & Jenkins LLP and by Joseph Levi, Michael H. Rosner and Nicholas I Porritt of Levi & Korsinsky LLP.

The Occam directors and officers are represented by Peter J. Walsh Jr. , Arthur L. Dent and Aaron R. Sims Of Potter Anderson & Corroon, by Patrick E. Gibbs of Cooley LLP and by Matthew Rawlinson of Latham & Watkins LLP.

Wilson Sonsini is represented by David E. Ross of Ross Aronstam & Moritz LLP and by Evan R. Chesler, Sandra C. Goldstein and Kevin J. Orsini of Cravath, Swaine & Moore LLP.

The case is Herbert Chen, et al. v. Occam Networks Inc., et al., case number 5878, in the Court of Chancery of the State of Delaware.

--Editing by Jill Coffey.