

Amerigroup Shareholder Litigation

COURT: Delaware Court of Chancery

CASE NUMBER: 7788-CS

CASE LEADERS: Mark Lebovitch

On July 9, 2012, Amerigroup Corporation ("Amerigroup" or the "Company") and WellPoint, Inc. ("WellPoint") executed a Merger Agreement pursuant to which Amerigroup shareholders would receive \$92 per share (the "Proposed Transaction"). After an investigation, BLB&G brought suit in the Delaware Court of Chancery on behalf of City of Monroe Employees Retirement System and other similarly situated Amerigroup shareholders alleging, among other things, that the Amerigroup board of directors (the "Board") failed to engage a known interested suitor, and the Board was improperly influenced by its conflicted financial advisor, Goldman, Sachs & Co. ("Goldman"). Goldman's conflict arose from a 2007 financial position and related hedges, which put Goldman in the position to possibly earn a windfall of over \$200 million in the event of a timely sale of Amerigroup. Thus, Goldman endorsed a hasty sale of Amerigroup to WellPoint, which had a high likelihood of closing.

While Goldman's actual profit from its financial position was ultimately around \$20 million, the Board and Goldman first sought to obfuscate the windfall and Goldman's resulting conflict of interest. The preliminary proxy materials related to the Proposed Transaction described Goldman's conflict as illusory because Goldman would only receive an outsized "cancellation payment" if a sale of the Company was consummated prior to October 22, 2012, and that a sale was unlikely to close prior to such date. The preliminary proxy's description of Goldman's conflict was affirmatively misleading because the potential cancellation payment only disclosed a small part of Goldman's true interest in a sale of the Company.

After the Court granted our motion to expedite the litigation, Defendants substantively revised the proxy materials related to the Proposed Transaction to squarely address Goldman's conflict of interest. Following extremely expedited discovery, the parties agreed to settle the remainder of the litigation in advance of a hearing to enjoin the Proposed Transaction. The October 2, 2012 settlement renewed the sale process by, among other things, moving the date that shareholders were to vote on the Proposed Transaction to allow time for competing bids, and modifying the deal protection devices in the WellPoint Merger Agreement that could dissuade potential suitors from submitting acquisition proposals. Specifically, under the terms of the settlement, Defendants agreed that:

- WellPoint and Amerigroup would amend Section 7.3(b) (Fees and Expenses) of the Merger Agreement to reduce the termination fee payable by Amerigroup to WellPoint under the circumstances described in the Merger Agreement from \$146 million to \$97 million;
- Amerigroup would delay the special meeting of the stockholders for the stockholder vote to adopt the WellPoint Merger Agreement from October 9, 2012 to October 23, 2012; and
- Amerigroup would disclose in a Form 8-K that the Board, pursuant to the Merger Agreement and consistent with its fiduciary duties, is prepared to receive and consider in good faith any inquiries and superior proposals to purchase Amerigroup.

BLB&G and the City of Monroe Employees Retirement System are satisfied that these commitments by Defendants, in addition to numerous supplemental disclosures made during the course of the litigation and in connection with its settlement, provide fulsome relief for the class by allowing interested suitors the opportunity to bid for

Amerigroup without jeopardizing the Proposed Transaction. On October 31, 2012, the Court entered the Scheduling Order directing that notice of the settlement be provided to the Class and scheduling the Settlement Hearing for January 22, 2013. On December 27, 2012, Plaintiffs filed a motion and related documents seeking final approval of the proposed settlement and an award of attorneys' fees and expenses. On January 16, 2013, the Court granted the final approval of the settlement.

Case Documents

- January 3, 2013 - Exhibit A to Filing re Mailing of Notice of Pendency of Class Action, Proposed Settlement and Hearing
- January 3, 2013 - Affidavit Regarding Mailing of Notice of Pendency of Class Action, Proposed Settlement and Settlement Hearing
- January 3, 2013 - Notice of Filing
- December 27, 2012 - Barry Letter to Chancellor Strine Forwarding Settlement Brief Courtesy Copies
- December 27, 2012 - Declaration of Michael J. Barry of Plaintiffs' Brief in Support of Motion for Final Approval of the Proposed Settlement and an Award of Attorneys' Fees and Reimbursement of Expenses
- December 27, 2012 - Plaintiffs Brief ISO Motion for Final Approval of the Proposed Settlement and Award of Attorneys' Fees and Reimbursement of Expenses
- December 27, 2012 - Plaintiffs Motion for Final Approval of Proposed Settlement and an Award of Attorneys' Fees and Reimbursement of Expenses
- October 31, 2012 - Granted Scheduling Order re Stipulation and Agreement of Compromise Settlement and Release
- Proposed Order and Final Judgment
- Additional Disclosure Exhibit A to Stipulation and Agreement of Compromise Settlement and Release
- Notice of Pendency of Class Action Proposed Settlement and Settlement Hearing
- October 26, 2012 - Stipulation and Agreement of Compromise Settlement and Release with Exhibits
- October 26, 2012 - Stipulation and Agreement of Compromise, Settlement and Release
- August 24, 2012 - Verified Amended Class Action Complaint
- October 2, 2012 - Memorandum of Understanding