

In re El Paso Corp. Shareholder Litigation

COURT: Delaware Court of Chancery

CASE NUMBER: C.A. No. 6949-CS

CASE LEADERS: Mark Lebovitch

On October 21, 2011, BLBG filed a class action complaint (the "Complaint") in the Delaware Court of Chancery on behalf of the Louisiana Municipal Police Employees' Retirement System and similarly situated shareholders of El Paso Corporation ("El Paso" or the "Company") challenging the proposed sale of the Company to competitor Kinder Morgan, Inc. ("KMI") (the "Merger"). Among other things, the Complaint alleged that the El Paso board of directors (the "Board") breached their fiduciary duties in connection with the Merger, and that the Board's financial advisor Goldman Sachs ("Goldman") and KMI aided and abetted the Board's breaches.

During the fall of 2011, the El Paso Board was faced with a decision that would fundamentally alter the future of the Company. The Board had to select between three alternatives — (1) completing a previously announced spin-off (the "Spin") of El Paso's exploration and production business and continuing to operate the Company's pipeline and midstream segments, (2) selling the entire company to KMI, and (3) breaking up the Company and allowing third parties to bid for El Paso's component parts.

The entire process by which the Board decided El Paso's future was inherently tainted because of the Board's reliance on conflicted advisors and management. Goldman, the Company's long-time financial advisor, could not provide impartial advice about the Company's strategic alternatives due to the bank's \$4 billion (19%) ownership stake in KMI, yet the Board allowed Goldman to play a pivotal role in the process. Making matters worse, the Board approved a banker compensation structure that exacerbated, rather than mitigated, the conflict. El Paso provided Goldman roughly the same amount of fees whether the Board pursued the Spin or Merger, but agreed to pay its purportedly independent co-advisor, Morgan Stanley, only if the Merger was consummated. This arrangement eliminated any incentive for Goldman or Morgan Stanley to push for a transaction other than the Merger. Also, El Paso's senior management saw an opportunity to reap a windfall from their severance packages and the acceleration of their unvested equity, which caused them to take actions not geared toward maximizing value for El Paso's shareholders.

In the end, with its financial advisors and management favoring a deal with KMI based on their own interests, the Board failed to even consider the most obvious way to maximize value — selling El Paso in parts.

On November 18, 2011, the Court appointed BLBG as Co-Lead Counsel.

On January 13, 2012, BLBG filed its brief in support of Plaintiffs' motion for a preliminary injunction.

On February 9, 2012, the Court conducted a hearing on the motion for a preliminary injunction. On February 29, 2012, the Court issued a written decision denying the preliminary injunction motion, finding that while "plaintiffs [had] a reasonable likelihood of success in proving that the Merger was tainted by disloyalty," the "balance of harms counsel[ed] against a preliminary injunction."

Co-Lead Plaintiffs Recover \$110 Million in Cash to Settle All Claims

On September 7, 2012, the parties executed the Stipulation and Agreement of Settlement setting forth the terms of the proposed settlement of the Action for \$110 million in cash (the "Settlement"). On September 14, 2012, the

Court entered the Scheduling Order directing that notice of the Settlement be provided to the Class and scheduling a final approval hearing for December 3, 2012 in the Delaware Court of Chancery. Following the final approval hearing, on December 3, 2012, the Court entered the Final Order and Judgment granting final approval to the Settlement and the Plan of Allocation of the settlement proceeds, and granting Lead Counsel's application for an award of attorneys' fees and expenses.

A copy of the Notice and the Claim Form are available on the "Case Documents" page.

Case Documents

- December 3, 2012 - Final Order & Judgment
- September 28, 2012 - Notice of Proposed Settlement of Class Action
- September 14, 2012 - Scheduling Order
- September 7, 2012 - Stipulation and Agreement of Settlement
- February 29, 2012 - Memorandum Opinion
- February 17, 2012 - Joint Certification Pursuant to Rule 5(g)
- February 17, 2012 - Reply Brief in Support of Plaintiffs' Motion for a Preliminary Injunction
- February 9, 2012 - Oral Argument on Plaintiffs' Motion for Preliminary Injunction
- February 8, 2012 - Reply Brief in Support of Plaintiffs' Motion for a Preliminary Injunction
- February 2, 2012 - Brief in Support of Plaintiffs' Motion for a Preliminary Injunction
- January 20, 2012 - Joint Certification Pursuant to Rule 5(g)
- January 20, 2012 - Brief in Support of Plaintiffs' Motion for a Preliminary Injunction
- January 13, 2012 - Letter to Chancellor Leo E. Strine Jr. From Plaintiffs' Counsel
- January 13, 2012 - Letter to Chancellor Leo E. Strine Jr. From Defendants Counsel
- November 18, 2011 - (Proposed) Order Consolidating Cases and Appointing Co-Lead Plaintiffs and Co-Lead Counsel
- October 20, 2011 - Verified Class Action Complaint