

In re Freeport-McMoRan Copper & Gold Inc. Derivative Litigation

COURT: Delaware Court of Chancery
CASE NUMBER: 8145-VCN
CASE LEADERS: Mark Lebovitch, Jeremy P. Robinson

A stockholder derivative action brought in the Court of Chancery of the State of Delaware (the “Court”) challenging the decision by the board of directors of Freeport-McMoRan Copper & Gold Inc. to acquire both McMoRan Exploration Co. (MMR) and Plains Exploration & Production Co. (PXP) (the “Transaction”).

The suit alleges that the Transaction was tainted due to Defendants’ conflicted decision to significantly overpay for MMR and PXP in a deal riddled with conflicts, including the fact that half of the Freeport board of directors comprised a majority of the board of directors of MMR. Plaintiffs allege that Freeport’s Board approved the Transaction in order to bail out their personal investments in the financially imperiled MMR – causing Freeport’s shareholders to overpay for both MMR and PXP, which held a veto over any MMR acquisition.

The parties to the action engaged in extensive expedited fact discovery. Plaintiffs reviewed thousands of documents produced by Defendants, Freeport and certain third parties. Plaintiffs also deposed eleven individuals (some for multiple days), including several of the Defendants and representatives of the advisors to Freeport’s special committee, RPS Group Plc and Credit Suisse Securities (USA) LLC.

Beginning in the spring of 2014, counsel for Plaintiffs and Defendants engaged in arm’s-length discussions and negotiations regarding a potential resolution of the action, which included multiple mediation sessions with the Honorable Layn R. Phillips. On November 5, 2014, Plaintiffs and Defendants reached an agreement in principle to settle the action, which led to the execution of a term sheet. On January 12, 2015, the parties entered into the Stipulation and Agreement of Settlement, Compromise and Release setting forth the terms of the settlement of the action (the “Settlement”).

Under the terms of the Settlement, an aggregate amount of \$137.5 million, less Plaintiffs’ Counsel’s attorneys’ fees and expenses as awarded by the Court, will be distributed as a special dividend Freeport stockholders. A description of the terms of the Settlement is set forth in paragraph 26 of the [Settlement Notice](#).

On March 16, 2015, the parties also resolved potential claims against Credit Suisse Securities (USA) LLC (“Credit Suisse”), which had acted as a financial advisor to Freeport in connection with the Transaction. This additional recovery totals \$16.25 million in value and will resolve potential claims against Credit Suisse arising from its role in the Transaction. The additional \$16.25 million consists of \$10 million in cash, which Freeport will cause to be distributed to Freeport stockholders by way of the special dividend, and a \$6.25 million credit redeemable by Freeport for services from Credit Suisse for a period of two years. With this additional recovery, the total value of the Settlement increased to \$153.75 million.

On April 7, 2015, the Court approved the Settlement. In granting approval, the Court noted that the Settlement represents an “exceptional recovery” in an extremely challenging case.

Important information about the Settlement is contained in the [Settlement Notice](#). If you held Freeport common stock as of the close of business on January 12, 2015, your rights will be affected by the Settlement. Please be sure to read the [Settlement Notice](#) to fully understand your rights.

Case Documents

- March 17, 2015 – Supplemental Scheduling Order
- March 18, 2015 - Plaintiffs' Motion in Support of Credit Suisse Settlement and Supplemental Request for Attorneys' Fees and Expenses
- March 18, 2015 - Affidavit of Timothy J. Smyth on Behalf of State-Boston Retirement System in Continued Support of Settlement of Derivative Action and Award of Attorneys' Fees and Expenses
- March 17, 2015 - Supplemental Notice of Pendency of Derivative Action, Proposed Settlements of Derivative Action, Settlement Hearing and Right to Appear
- March 16, 2015 - Addendum to Stipulation and Agreement of Settlement, Compromise and Release (with Exhibits A-C)
- March 8, 2015 - Exhibits 1-7 to Transmittal Affidavit of Christine S. Azar ISO Plaintiffs' Opening Brief ISO Motion for Final Approval of Proposed Settlement and an Award of Attorneys' Fees and Reimbursement of Expenses
- March 8, 2015 - Exhibit A to Plaintiff's Opening Brief ISO of Motion for Final Approval of Proposed Settlement and an Award of Attorneys' Fees and Reimbursement of Expenses
- March 8, 2015 - Transmittal Affidavit of Christine S. Azar ISO Plaintiffs' Opening Brief ISO Motion for Final Approval of Proposed Settlement and an Award of Attorneys' Fees and Reimbursement of Expenses
- March 8, 2015 - Plaintiff's Opening Brief ISO of Motion for Final Approval of Proposed Settlement and an Award of Attorneys' Fees and Reimbursement of Expenses
- January 30, 2015 - Notice of Pendency of Derivative Action, Proposed Settlement of Derivative Action, Settlement Hearing and Right to Appear
- January 22, 2015 - Scheduling Order
- January 12, 2015 - Stipulation and Agreement of Settlement, Compromise and Release
- July 26, 2013 - Verified Second Amended and Consolidated Derivative Action Complaint