

In re J. Crew Group Shareholder Litigation

COURT: Delaware Court of Chancery

CASE NUMBER: C.A. No. 6043-VCS

CASE LEADERS: Mark Lebovitch

On December 2, 2010, BLB&G filed a class action complaint (the "Complaint") in the Delaware Court of Chancery on behalf of City of Orlando Police Pension Fund and similarly situated public shareholders of apparel retailer J. Crew Group ("J. Crew" or the "Company") challenging the terms of a proposed sale of the Company to a buyout group that included TPG Capital, L.P. ("TPG"), Leonard Green & Partners, L.P. ("Leonard Green") and the Company's Chairman and CEO Millard Drexler (the "Proposed Transaction"). Among other things, the Complaint alleged that Drexler conspired with TPG representatives on the J. Crew board of directors (the "Board") to improperly structure the Proposed Transaction to favor TPG, and dissuade other interested parties from bidding for the Company.

Drexler and other J. Crew executives had undertaken secretive and unilateral due diligence of the Company, and organized the Proposed Transaction with TPG and Leonard Green at least one month before informing the remainder of the J. Crew Board. In addition, Drexler took steps to subordinate other interested parties, including representing that he would only work for TPG, in order to advance the interests of his own buyout group. The merger agreement between J. Crew and TPG contained an illusory "go-shop" period that did not provide third parties with the opportunity to gauge the results of J. Crew's pivotal holiday season in order to formulate a timely bid for the Company. Further, the merger agreement contained unlimited, recurring matching rights that dissuaded rival bidders from expending the resources to make an offer for J. Crew, since any offer could be summarily "matched" by TPG.

On December 14, 2010, the Court appointed City of Orlando Police Pension Fund as Co-Lead Plaintiff and BLB&G as Co-Lead Counsel. On January 14, 2011, BLB&G filed a consolidated amended complaint (the "Amended Complaint") that added claims relating to the wholly inadequate disclosures made by the Company in its Preliminary Proxy Statements relating to the Proposed Transaction that were filed on December 6, and December 29, 2010 (the "Proxies"). In addition to various other shortcomings, the Proxies failed to adequately describe the Board's decision to negotiate almost exclusively with TPG and Leonard Green, to concede \$2 per share in value in the final days of negotiations, and to truncate the "go-shop" period with securing any consideration in exchange.

On January 18, 2011, after the early stages of expedited discovery that included the review of thousands of pages of documents in a matter of weeks, the parties executed a memorandum of understanding (the "MOU") relating to all of the outstanding claims in the lawsuit. As part of the MOU, J. Crew agreed to, among other things:

- make a payment of \$10 million to J. Crew shareholders if the Proposed Transaction is completed;
- eliminate the matching rights it had granted to TPG;
- significantly reduce any termination fee the Company may be obligated to \$20 million;

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extend the "go-shop" period one month; and

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pay an incentive fee to any bidder who makes a bona-fide offer for the Company that is not successful.

In addition, J. Crew agreed to provide shareholders with substantially more information about the Proposed Transaction and process, and to schedule the shareholder vote on the Proposed Transaction to provide sufficient time for shareholders to fully appreciate the Proposed Transaction. Before the parties executed a settlement stipulation, the shareholder plaintiffs alleged that defendants breached certain terms of the MOU. Litigation then ensued, and the parties reached a settlement on August 30, 2011. The settlement includes the therapeutic relief contemplated under the original MOU and increased the payment to former J. Crew shareholders to \$16 million. The Court scheduled a hearing on December 14, 2011 to determine whether to approve the terms of the settlement agreement. On December 16, 2011, the Court granted final approval of the settlement.

Case Documents

- December 16, 2011 - Order and Final Judgment
- August 31, 2011 - Stipulation and Agreement of Compromise and Settlement
- December 2, 2010 - Verified Class Action Complaint