

In re Safeway Inc. Stockholders Litigation

COURT: Delaware Court of Chancery
CASE NUMBER: 9445-VCL
CASE LEADERS: Jeroen van Kwawegen, Edward G. Timlin

On March 20, 2014, BLB&G, on behalf of Pipefitters Local 636 Defined Benefit Fund (“Pipefitters”), filed a verified class action complaint in the Delaware Court of Chancery against the board of directors (the “Board”) of Safeway Inc. (“Safeway” or the “Company”) and Cerberus Capital Management, L.P., and its affiliates (“Cerberus”) relating to the private equity sale of the Company to Cerberus. Under the terms of the proposed transaction, each Safeway share will receive \$32.50 in cash and contingent value rights (CVRs) for certain investments and real estate assets that Safeway contemplates selling in connection with the merger. The complaint alleged that the Board breached its fiduciary duties to Safeway’s shareholders, including, inter alia, by agreeing to accept CVRs without adequately ensuring that the CVRs would inure to the benefit of Safeway shareholders and by maintaining a shareholder rights plan (a “poison pill”) to unreasonably protect the proposed transaction against potential alternative bidders. A copy of the complaint can be found in the **Case Documents** section at right.

On April 8, 2014 Vice Chancellor Laster appointed Pipefitters as co-lead plaintiff and BLBG co-lead counsel for the proposed class of Safeway shareholders who were harmed by the Board’s alleged breaches of duty. Following expedited discovery, including the production, review and analysis of numerous documents and valuation analyses as well as depositions of members of the Board and corporate representatives of the Board’s financial advisors and Cerberus, the parties engaged in arm’s-length negotiations concerning a possible settlement of the action. The parties entered into an agreement in principle to settle the Action that was memorialized in a memorandum of understanding (the “MOU”) on June 13, 2014 and in a Stipulation and Agreement of Settlement (the “Stipulation”) on July 14, 2014. Copies of the MOU and the Stipulation can be found in the **Case Documents** section at right.

Pursuant to the Settlement, among other things, Defendants have agreed to withdraw the poison pill and to make adjustments to the CVRs. *Before* the Settlement, Cerberus agreed to pay holders of CVRs: (1) the proceeds of the sale of properties held by Safeway’s Properties Development Centers LLC (“PDC”) that are sold within two years of the closing of the transaction; and (2) the proceeds of the sale of Safeway’s 49% interest in the Casa Ley grocery chain if it is sold within four years of the closing the transaction. *Before* the Settlement, any PDC properties not sold within two years would have been retained by Safeway (by then owned by Cerberus) without payment to Safeway’s former shareholders who received PDC CVRs. If Safeway’s minority interest in Casa Ley was not sold, Safeway would have paid holders of the Casa Ley CVR the estimated “fair market value” for this interest, as adjusted for Safeway’s minority ownership and the marketability of Safeway’s interest. *As part of the Settlement*, Defendants have agreed to: (1) pay former Safeway shareholders who hold PDC CVRs the appraised value for all PDC properties that are not sold within two years of the closing of the transaction; and (2) pay holders of Casa Ley CVRs the “fair value” of Safeway’s interest in Casa Ley without minority and marketability discounts if this interest is not sold within three years of the closing of the transaction.

BLB&G and other co-lead counsel worked with a financial expert throughout the litigation and in negotiating the terms of the settlement. The financial expert has concluded that by changing the Casa Ley CVR in order to ensure that CVR holders will receive “fair value” of Safeway’s 49% interest in Casa Ley – with no discounts for Safeway’s minority status and the lack of marketability of Safeway’s minority interest – if Safeway’s interest is not sold within

three years from the closing of the transaction, the value of the transaction to Safeway stockholders increases by at least \$80 million and potentially higher figures. Because the PDC CVR did not provide any assurance of a monetization event if the underlying properties were not sold within two years, the financial expert has concluded that the improvements to the PDC CVR by guaranteeing that any unsold properties will be appraised and the value of those properties will be distributed to former Safeway shareholders who hold PDC CVRs, potentially increase the value of the transaction by amounts well in excess of the improvements to the Casa Ley CVR.

On July 16, 2014, the Court approved the Notice of Settlement, which can be found in the **Case Documents** section at right, and entered a Settlement Scheduling Order, which can be found in the **Case Documents** section at right. On September 17, 2014 a final settlement hearing was held and the Court approved the Class Action Settlement.

Case Documents

- July 16, 2014 - Scheduling Order
- July 14, 2014 - Stipulation and Agreement of Settlement
- July 14, 2014 - Final Order and Judgement Approving Class Action Settlement
- July 14, 2014 - Notice of Proposed Settlement of Class Action, Settlement Fairness Hearing, and Right to Appear
- July 14, 2014 - Scheduling Order
- June 16, 2014 - Memorandum of Understanding
- April 8, 2014 - Stipulation and Proposed Order for Consolidation and Leadership
- March 20, 2014 - Verified Class Action Complaint