

In re Columbia Pipeline Group, Inc. Merger Litigation

COURT: Delaware Court of Chancery
CASE NUMBER: 2018-0484-JTL
CASE LEADERS: Jeroen van Kwawegen
CASE TEAM: Thomas James, Rebecca L. Reyhani

This action challenges the 2016 sale of Columbia Pipeline Group, Inc. (“Columbia”) to TransCanada (the “Merger”). On March 9, 2020, BLB&G filed a class action complaint (the “Complaint”) in the Delaware Court of Chancery on behalf of Plaintiff Police & Fire Retirement System of the City of Detroit (“Plaintiff”), and all other similarly situated former stockholders of Columbia Pipeline Group, Inc. (“Columbia” or the “Company”), against Columbia’s former Chairman and Chief Executive Officer, Robert C. Skaggs (“Skaggs”), and Columbia’s former Chief Financial Officer, Stephen P. Smith (“Smith”), for breaching their duties as fiduciaries of Columbia, and against TransCanada Corporation (“TransCanada” and together with Skaggs and Smith, “Defendants”) for aiding-and-abetting Skaggs and Smith’s breaches of fiduciary duty and for unjust enrichment.

This Court previously adjudicated appraisal claims concerning the Merger in *In re Appraisal of Columbia Pipeline Group, Inc.*, C.A. No. 12736-VCL (the “Appraisal Action”). BLB&G acted as lead trial counsel in the Appraisal Action in which the Court held a five-day trial from October 29 through November 2, 2018. Following extensive post-trial briefing, the Court issued a post-trial Memorandum Opinion on August 12, 2019. *In re Appraisal of Columbia Pipeline Grp. Inc.*, 2019 WL 3778370 (Del. Ch. Aug. 12, 2019) (the “Appraisal Opinion”). In its Appraisal Opinion, the Court unambiguously ruled: “The petitioners proved that the Proxy contained material misstatements and omissions.” Appraisal Opinion, 2019 WL 3778370, at *36. The Court identified three specific categories of material misstatements and omissions: (i) the Proxy’s failure to disclose Skaggs’s and Smith’s plans to retire in 2016 (*id.*); (ii) the Proxy’s materially incomplete disclosure regarding Smith’s January 7, 2016 meeting with TransCanada executive Francois Poirier (*id.*); and (iii) the Proxy’s incomplete and misleading disclosures concerning Columbia’s NDAs, including its failure to disclose that TransCanada had breached its standstill agreement (*id.* at *35–36).

The misstatements and omissions identified by the Court in the Appraisal Opinion are the same misstatements and omissions on which Plaintiff’s duty of candor claims against Skaggs and Smith are based. As such, on March 23, 2020 Plaintiffs filed a Motion for Partial Summary Judgment because there is no issue of material fact as to whether Skaggs and Smith breached their fiduciary duty of candor and TransCanada aided and abetted those breaches of duty.

On March 1, 2021, the Court denied Defendants’ motion to dismiss the Complaint. On March 3, 2021, the Court partially granted Plaintiffs’ motion for summary judgment. On March 2, 2022, Plaintiffs reached a partial settlement of \$79 million with Defendants Skaggs and Smith, which the Court approved on June 1, 2022. Also on June 1, 2022, the Court certified a litigation class consisting of all public stockholders of Columbia as of July 1, 2016.

A five-day trial took place on July 18–22, 2022. Plaintiffs filed their opening post-trial brief on September 9, 2022. Defendant TransCanada is scheduled to file its answering post-trial brief on October 21, 2022, and Plaintiffs are scheduled to file their reply post-trial brief on November 11, 2022. Post-trial argument occurred on November 22, 2022.

The Court issued a post-trial opinion on June 30, 2023, finding Plaintiffs proved that: (i) Skaggs and Smith breached their fiduciary duties of loyalty; (ii) the Board breached their fiduciary duties of care; and (iii) TransCanada aided and abetted those breaches of duty by, among other things, repeatedly and knowingly breaching the operative NDA and the standstill provision therein.

The Court did not calculate a specific damages award, and requested that the parties confer regarding next steps. On July 28, 2023, the parties submitted a letter to the Court identifying the remaining issues and proposing a briefing schedule that the Court subsequently entered. Namely, five issues remained: 1) TransCanada intends to seek a judgment reduction under DUCATA and the terms of the settlement agreement among Plaintiffs and Skaggs and Smith for Skaggs' and Smith's share of liability; 2) TransCanada intends to assert that the appraisal petitioners are not entitled to the remedy awarded by the Court on the disclosure claim; 3) Plaintiffs intend to seek pre-judgment interest; 4) Plaintiffs intend to seek a Court order awarding fees and costs; and 5) Plaintiffs intend to seek certain costs under Rule 54(d). TransCanada filed its opening brief regarding the first two issues, DUCATA and the appraisal petitioners, on September 18, 2023. Plaintiffs filed their answering brief addressing the DUCATA and appraisal petitioner issues, any dispute concerning pre-judgment interest and bill of costs, as well as a motion for entry of final order and judgment, including an award of fees and expenses, on November 2, 2023. TransCanada is expected to file its reply brief on December 18, 2023, and Plaintiffs will file their reply brief on January 10, 2024. A hearing on the post-trial issues is scheduled for January 19, 2024.

BLB&G continues to vigorously prosecute this action.

Case Documents

- July 22, 2022 - Trial Transcript Vol V
- July 21, 2022 - Trial Transcript Vol IV
- July 20, 2022 - Trial Transcript Vol III
- July 19, 2022 - Trial Transcript Vol II
- July 18, 2022 - Trial Transcript Vol I
- March 1, 2021 - Memorandum Opinion Denying Motion to Dismiss
- March 24, 2020 - Plaintiff Motion for Partial Summary Judgment
- February 24, 2020 - Verified Amended Stockholder Class Action Complaint