

In re Globe Specialty Metals, Inc. Stockholders Litigation

COURT: Delaware Court of Chancery
CASE NUMBER: C.A. No. 10865-VCG
JUDGE: Vice Chancellor Sam Glasscock III
CASE CONTACTS: Mark Lebovitch, Jeroen van Kwawegen, Christopher J. Orrico

On April 1 and April 10, 2015, BLB&G and Co-Counsel filed two class action complaints – one on the behalf of City of Providence and one on the behalf of International Union of Operating Engineers Local 478 Pension Fund – on behalf of the putative class of public stockholders of Globe Specialty Metals, Inc. ("Globe" or the "Company"), a Delaware company, against Globe, members of Globe's board of directors (the "Board"), Globes' Executive Chairman, Alan Kestenbaum, Globe's CEO, Jeff Bradley, Grupo FerroAtlántica, S.A.U. ("Grupo FA" or "FerroAtlántica"), a Spanish limited liability company; Grupo Villar Mir, S.A.U. ("Grupo VM"), a Spanish limited liability company and Grupo FA's corporate parent; VeloNewco Limited PLC ("VeloNewco"), a United Kingdom private holding company; and Gordon Merger Sub, Inc., a Delaware corporation.

The action alleges breaches of fiduciary duties and aiding and abetting thereof in connection with Grupo VM's attempt to acquire Globe for inadequate consideration as announced on February 23, 2015, (the "Proposed Acquisition"), pursuant to a Business Combination Agreement dated February 23, 2015 (the "Merger Agreement"), to the detriment of Globe's public stockholders. Concurrently with the complaints, Plaintiffs filed a motion for preliminary injunction to enjoin Defendants and anyone acting in concert with them from convening the stockholder vote on Proposed Acquisition, or consummating the Proposed Acquisition.

Although billed as a "stock-for-stock merger," the Proposed Acquisition is a "sale of control" transaction as Globe stockholders will end up holding a minority interest in a foreign company controlled by a foreign majority stockholder. Currently, Globe's public stockholders collectively hold more than 80% of Globe's outstanding stock and govern the Company by way of an effective voting franchise and with the protections of Delaware corporate law. Following the consummation of the Proposed Acquisition, Globe stockholder will have a 43% minority interest in a company that is controlled by Grupo VM and incorporated under the laws of the United Kingdom – a far different equity and corporate governance profile than what Globe stockholders enjoy today.

Accordingly, the Board was required to conduct a good faith negotiation, exercise independence, and seek the best value reasonably available for Globe stockholders. Instead, the conflicted Executive Chairman and the majority of the Board engaged in self-dealing to structure the Proposed Acquisition to entrench themselves on the post-merger VeloNewco board, thus ensuring the continuance of their lucrative positions and the prestige and financial rewards of being a director of a far larger company. The conflicted Board's self-dealing resulted in an unfair sale value of Globe.

Plaintiffs filed their Opening Brief in Support of Their Motion for Preliminary Injunction on August 10, 2015. Plaintiffs asked the Court to preliminary enjoin the vote on the Proposed Transaction arguing that the Board failed to fulfill its Revlon duties when approving the change of control transaction. Specifically, Plaintiffs positioned that the Board failed to fulfill its Revlon duties because it approved the Proposed Transaction on incorrect and incomplete information including, but not limited to: (i) admittedly incorrect financial projections; (ii) projected synergies that were never agreed to by Grupo VM or Grupo FA and that were later abandoned by Globe; (iii) a fairness presentation that was based on financial projections that did not reflect Grupo FA's "best currently available estimates"; and (iv) only partial information about one of five criminal investigations implicating the proposed Executive Vice Chairman of the combined company, including one criminal investigation that also implicates the future controlling stockholder.

The Court held the hearing on Plaintiffs' Motion for Preliminary injunction on August 26, 2015, and shortly thereafter Defendants' counsel and Plaintiffs' counsel engaged in meaningful settlement negotiations. As a result of the prosecution of the litigation and these arms-length negotiations, the parties stipulated to a settlement on October 30, 2015 (the "Settlement Stipulation"). A copy of the Settlement Stipulation can be viewed [here](#).

Among other things, the Settlement provides for a \$32.5 million cash payment (the "Cash Payment") to the Class and significantly enhanced corporate governance protections for Globe stockholders who tender their shares and become stockholders of the post-deal entity. For example, as a result of the Settlement, a majority of the board of the post-deal entity must be independent (as defined by the NASDAQ rules) and rollover shareholders must receive the same control premium if the post-deal entity is sold in the future. Defendants have further acknowledged that the litigation caused the Board to meet on August 7, 2015, to consider various concerns raised by Plaintiff and to provide supplemental disclosures of information to Globe stockholders that could influence their vote on the deal.

The Court granted final approval of the Settlement on February 10, 2016. In approving the Settlement the Court commented that it "was an excellent result for the stockholders. I'm not surprised that there are no objectors."