In re Kinder Morgan Energy Partnership, L.P. Derivative Litigation

COURT: Delaware Court of Chancery
CASE NUMBER: 9318-VCN

On February 5 2014, BLB&G filed a verified class action and derivative complaint in the Delaware Court of Chancery on behalf of Jon Slotoroff and the putative class of the Limited Partners of Kinder Morgan Energy Partners, L.P. ("KMP"), and derivatively on behalf of nominal defendant KMP, against Kinder Morgan, Inc. ("KMI") and the Partnership's general partner Kinder Morgan G.P., Inc. ("KMGP"). KMP, a leading pipeline transportation and energy storage company and one of the oldest and largest master limited partnerships ("MLPs") in the nation, relies entirely on KMI, which wholly owns and controls KMGP. KMI and KMGP are conflicted because, in that capacity, KMI controls KMP's business and, among other things, determines the amounts of KMP's quarterly distributions to its Limited Partners and to KMI itself, in part through its decisions regarding allocation of capital expenditures for accounting purposes.

Plaintiff Slotoroff, on behalf of KMP's Limited Partners, alleges that KMI and KMGP have breached KMP's partnership agreement, and the implied covenant of good faith and fair dealing, by failing to allocate the partnership's capital expenditures in good faith. As a result, each Limited Partner's stake in KMP is diluted, while KMI garners massive profits. Moreover, Slotoroff alleges, on behalf of KMP itself, that KMI and KMGP's conduct has hurt and continues to hurt KMP by leaving the partnership undercapitalized and exposed to significant economic harm. Accordingly, this suit seeks to compel KMI to act in accordance with the terms of the Partnership Agreement (by requiring KMI to calculate DCF without preference to its personal interests) and to seek money damages on KMP's behalf for past harm inflicted by KMI.

On March 24, 2013 Defendants Kinder Morgan, Inc. and Kinder Morgan G.P., Inc., and Nominal Defendant Kinder Morgan Energy Partners, L.P. filed a motion to dismiss. Plaintiff Slotoroff filed a brief in response on April 22, 2014.

On April 14, 2014 Vice Chancellor Noble granted BLB&G's Stipulation and Proposed Order for Appointment of Co-Lead Counsel and Additional Counsel.

On May 19, 2014, the Court issued a decision in *Allen v. El Paso Pipeline GP Company, L.L.C.*, C.A. No. 7520-VCL which led the Defendants to withdraw their motion to dismiss. On May 21, 2014 an Order was granted withdrawing Defendants Motion to Dismiss.

As a result of on-going discussions, the parties reached an agreement-in-principle to settle the Action in mid-June 2015, and entered into the Stipulation and Agreement of Settlement on August 14, 2015. On August 19, 2015, the Court entered a Scheduling Order that preliminarily certified the Class for purposes of the Settlement only, and authorized this Notice to be sent to Class Members.

On November 10, 2015 Lead Plaintiffs filed their Corrected Opening Brief in Support of their Motion for Final Approval of Settlement, Class Certification, and Application for an Award of Attorneys' Fees and Reimbursement of Expenses. Click here.

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During a November 23, 2015 Settlement Hearing, the Court requested additional information concerning the proposed Settlement, Plan of Allocation, and motion for award of attorneys' fees and expenses. On December 10, 2015, Lead Plaintiff filed a Supplemental Brief in Support of Motion for Final Approval of Settlement, Class Certification and Application for an Award of Attorneys' Fees and Reimbursement of Expenses. Click here. The Court continued the Settlement Hearing on December 15, 2015, and approved the settlement of the action, including Defendants' agreement to pay $27.5 million to former KMP investors to resolve Plaintiff's claims.

Case Documents

- March 16, 2017 - Administrative Order
- December 10, 2015 - Transmittal Affidavit Of David M. Haendler In Support Of Lead Plaintiff's Suppl. Brief In Support Of Motion For Final Approval Of Settlement, Class Certification And Application For An Award Of Attorneys' Fees And Reimbursement Of Fees
- December 10, 2015 - Lead Plaintiffs' Supplemental Brief in Support of Motion for Final Approval of Settlement, Class Certification and Application for an Award of Attorneys' Fees and Reimbursement of Expenses
- November 18, 2015 - Lead Plaintiff's Reply in Support of Motion for Final Approval of Settlement, Class Certification and Application for an Award of Attorneys' Fees and Reimbursement of Expenses
- November 18, 2015 - Transmittal Affidavit of David M Haendler in Support of Lead Plaintiff's Reply in Support of Motion for Final Approval of Settlement, Class Certification and Application for an Award of Attorneys' Fees and Reimbursement of Expenses
- November 10, 2015 - Lead Plaintiff's Corrected Opening Brief In Support Of Motion For Final Approval Of Settlement, Class Certification And Application For An Award Of Attorneys' Fees And Reimbursement Of Expenses
- September 17, 2015 - Notice of Pendency and Proposed Settlement of Unitholder Action, Settlement Hearing, and Right to Appear
- Augut 14, 2015 - Stipulation and Agreement of Settlement
- August 19, 2015 - Scheduling Order
- April 22, 2014 - Lead Plaintiff's Brief in Opposition to Defendants Kinder Morgan, Inc., Kinder Morgan G.P., Inc. and Kinder Morgan Energy Partners, L.P.'s Motion to Dismiss
- March 24, 2014 - Brief in Support of Motion to Dismiss
- February 5, 2014 - Verified Class Action and Derivative Complaint

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