

In re The Pepsi Bottling Group, Inc., Shareholder Litigation, In re PepsiAmericas, Inc., Shareholder Litigation

COURT: Delaware Court of Chancery
CASE NUMBER: Consolidated C.A. No. 4526-VCS, Consolidated C.A. No. 4530-VCS
JUDGE: Vice Chancellor Leo E. Strine, Jr.
CASE CONTACTS: Mark Lebovitch

These two separate, but related actions are shareholder class actions brought in the Delaware Court of Chancery on behalf of shareholders of the Pepsi Bottling Group, Inc. (“Pepsi Bottling”) and PepsiAmericas, Inc. (“PepsiAmericas”) arising from the proposed merger announced by PepsiCo, Inc. (“PepsiCo”) to acquire all publicly held shares of its two bottlers, Pepsi Bottling and PepsiAmericas, for inadequate consideration. BLB&G serves as Co-Lead Counsel for the Class in both actions, representing Co-Lead Plaintiffs The General Retirement System of City of Detroit and the Police and Fire Retirement System of the City of Detroit in each action.

Under the proposed merger, PepsiCo simultaneously offered to acquire all of Pepsi Bottling’s outstanding shares for a grossly inadequate premium of approximately 17% over the two companies’ stock prices, when studies have shown that the average premium for similar “squeeze out” transactions is 36%. The proposed merger is unfair to Pepsi Bottling and PepsiAmericas shareholders for several reasons. First, the proposed merger does not offer the respective shareholders a fair price, considering the typical premium offered in similar “squeeze out” deals. Further, PepsiCo has demonstrated that it does not intend to deal fairly with the bottling companies and their shareholders by, inter alia, retaliating against the companies for rejecting the proposed merger, using its dominant stake in the companies to prevent competing offers, and filing lawsuits against Pepsi Bottling and PepsiAmericas to defeat certain defensive measures designed to block the unfair merger.

In *In re The Pepsi Bottling Group, Inc., Shareholder Litigation*, Plaintiffs seek relief for defendants’ breaches of fiduciary duty related to the unfair offer price of the proposed merger, as well as the retaliatory measures taken against the company by PepsiCo. In addition, Plaintiffs in that action seek declaratory relief against certain provisions in Pepsi Bottling’s governing documents that allow PepsiCo to usurp corporate opportunities, such as acquiring PepsiAmericas, without liability. In *In re PepsiAmericas, Inc., Shareholder Litigation*, Plaintiffs similarly seek relief for defendants’ breach of fiduciary duty related to the unfair offer price of the proposed merger, as well as the retaliatory measures taken against the company by PepsiCo. In addition, Plaintiffs in that action seek declaratory and injunctive relief against PepsiCo related to violations of certain provisions of a Shareholder Agreement by pursuing the proposed merger.

On June 5, 2009, the Court consolidated all similar actions on behalf of shareholders of Pepsi Bottling and PepsiAmericas. Pursuant to the Court’s order, on June 19, 2009, plaintiffs in *In re The Pepsi Bottling Group, Inc., Shareholder Litigation* and *In re PepsiAmericas, Inc., Shareholder Litigation* filed a consolidated complaint in each action.

This case has since settled.