In re Virgin Media Inc. Shareholders Litigation

COURT: New York Supreme Court, New York County
CASE NUMBER: 1274-001
CASE LEADERS: Jeroen van Kwawegen

This is a breach of fiduciary duty action brought by City of Westland Police and Fire Retirement System and other shareholders of Virgin Media Inc. ("Virgin Media" or the "Company") against Virgin Media's board of directors (the "Board"). Plaintiffs allege that the Board breached its fiduciary duties by agreeing to sell the Company to Liberty Global, Inc. ("Liberty") without performing a market check while agreeing to onerous deal protections that made it virtually impossible for any potential competing suitors to make a competing bid. The deal protections included restrictions on the Company's ability to share due diligence information with anyone other than Liberty, awarding Liberty unlimited rights to "match" any competing offer, and Liberty's right to receive a $470 million termination fee if the Company was sold to a competing bidder.

On March 26, 2013, BLB&G filed a class action complaint (the "Complaint") in the Supreme Court of the State of New York on behalf of Virgin Media's shareholders who were harmed by the Board's alleged breaches of duty. A copy of the Complaint can be found in the **Case Documents** section of this page. The core allegation in the Complaint was that the process resulting in the proposed sale to Liberty was run by senior executives, Board members, and financial advisors who all had significant financial interests in selling the Company without maximizing shareholder value, and who agreed to sell Virgin Media without following a proper sales process. The lack of a proper sales process and the anti-competitive effect of the deal protections undermined shareholder confidence that the price Liberty agreed to pay was the highest achievable. After BLBG filed the complaint, the Court allowed expedited discovery in preparation of a motion for a preliminary injunction of the announced transaction. Plaintiffs reviewed more than 100,000 pages of discovery documents and took depositions of key-individuals, including the CEOs of Virgin Media and Liberty, in London, England, Englewood, Colorado and New York City. Based on this extensive record, Plaintiffs filed a Motion for Preliminary Injunction on May 8, 2013. The Motion can be found in the **Case Documents** section of this page.

Following intense settlement negotiations, Defendants agreed to significantly reduce the deal protections, thereby giving potential competing suitors a significant incentive to make a competing bid if the price Liberty had agreed to pay was inadequate. Defendants agreed to: (1) make it much easier for Virgin Media to share due diligence information with other potential bidders; (2) limit Liberty's matching rights to only one round; and (3) reduce the termination fee by $100 million. Defendants also agreed to make supplemental disclosures regarding the existence of other potential bidders and the value of the Liberty transaction for Virgin Media shareholders. After agreeing to the core terms of the settlement in a memorandum of understanding on May 23, 2013, the parties further documented the terms of the settlement in a Stipulation and Agreement of Compromise, Settlement, and Release on July 22, 2013. The Stipulation can be found in the **Case Documents** section of this page.

Plaintiffs filed a Motion for Approval of Settlement on September 3, 2013 and a Reply in Further Support of Approval on September 30, 2013. Copies of the Motion and the Reply can be found in the **Case Documents** section of this page. On October 3, 2013 the Court entered a Final Order and Judgment approving the Settlement in its entirety. The Order can be found in the **Case Documents** section of this page.

Case Documents

- October 3, 2013 - Final Order and Judgment
- September 30, 2013 - Plaintiffs Reply in Further Support of Plaintiffs' Motion for Class Certification, Final Approval of Class Action Settlement, and for an Award of Attorneys' Fees and Expenses, and in Response to Objection
- September 3, 2013 - Plaintiffs' Memorandum of Law in Support of Motion for Class Certification, Final Approval of Class Action Settlement, and for an Award of Attorneys' Fees and Expenses
- July 23, 2013 - Stipulation and Agreement of Compromise, Settlement and Release
- May 8, 2013 - Memorandum of Law in Support of Plaintiffs' Motion for a Preliminary Injunction
- March 26, 2013 - Class Action Complaint