

# *The Williams Companies Stockholder Litigation*

**COURT:** Delaware Court of Chancery

**CASE NUMBER:** 2020-0707-KSJM

**CASE LEADERS:** Gregory V. Varallo

**CASE TEAM:** Thomas James

This stockholder class action challenges a highly aggressive shareholder rights plan (the “Poison Pill”) adopted by the board of directors of The Williams Companies, Inc. (“Williams” or the “Company”) on March 20, 2020 in the wake of market volatility caused by the COVID-19 pandemic.

Notably, the Poison Pill was “not” adopted “in response to any specific threat.” Rather, the only “threat” Williams identified was the general possibility of low prices for oil and gas-related stocks and market volatility resulting from the COVID-19 pandemic.

The Poison Pill contains two notable and draconian features. First, unlike a typical shareholder rights plan, which contains a 15% triggering threshold, the Poison Pill adopted a stunningly low 5% triggering threshold (the “5% Trigger”). Outside of the limited category of pills adopted to protect substantial net operating losses, such a low trigger has never been upheld as an appropriate triggering threshold for a shareholder rights plan. Second, the Poison Pill contains broad “acting in concert” language that does not require the Williams board to find proof of an “agreement, arrangement or understanding” to aggregate shares to reach the 5% Trigger (the “Wolfpack” provisions). The Wolfpack provisions also do not apply equally as they contain express carve-outs for the Company’s officers and directors and further provide for “daisy chain” aggregation such that a person subject to the provision would likely have no way to know with whom he or she is “acting in concert.”

Plaintiff—noted activist advisor, Steven Wolosky—moved for expedited proceedings. In particular, Plaintiff sought a prompt trial to consider whether the final relief sought—(i) a declaration that the Poison Pill is unenforceable and that Defendants breached their fiduciary duties by adopting and maintaining it, and (ii) a permanent injunction enjoining the Poison Pill’s continued operation—should be ordered before the Pill expired by its own terms on March 20, 2021. On September 8, 2020, the Court granted Plaintiff’s motion for expedition over Defendants’ opposition. On November 18, 2020, the Court granted Plaintiffs’ Motion for Class Certification, again over Defendants’ opposition. A three day trial in this matter began on January 12, 2021.

On February 26, 2021, the Court issued an 89-page post-trial memorandum opinion “declaring the [Poison Pill] unenforceable and permanently enjoining the continued operation of the [Poison Pill]” and “conclud[ing] that the [Poison Pill] is unenforceable because the Director Defendants breached their fiduciary duties under *Unocal* when adopting it.” Notably, this case is only the third instance in which the Delaware Court of Chancery has permanently enjoined or rescinded a shareholder rights plan after trial.

On May 6, 2021, Defendants filed a notice of appeal of the Court of Chancery’s post-trial memorandum opinion and implementing order. The Delaware Supreme Court held argument on October 20, 2021 and, on November 3, 2021, affirmed on the basis of and for the reasons assigned by the Court of Chancery.

## **Case Documents**

- February 26, 2021 - Post-Trial Opinion

- January 28, 2021 - Plaintiffs' Post-Trial Brief
- January 14, 2021 - Day Three Trial Transcript
- January 13, 2021 - Day Two Trial Transcript
- January 12, 2021 - Plaintiffs' Pre-Trial Brief
- January 12, 2021 - Day One Trial Transcript
- November 18, 2020 - Transcript and Rulings on Class Certification
- November 5, 2020 - Plaintiffs' Reply Brief in Further Support of Their Motion for Class Certification
- October 16, 2020 - Plaintiffs' Opening Brief in Support of Their Motion for Class Certification
- August 27, 2020 - Complaint
- August 27, 2020 - Motion to Expedite
- August 27, 2020 - Transcript Granting Motion to Expedite