

# Pensions & Investments Publishes Commentary of El Paso/Kinder Morgan Deal by Mark Lebovitch and Jeremy Friedman

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On May 14, 2012, *Pensions & Investments* magazine published an opinion piece co-authored by BLB&G partner Mark Lebovitch and associate Jeremy Friedman on the *In re El Paso Corp. Shareholder Litigation* which arose from the high-profile acquisition of El Paso Corporation by Kinder Morgan. “Court chastises indifference to conflicts of interest,” discusses the significance of the Delaware Court of Chancery’s ruling which strongly rebuked the conduct of Goldman Sachs and El Paso Board members while El Paso was the target of a buyout offer by Kinder Morgan, primarily due to evidence of conflicts of interest that served to compromise their fiduciary roles.

For Goldman Sachs, among the numerous conflicts of interest in advising the El Paso Board regarding Kinder Morgan’s buyout offer lay in the fact that Goldman Sachs had a \$4 billion equity stake in Kinder Morgan, and that two Goldman managing directors serve on Kinder Morgan’s Board. Moreover, El Paso board members, including its CEO, Douglas Foshee, were personally vested in the deal, as El Paso’s senior management had ambitions of purchasing the exploration and production business from Kinder Morgan, and therefore did not forcefully negotiate the purchase price with Kinder Morgan on behalf of El Paso shareholders. Among other strongly worded concerns, the Chancery Court ruled that “plaintiffs have a probability of showing that more faithful, unconflicted parties could have secured a better price from Kinder Morgan.”

According to the article, “Mr. Strine’s opinion is a strong wake-up call to corporate fiduciaries and gatekeepers who are entrusted with investors’ money, as well as a significant statement by one of the nation’s most important judges.” More importantly, the piece argues that, “Without the efforts of the public pension fund investor plaintiffs in this instance, these facts would not have to come to light. It is essential that institutional investors continue to play a significant role in ensuring that Wall Street firms and corporate titans play by the rules.”

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Mr. Lebovitch leads the firm’s corporate governance litigation practice, focusing on derivative suits and transactional litigation. He has prosecuted numerous high-profile cases on behalf of institutional investors to preliminary injunctions and to trial, obtaining hundreds of millions of dollars for investors and achieving unprecedented corporate governance. Mr. Friedman prosecutes corporate governance and shareholder rights litigation on behalf of the firm’s institutional investor clients, focusing on merger and acquisition litigation.