IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CHESTER COUNTY RETIREMENT SYSTEM, Individually, and on behalf of all Those similarly situated,	:	
Plaintiff,	:	
v	:	Civil Action No. 12072-VCL
JOSHUA L. COLLINS, DAVID A. WILLMOTT, ROBERT E. BEASLEY, JR., RONALD CAMI, ANDREW C. CLARKE, NELDA J. CONNORS, E. DANIEL JAMES, HAROLD E. LAYMAN, MAX L. LUKENS, DANIEL J. OBRINGER, BLOUNT INTERNATIONAL, INC., AMERICAN SECURITIES LLC, P2 CAPITAL PARTNERS, LLC, P2 CAPITAL MASTER FUND I, L.P., ASP BLADE INTERMEDIATE HOLDINGS, INC., ASP BLADE MERGER SUB, INC. and GOLDMAN, SACHS & CO.,	:	
Defendants.	:	

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Chancery Court Chambers
New Castle County Courthouse
500 North King Street
Wilmington, Delaware
Monday, March 14, 2016
4:30 p.m.

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BEFORE: HON. J. TRAVIS LASTER, Vice Chancellor.

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ORAL ARGUMENT ON PLAINTIFF'S MOTION FOR EXPEDITED PROCEEDINGS and RULINGS OF THE COURT

APPEARANCES: (Via teleconference)

PAMELA S. TIKELLIS, ESQ.
ROBERT J. KRINER, JR., ESQ.
A. ZACHARY NAYLOR, ESQ.
TIFFANY J. CRAMER, ESQ.
Chimicles & Tikellis LLP
for Plaintiff

DAVID E. ROSS, ESQ.
Ross, Aronstam & Moritz LLP
-and-
NATHANIEL J. KRITZER, ESQ.
of the New York Bar
Kirkland & Ellis LLP
for Defendants Joshua L. Collins and
David A. Willmott

WILLIAM M. LAFFERTY, ESQ.
Morris, Nichols, Arsht & Tunnell LLP
-and-
LAWRENCE PORTNOY, ESQ.
of the New York Bar
Davis Polk & Wardwell LLP
for Defendants Robert E. Beasley, Jr., Ronald
Cami, Max L. Lukens, and Daniel J. Obringer

PETER J. WALSH, JR., ESQ.
FRANK R. MARTIN, ESQ.
Potter, Anderson & Corroon LLP
-and-
GARY A. BORNSTEIN, ESQ.
of the New York Bar
Cravath, Swaine & Moore LLP
for Defendants Blount International, Inc.,
Andrew C. Clarke, Nelda J. Connors, E. Daniel
James, and Harold E. Layman

GREGORY P. WILLIAMS, ESQ.
Richards, Layton & Finger, P.A.
-and-
GARY W. KUBEK, ESQ.
of the New York Bar
Debevoise & Plimpton LLP
for Defendants American Securities LLC, ASP
Blade Intermediate Holdings, Inc., ASP Blade
Merger Sub, Inc., P2 Capital Partners, LLC
and P2 Capital Master Fund I, L.P.

APPEARANCES: (Continued)

MATTHEW L. MILLER, ESQ.
Abrams & Bayliss LLP
for Defendant Goldman, Sachs & Co.

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THE COURT: Good afternoon. This is Travis Laster speaking.

Who is on for Chester County Retirement System?

MR. NAYLOR: Good afternoon, Your Honor. Zach Naylor from Chimicles & Tikellis on behalf of Chester County. I have Pam Tikellis, Bob Kriner, and Tiffany Cramer in the room with me as well.

THE COURT: All right. And who is on for the defendants?

MR. WALSH: Good afternoon, Your Honor. This is Pete Walsh of Potter, Anderson & Corroon on behalf of Blount International and defendants Clarke, Connors, James, and Layman. With me is Frank Martin. And also on the line is Gary Bornstein of Cravath, Swaine & Moore.

Mr. Bornstein has been admitted pro hac, and he will speak to the motion on behalf of defendants.

THE COURT: That's great.

Who is on for Goldman?

MR. MILLER: This is Matthew Miller at Abrams & Bayliss. I am standing alone today.

THE COURT: That's all right. You may be few in numbers, but you are mighty.

Mr. Naylor, do you want to go ahead?

MR. LAFFERTY: Your Honor, before Mr. Naylor begins, this is Mr. Lafferty. I apologize for interrupting, but I figured I better get my name on the record now. I don't intend to speak. I think Mr. Bornstein is going to carry the water. But there are a couple other counsel on the phone, including myself. I represent the special committee defendants, along with Larry Portnoy from Davis, Polk & Wardwell in New York. And I know there is at least one other set of counsel on that I think probably want to identify themselves as well.

THE COURT: Absolutely. I'm sorry, Mr. Lafferty. I didn't mean to cut you off or to slight Mr. Portnoy, by any means. I apologize for that.

Who is the other counsel?

MR. WILLIAMS: Your Honor, this is Greg Williams. I represent American Securities and the ASP entities. And my co-counsel, Gary Kubek, is on the line from Debevoise.

THE COURT: All right. Great.

MR. ROSS: Your Honor, sorry to delay a little further. David Ross, Ross, Aronstam & Moritz, on behalf of defendants Collins and Willmott, along with Nathaniel Kritzer of Kirkland & Ellis.

THE COURT: All right. I'm glad you had time to get back to the office.

MR. ROSS: Thank you, Your Honor. Just long enough.

THE COURT: So with that, Mr. Naylor, would you like to go ahead?

MR. NAYLOR: Yes. And thank you, Your Honor, for being available for us this afternoon.

This is a class action challenging the buyout of Blount Industries by its two most senior managers, each of whom also sit on the board -- those are Messrs. Collins and Willmott -- and two private equity firms in the pursuit of a leveraged buyout.

Plaintiff alleges the process undertaken here by the Blount board in connection with the process was tainted by several conflicts. First, the insider defendants -- and that's Messrs. Collins and Willmott -- had unique buy-side interests in pursuing the buyout.

Second, the bankers advising the

special committee did not cure the process; and, in fact, Goldman Sachs, who is a defendant here, had its own web of conflicts, and the putatively independent banker, Greenhill, took a back seat to Goldman in the process.

Third, the special committee, which was eventually established, failed both structurally and in terms of its conduct to isolate the insiders' conflicts.

Fourth, the buyout terms include lock-up provisions that are unreasonable in the given circumstances.

And fifth, defendants have issued materially deficient disclosure documents.

To that end, plaintiff asks the Court to set a hearing date and to permit the taking of document and deposition discovery in advance of that date. Plaintiff has served document requests on the defendants and has subpoenaed the third-party banker, Greenhill.

Cognizant of the nature of expedited proceedings, we have developed a narrow universe of priority documents, custodial documents, and deponents. We have provided the Court with that

proposed discovery program. And that's Exhibit A to the reply brief that we filed on Friday.

We submit that that universe is well within the norm for an action in this posture and presents no atypical burden on the parties. Speaking generally, this is the type of matter the Court hears on an expedited basis. It is a leveraged buyout of a Delaware corporation with a vote scheduled on April 7th, and the relief that plaintiff seeks in this motion is usual.

There are two primary legal principles at the forefront of the motion. The first is that in the context of a cash-out LBO, directors must conduct a process designed to obtain the maximum value reasonably available. That conduct is, of course, subject to enhanced scrutiny.

The second is that in determining whether to expedite discovery, the Court applies the most plaintiff-friendly standard available. And that is whether or not the claims are colorable. And we respectfully submit that the allegations here give rise to colorable claims, that the process was warped by conflicts and, thus, unreasonable in the context of a sale.

And if I could begin with the conflicts that we have observed with respect to Messrs. Collins and Willmott, who are the insider directors.

THE COURT: I read your complaint. I read your brief. I get the conflicts that you are alleging.

In a post-C&J world, why do you have irreparable harm as to your process claims?

MR. NAYLOR: So the issue with the process is essentially that we have a situation where we may not be able to fully address the harm visited upon the class that we allege with monetary damages. And there are a number of actions, obviously, that have entered injunctions that relate to merger terms. And in this action, I could envision relief from the termination fee and, in particular, here because the termination fee becomes payable on a no vote by the stockholders.

Now, one of the conflicts --

THE COURT: Can you walk me through Article VII and explain to me why you believe that?

MR. NAYLOR: Sure. Yes. As I understand the termination fee provisions, if the

stockholders vote no, a termination fee of just over $14 million is payable to the buying firm.

THE COURT: That may, in theory, be true, but it didn't immediately jump out to me. What I saw was that Section 7.2 provides either parent or the company with a termination right, including 7.2(b), a termination right if the stockholder meeting wasn't held or completed or if the adoption of the agreement by the stockholders hadn't happened.

Where I didn't see that, and I may just have missed it -- you know, you guys have had these documents much longer than I have. If there's one thing that I am, it's fallible. I am not infallible. But I did not pick up where a Section 7.2 vote-down gave rise to a termination fee unless it was also coupled with a higher proposal.

So I saw the place where if a higher proposal emerges and there's a vote-down you get the termination fee. What I didn't see -- and, again, I'm happy to be shown where it was. I just didn't see it -- where you get a termination fee without that.

MR. NAYLOR: Right. And I understand that, Your Honor, and I'm just checking it myself, because I had had the understanding that that was the

case. And perhaps my friends will tell us it's not. But assuming that it is, that that then creates a situation where the vote-down of the merger would then potentially impair cash flow and implicate certain debt covenants.

THE COURT: Look, why don't you have somebody find that while you are moving on to something else.

MR. NAYLOR: Yes. And we certainly will. So I'm happy to -- Your Honor has made it clear that you have reviewed the complaint and the motions. If there is anything that in particular interests you, I'm certainly happy to turn to that.

THE COURT: Yes. Again, in a post-C&J world, other than the naked no-vote claim, assuming it exists, what is your basis for suggesting that I would be in a position to grant injunctive relief based on what you've alleged?

MR. NAYLOR: Well, obviously, there are the disclosure claims. And that sort of --

THE COURT: Yes; I thought I said your process claims. If I didn't limit it to your process claims, I meant to limit it to your process claims.

MR. NAYLOR: No; and you did limit it

to the process claims in your initial question. I apologize.

No, I think that that is the most important issue that we're looking at here. We also have --

THE COURT: Which?

MR. NAYLOR: The naked no-vote. There is also the definition of superior proposal, which is unusually high in this circumstance, 75 percent. You know, you normally see 50. There's also an issue regarding which shares get counted for appraisal.

So I can see a number of routes to a potential injunctive relief on the process that are not necessarily addressable by monetary relief.

Then, to follow-up on that, is the disclosure point. I mean, there are existing disclosure claims that have not been cured by the defendants' latest disclosure. Those are obviously the types of claims that are addressable by injunctive relief and are ripe for an expedited proceeding.

THE COURT: Okay. Anything else before I hear from the defendants?

MR. NAYLOR: Yes. I would like to address two of the points that they really rely on in

their opposition, which are the go-shop and the laches points.

On the go-shop, the defendants have relied heavily on that, obviously. Our point is that in light of the downward revisions to projections by this self-interested management group, that there can't be any confidence that a go-shopper would be getting a fair picture of inherent value of the company. And along those same lines, where the integrity of a process is undermined, obviously I don't think we can have any faith in the efficacy of a go-shop process.

Regarding laches, defendants raise that but don't actually convincingly state any real-world prejudice that they would face if an expedition were granted. They didn't file their defendant proxy until after the complaint was filed. And, frankly, they've been on notice of the claims for several weeks prior to that. Now, granted, that was a different action. But they certainly understood the substance of the action and the substance of what we were looking for in an expedited discovery program and, in fact, engaged with us for several weeks in the negotiation of such a process. So I don't see any

legitimate prejudice that they could possibly articulate with their laches point.

THE COURT: All right.

Mr. Bornstein, are you going to talk for the defendants?

MR. BORNSTEIN: I am, Your Honor.

THE COURT: Please, do.

MR. BORNSTEIN: Thank you. So I'll start with the question that Your Honor raised about the termination fee. Your Honor's reading of the contract is correct, or at least, I should say, it's the same as mine and I, therefore, believe it's correct. And it's the view of the company, as well, that there is no naked no-vote termination fee payable.

I think that addresses the claims, or the arguments with respect to the alleged preclusiveness of the deal protection provisions and, to take Your Honor's phrase, in a post-C&J world, I think also addresses the question of irreparable harm on the process claims.

I can address briefly, if Your Honor is interested, the argument that was made with respect to the go-shop and just make the observation that we

have here no specific allegations of fault in the go-shop process. Nothing like defendants being -- excuse me. Bidders being steered away. There's just a very general allegation that there were conflicts because of Goldman's presence in the process. But we had another advisor, we had a special committee, and the management directors who were involved in the buy side were expressly permitted to team up with anyone else who came along with a better offer. There is just nothing other than a vague allegation, "Well, this process was tainted and, therefore, the go-shop can't be considered effective," despite the number of people who came through, the 13 folks who signed NDAs and kicked the tires, and nothing came of it.

With respect to the disclosure claims, we did our best to provide Your Honor a markup so that the Court can see -- it's our Exhibit C -- can see exactly what we've done to moot the disclosure claims, obviously without conceding that any mooting was necessary and that there were any material deficiencies with the preliminary proxy, but have done it anyway to eliminate the risk. Your Honor is aware of the incentives that drive defendants to do that in certain instances, and this is one.

Unless the Court has questions about the disclosure issues, I would propose not to take the Court's time in dealing with them. I think what's left is -- speaks for itself in terms of not being material to the shareholders' decisions.

I suppose, on the disclosures, the only thing I would pause on is the Goldman engagement letter. There is an allegation that the proxy doesn't disclose adequately how the fee is calculated. We have the $8 million number of the fee. We have the percentage of the fee. And what is allegedly missing is the base on which that percentage is calculated, how the aggregate consideration payable in connection with the merger is determined. And that's just math. We have the amount and we have the percentage. You can just do some division and come up with the base that was used in coming up with the $8 million figure. So there's no problem there, nothing omitted there and nothing material in the rest of the -- the rest of the information that is alleged to have been omitted.

And on laches, the argument that I heard my friend emphasize was the question of prejudice. What I would ask is for the Court to imagine that we were dealing with a case now that has

been brought by -- brought by a different law firm who just showed up, a plaintiff who just showed up for the first time when we had a month to go until the vote. Now we're three weeks or so until the vote. But after the expiration of nearly two months, and just about a month to go, a plaintiff who showed up saying "We need expedited discovery and we're interested in trying to enjoin this transaction" I think wouldn't get a lot of sympathy from the Court. And that's what we have.

It is true that counsel had a prior client who was involved, but I don't -- I'm not aware why that should make -- why that should make a difference.

And here we are now, with a very short period of time before the vote, and suffer prejudice, frankly, through no fault of our own. I recognize there is a frustration because of what happened to the prior client, but that wasn't something that defendants had anything to do with and, I would submit, shouldn't be forced to suffer the prejudice of having an extremely compressed schedule as a result.

So unless Your Honor has any other questions, I'll stop talking.

THE COURT: No. Thank you,

Mr. Bornstein.

Does anyone else for the defendants have anything that they would like to add?

MR. WILLIAMS: Nothing, Your Honor.

MR. NAYLOR: Your Honor, this is Zach Naylor again. If the defendants have nothing, I just wanted to get back on the naked no-vote provision. And I -- it appears that we are mistaken in terms of our reading of the provision. So we apologize for that. But I think we misconstrued the terms of the contract.

THE COURT: All right. Anything else that you want to add besides that?

MR. NAYLOR: No, not at this time.

THE COURT: All right. Great.

Well, thank you all for getting on the phone. I appreciate it. I also appreciate the submissions that were made. They were very helpful, as well as the comments that were made today.

I'm denying the motion to expedite. I'm denying the motion to expedite on the process claims because of the absence of irreparable harm that would eventually support injunctive relief.

We are in a post-C&J world. I think

C&J makes clear that this type of transaction scenario is not something that the courts are supposed to police through injunctive remedies. In fact, unless there is sufficient certainty to be able to enjoin the deal as a whole, which will really only exist if there is a topping bid in the offing, this is not the type of proceeding that is something that will end up in a preliminary injunction.

If it's not the type of thing that will end up in a preliminary injunction, it doesn't make a lot of sense to put in a lot of effort doing something that isn't going to end up in a preliminary injunction. The whole point of having an expedited hearing on an application for a preliminary injunction is if you might ultimately have a preliminary injunction.

The premise of this approach, as I understand it, which is an entirely rational view of the world, is that stockholders are able to make these types of decisions with information about whether or not to take the deal, including information about conflicts and what went on in the go-shop process, et cetera. This is, therefore, the type of issue that should be left for the stockholders to decide and

would be left to the stockholders to decide, and it's not a situation where the Court would, absent truly extraordinary circumstances, tailor an injunction or do something along those lines.

So in the post-C&J world, the motion to expedite, to the extent it addresses process claims and the substantive terms of the deal, is denied.

That then leaves us with disclosure. The disclosure issues aren't teed up as anything that needs discovery. The disclosure issues are teed up as things that are omissions. They are alleged to be material omissions, but they are, nevertheless, alleged to be omissions. They are not teed up as things where people need to go in and investigate whether something's happening. That would be discovery in search of a claim rather than discovery in support of an existing claim.

What that means is that for the claims that have been made, they have already been mooted, in part, by the defendants. Just as the defendants have done that, they can look at the remaining arguments that the plaintiffs have. They can consult with their highly experienced and expert securities lawyers, who make decisions about materiality all the time, and

they can make the decision on risk. If they want to do further mooting action, that's fine. That's certainly within their power. And I'm not suggesting one way or the other that it needs to be done, but it's something that they can do.

If they assess these claims, these remaining issues, as not being something that is worth dealing with, we can readily address them in a post-close setting as to whether there's actually something that was both material and was omitted. At that point, I'll have the benefit of full briefing from both sides. I can address the matter in due course, rather than in the context of a quick motion to expedite, or even in the context of a moderately less quick preliminary injunction.

If there are disclosures that survive a motion to dismiss, that will obviously have consequences. It will have consequences for the standard of review. It will have consequences for the availability of appraisal and quasi-appraisal, and all sorts of good stuff. But that's all the type of thing that can be addressed post-close. There isn't a need to deal with these things pre-close.

So, for all those reasons, the motion

to expedite is denied. Thank you again for getting on the phone. I do appreciate everyone's time, and I hope that you-all manage to stay relatively warm and dry on this somewhat brisk day.

Thank you, everyone. Have a good one.

(Teleconference concluded at 4:55 p.m.)

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CERTIFICATE

I, DEBRA A. DONNELLY, Official Court Reporter for the Court of Chancery of the State of Delaware, Registered Merit Reporter, Certified Realtime Reporter, and Delaware Notary Public, do hereby certify that the foregoing pages numbered 3 through 22 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated, except for the rulings at pages 18 through 22, which were revised by the Vice Chancellor.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 16th day of March, 2016.

/s/ Debra A. Donnelly

Debra A. Donnelly
Official Court Reporter
Registered Merit Reporter
Certified Realtime Reporter
Delaware Notary Public