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Delaware Supreme Court Reinforces High Standard for Establishing an Acquiror's Liability

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On June 17, 2025, in *In re Columbia Pipeline Group Merger Litigation*,[1] the Delaware Supreme Court reversed a nearly $200 million damages award against TransCanada Corporation (TransCanada), a Canadian energy company (now TC Energy), for aiding and abetting Columbia Pipeline Group, Inc.'s (Columbia) breaches of fiduciary duty in connection with TransCanada's acquisition of Columbia. Notably, the Court reaffirmed its recent decision (*In re Mindbody, Inc. Stockholder Litigation*, 332 A.3d 349 (Del. 2024)) that an acquiror cannot be liable for a seller's breach of fiduciary duty unless it possesses actual knowledge of both the (1) seller's breach of fiduciary duty and (2) wrongfulness of its own conduct. This decision is a reminder that counterparty aiding and abetting claims are exceedingly difficult to prove, particularly against an acquiror accused of aiding and abetting a breach by a sell-side fiduciary.

Background

In 2015, Columbia and TransCanada commenced merger negotiations. Robert Skaggs Jr., Columbia's CEO and the chair of its board of directors, Stephen Smith, Columbia's CFO, and Glenn Kettering, Columbia business unit's CEO, were on the verge of retiring and were contractually entitled to favorable benefits upon a change-in-control. Skaggs and Smith led negotiations on behalf of Columbia, while François Poirier (TransCanada's Senior Vice President for Strategy and Corporate Development) led negotiations on behalf of TransCanada. In November 2015, TransCanada and Columbia entered into an NDA, which contained a standstill provision (the Standstill).

Later that month, notwithstanding the terms of the Standstill, TransCanada proposed a deal to acquire Columbia at $25 to $26 per share. The Columbia board rebuffed the offer not because TransCanada had technically violated the Standstill, but because it deemed the offer too low. In January 2016, Skaggs presented to Columbia's board TransCanada's $25 to $28 proposal. On March 9, 2016, the TransCanada board authorized an offer of $26 per share. TransCanada then proposed to acquire Columbia at $25.50 per share and planned to put out a press release announcing that discussions have ended in the event Columbia did not accept the reduced offer. Columbia's board voted to approve TransCanada's reduced offer at $25.50 per share.

Under the Merger Agreement, TransCanada was obligated to ensure that Columbia's proxy statement was not misleading by, among other things informing Columbia of material omissions. Several TransCanada executives, including Poirier, apprised Columbia that they would carefully examine the background section of the Merger Agreement. Before the proxy was distributed to Columbia's stockholders, TransCanada's management had the chance to review it. At a meeting in June 2016, holders of a majority of the outstanding Columbia stock voted for the merger. The merger closed on July 1, 2016. After it closed, Skaggs, Smith, and Kettering retired and received millions of dollars in retirement benefits —more than what they would have received absent a change-in-control transaction.

Procedural History

In September 2017, certain Columbia stockholders brought an appraisal action in the Delaware Court of Chancery. In that action, the Court determined that (1) the fair value of Columbia's common stock on the effective date of the merger was $25.50 per share and (2) the proxy statement contained material misstatements and omissions, including, for instance, that the proxy "failed to mention that Smith invited a bid and told Poirier that TransCanada did not face competition."[2]

In July 2018, Columbia stockholders sued Skaggs, Smith, and TransCanada. Plaintiffs claimed that Skaggs and Smith breached their (i) duty of loyalty by deliberately timing the merger to favor their own self-interest (including their change-in-control benefits) over the interests of Columbia and its stockholders and (ii) duty of disclosure in connection with the false and misleading proxy statement. Plaintiffs also alleged that the Columbia board of directors breached their duty of care by neglecting to supply adequate oversight over the merger process, and TransCanada aided and abetted the fiduciary breaches during the process and aided and abetted breaches of the duty of disclosure with respect to the proxy statement. During discovery, plaintiffs settled with Skaggs and Smith, leaving TransCanada as the only defendant.

The Court of Chancery found in favor of Columbia's stockholders, stating that plaintiffs prevailed on the disclosure claim and sale-process claim. In particular, the Court of Chancery, applying an enhanced scrutiny standard of review because the "period leading up to the Merger . . . could and did cause the interests of the corporate fiduciaries and their beneficiaries to diverge,"[3] concluded that Skaggs and Smith violated their duty of loyalty and that Columbia ran afoul of its duty of care. Concerning plaintiffs' aiding and abetting cause of action against TransCanada, the Court of Chancery maintained that the plaintiffs established that TransCanada had constructive knowledge of and culpably participated in Smith's and Skaggs's breaches of fiduciary duty. Further, the Court of Chancery also found TransCanada liable for aiding and abetting the Columbia directors' and officers' disclosure violation (*i.e.*, issuing a misleading proxy) because TransCanada had "an obligation to inform Columbia of any material omissions but remained silent when the draft Proxy failed to disclose the full panoply of Skaggs's and Smith's interactions with TransCanada in the sale process[.]"[4] As to total damages, the Court of Chancery awarded plaintiffs roughly $200 million.

On appeal, TransCanada principally contended that the Court of Chancery erred in finding aiding and abetting liability.[5]

The Delaware Supreme Court's Decision

Writing for the Delaware Supreme Court, Justice Gary F. Traynor listed the elements of an aiding and abetting tort claim: "(1) the existence of a fiduciary relationship, (2) a breach of the fiduciary's duty, . . . (3) knowing participation in that breach by the defendants, and (4) damages proximately caused by the breach."[6] The Court applied its recent decision in *Mindbody*, which held that: "for an acquiror to be held liable for aiding and abetting a sell-side breach of fiduciary duty, the acquiror must have actual knowledge of both the target's breach and the wrongfulness of its own conduct."[7] (*Mindbody* was issued after the Delaware Court of Chancery's opinion in this case.)

With respect to whether TransCanada had actual knowledge that Skaggs and Smith breached their fiduciary duties, the Court observed that "Skaggs and Smith wanted to 'do the right thing' in a professional manner [which] would have manifested itself to Poirier and TransCanada when they rejected several of TransCanada's proposals even though they were at a premium to the current Columbia share price."[8] The Court disagreed with the Court of Chancery's decision to construe Skaggs's and Smith's "lack of interest in enforcing the Standstill" as evidence that they were breaching their fiduciary duties.[9]

As to whether TransCanada had actual knowledge that the Columbia board was breaching its duty of care by supplying insufficient oversight of Skaggs and Smith, the Court explained that TransCanada did not have direct interactions with the

board members. According to the Court, this "imputation of knowledge" does not support a finding that "TransCanada actually knew of the board's breach."[10]

Turning next to the Court of Chancery's finding that TransCanada culpably participated in the breaches of fiduciary duties,[11] the Court, referring to *Mindbody*,[12] said that "whether a defendant's participation in another's breach of duty is culpable hinges in large part on whether the defendant substantially assisted in the commission of the [sell-side fiduciary's] breach."[13] The Court further stated: "[A] bidder's aggressive bargaining tactics, however disquieting, do not constitute aiding and abetting unless the bidder has substantially assisted, that is, 'knowingly participated' *in the* breach."[14]

Here, the Court stated that "taking advantage of a personal relationship and superior negotiating skills and experience" should not lead to aiding and abetting liability.[15] Furthermore, the Court determined that TransCanada's breach of the Standstill was not evidence of its culpable participation in the seller's breaches of fiduciary duty, noting that Columbia and TransCanada viewed the Standstill as allowing "informal communications."[16] The Court also concluded that the record did not support a finding that "there was a $26-per-share deal on which TransCanada could have reneged and followed with a coercive offer."[17] Accordingly, the Court held that TransCanada did not provide substantial assistance as mandated for aiding and abetting liability to attach.

With respect to TransCanada's aiding and abetting liability on the disclosure claim, the Court found that TransCanada did not culpably participate in the disclosure breaches. In assessing "the amount, kind, and duration of assistance given" by TransCanada, the Court reasoned that, as in *Mindbody*, TransCanada neither "propose[d] any of the statements that the Court of Chancery found to be misleading" nor "did it suggest omitting material information from the Proxy."[18] With regard to TransCanada's actual knowledge that neglecting to rectify the proxy was "[wrongful] conduct that affirmatively aided breaches of Skaggs's, Smith's and the Columbia board's fiduciary duties[,]"[19] the Court held that, based on the record, TransCanada could not have knowingly participated in any of the disclosure breaches.

Takeaways

To be liable for aiding and abetting, an acquiror must possess actual knowledge—not constructive knowledge—of the seller's breach of fiduciary duty and the wrongfulness of its own conduct. Acquirors can negotiate the best possible transaction for themselves, even if the seller is inexperienced.

Columbia Pipeline Group is consistent with the principle that, under Delaware law, "aiding and abetting claim[s] [are] among the most difficult to prove."[20] This makes ample sense, given that, during M&A negotiations, an acquiror "has limited visibility into the seller's internal governance dynamics."[21] "That limitation, coupled with the [acquiror's] fiduciary duty to its own stockholders to extract the best reasonably available price, erects a formidable obstacle to proving 'knowing participation.'"[22] Indeed, "a bidder's attempts to reduce the sale price through arm's-length negotiations cannot give rise to liability for aiding and abetting."[23]

As a practical matter, this decision will likely lead to fewer post-closing lawsuits brought by stockholders of acquired companies against acquirors. However, practitioners should be aware that the aiding and abetting cause of action is still available, and may remain attractive and viable in certain contexts—for instance, where an acquiror "attempts to create or exploit conflicts of interest in the board"[24] or "where the [acquiror] and the board conspire in or agree to the fiduciary breach."[25]

[1] *In re Columbia Pipeline Grp., Inc. Merger Litig.*, No. 281, 2024, 2025 WL 1693491 (Del. June 17, 2025).

[2] *In re Appraisal of Columbia Pipeline Grp., Inc.*, Cons. C.A. No. 12736-VCL, 2019 WL 3778370, at *36 (Del. Ch. Aug. 12, 2019).

[3] *In re Columbia Pipeline Grp., Inc. Merger Litig.*, 299 A.3d 393, 460 (Del. Ch. June 30, 2023).

[4] *Columbia Pipeline Grp., Inc.*, 2025 WL 1693491, at *20.

[5] TransCanada did not challenge on appeal the Court of Chancery's determination that Smith and Skaggs breached their duty of loyalty or the conclusion that Columbia's board of directors violated its duty of care.

[6] *Malpiede v. Townson*, 780 A.2d 1075, 1096 (Del. 2001) (internal citations and quotations omitted).

[7] *Columbia Pipeline Grp., Inc.*, 2025 WL 1693491, at *1.

[8] *Id.* at *25.

[9] *Id.* at *26 (internal citations and quotations omitted).

[10] *Id.*

[11] The three alleged incidents: (1) "Poirier's exploitation of Smith's inexperience in negotiating the sale of a public company"; (2) "TransCanada's violation of its $26.00 offer"; and (3) "a purported threat of a harmful disclosure if Columbia did not accept TransCanada's updated $25.50/share offer." *Id.* at *27.

[12] The *Mindbody* Court adopted factors to analyze whether a secondary actor has substantially assisted the primary actor in its wrongful conduct, including (1) "[t]he amount, kind, and duration of assistance given, including how directly involved the secondary actor was in the primary actor's conduct" and (2) "[t]he secondary actor's state of mind." *Mindbody*, 332 A.3d at 396 (internal citation omitted). These factors "encompass both the 'knowledge' and 'culpable participation' necessary for aiding-and-abetting liability." *Columbia Pipeline Grp.*, 2025 WL 1693491, at *33.

[13] *Columbia Pipeline Grp., Inc.*, 2025 WL 1693491, at *27.

[14] *Id.*

[15] *Id.* at *28.

[16] *Id.*

[17] *Id.* at *31.

[18] *Id.* at *35.

[19] *Id.* at *36.

[20] *RBC Cap. Mkts., LLC v. Jervis*, 129 A.3d 816, 866 (Del. 2015).

[21] *Columbia Pipeline Grp., Inc.*, 2025 WL 1693491, at *23.

[22] *Id.*

[23] *Malpiede*, 780 A.2d at 1097.

[24] *Id.*

[25] *Id.* at 1097-98.