

## **Delaware Court of Chancery Denies Cross-Motions for Partial Summary Judgment Pending Further Factual Development in Delaware Master Limited Partnership Unitholder Litigation**

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Vice Chancellor Glasscock, by memorandum opinion dated February 28, 2017, dismissed cross-motions for partial summary judgment in a dispute over the issuance of partnership units of Energy Transfer Equity, L.P., a Delaware master limited partnership (“ETE”). The challenged issuance (the “Issuance”) arose out of a contemplated, but never consummated, merger between ETE and The Williams Companies, Inc. (“Williams”), and was designed, according to the defendants, as a tool to improve ETE’s ability to enter into the merger by deferring some of ETE’s obligations to make distributions to its unitholders. The Issuance was intended to accomplish this by having certain unitholders give up their common units, which were entitled to quarterly distributions from ETE, in exchange for convertible units, which received distributions on a different schedule. Not all unitholders, however, were afforded the opportunity to participate in the Issuance and not all of the unitholders given the opportunity to participate chose to do so.

The lead plaintiffs in the case, Lee Levine and Chester County Employee’s Retirement Fund, sued both individually and as a class on behalf of unitholders in ETE that did not participate in the Issuance, and characterized the differing distribution schedules as favorable to the convertible unitholders and the Issuance as a distribution of wealth from ETE to the insiders who received the convertible units.

In their motion for partial summary judgment, the plaintiffs pressed two points: first, that the Issuance involved a “distribution” within the meaning of the limited partnership agreement (the “LPA”), and because it was not provided pro-rata to all unitholders (which is to say, in accordance with the percentage interests of the unitholders in ETE), it was not authorized by the LPA; and second, that because the Issuance was a conflict transaction, the defendants needed to satisfy one of four conditions to cure the conflict, one of which (“Special Approval”), was not satisfied. The defendants moved for partial summary judgment on a number of grounds, but the court framed its analysis primarily in terms of the two issues raised by the plaintiffs. The court ultimately denied the cross motions for partial summary judgment, and invited the parties to consider which other briefed issues might be mooted, informed, or made ripe for partial summary judgment by the court’s analysis.

On the first question, the court refused to grant summary judgment as to whether the Issuance was a distribution because it could not determine, as a matter of law, whether an issuance of convertible units in exchange for common units could be characterized as a “distribution” under the LPA without the further factual development that would take place at a trial. Given that the LPA did not define the term “distribution,” the court was not sufficiently convinced by the parties’ arguments, including a set of dueling definitions of the term “distribution” and references to other provisions in the LPA said to cast light on the meaning of the term, nor by its own attempt to understand the term within the context of the LPA and in everyday usage (as DRULPA does not supply a default definition), to render summary judgment appropriate.

On the second question, the court also found that summary judgment was inappropriate as to whether the defendants did or did not meet the Special Approval safe harbor within the LPA for conflicted transactions, deferring the question until further factual development could take place that would help to clarify the issue. Despite casting doubt on the defendants’ ability to rely upon the Special Approval process, in light of unresolved factual disputes between the parties regarding ETE’s Conflicts Committee, including its composition, the qualifications of its members, and whether its authorization of the Issuance was proper, the court was not able to conclusively determine whether the Special Approval safe harbor was met.

[In re Energy Transfer Equity L.P. Unitholder Litigation Memorandum Opinion](#)

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National Law Review, Volumess VII, Number 80

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