

Court Approves Findings by Baker Hughes Special Litigation Committee Represented by Quinn Emanuel

In an opinion granting a motion to terminate filed by a single-member Special Litigation Committee (SLC), the Delaware Chancery Court affirmed that while single-member committees are “not ideal,” a thorough investigation and well-reasoned report can overcome potential perceived deficiencies of a single-member committee. On April 17, 2023, the Delaware Chancery Court granted a motion by the SLC of the Baker Hughes Co.’s board to terminate a derivative case against General Electric Co. and members of the Baker Hughes board – a suit in which the shareholder plaintiffs had sought more than \$1 billion. The ruling followed a 12-month investigation by the SLC, with [Quinn Emanuel Urquhart & Sullivan, LLP](#) as its lead counsel.

The case arose out of affiliate transactions between GE and Baker Hughes in 2018. At the time, GE held a majority interest in Baker Hughes and controlled the board as the result of the merger of GE’s oil and gas division with the company in July 2017. Within a few months of the merger’s closing, GE’s liquidity crisis erupted; GE identified selling its Baker Hughes shares as a possible source of much-needed cash. However, GE’s shares were subject to a lockup through July 2019, so GE needed Baker Hughes’ consent to sell.

After months of negotiations, in November 2018, Baker Hughes agreed to a secondary offering by GE of \$2.3 billion worth of Baker Hughes shares and to Baker Hughes’ repurchase of an additional \$1.5 billion of its shares from GE. The parties also agreed to amend 19 contracts between Baker Hughes and GE affiliates signed in connection with the 2017 merger and under which GE affiliates provided products and services to Baker Hughes. The amended commercial agreements were less favorable to Baker Hughes than they had been pre-amendment.

The shareholder plaintiffs filed suit challenging the capital markets transactions and the contract amendments as unfair transactions forced on Baker Hughes by a dominant GE and by conflicted members of the Baker Hughes board. According to the plaintiffs, Baker Hughes failed to use the leverage it had over GE due to the liquidity crisis and simply acceded to one-sided GE demands. After the court denied motions to dismiss, the Baker Hughes board formed a single member SLC to determine whether pursuing the litigation was in the company’s best interests. The SLC retained Quinn Emanuel as well as Abrams & Bayliss as its legal counsel.

The SLC and its counsel undertook an exhaustive investigation, reviewing over 100,000 documents, interviewing 22 witnesses and plaintiffs’ counsel, and working with financial advisors to evaluate the fairness of the transactions. At the inquiry’s conclusion, the SLC issued a 320-page report concluding that the transactions were entirely fair and that the litigation should be terminated. Among other things, the SLC found that the plaintiffs had improperly compared the amended commercial contracts to the pre-amendment contracts even though the pre-amendment contracts were set to expire in July 2019. Their termination would have been a disaster for Baker Hughes. Recognizing they had leverage over GE but that the leverage would diminish as July 2019 approached, Baker Hughes management pressed GE to amend the contracts so that they would survive a separation from GE. Management and a Conflicts Committee of the board set, and ultimately achieved, clearly defined objectives that secured long-term access to GE products and services that were critical to Baker Hughes’ business.

The shareholder plaintiffs opposed termination of the derivative case. They challenged the fairness and reasonableness of the SLC’s investigation and conclusions under the standards required by the Delaware Supreme Court’s decision in *Zapata Corp. v. Maldonado*. Specifically, plaintiffs argued that the single

member of the SLC had allegedly improper contacts with one of the defendants, had relationships with potential defendants, received a bottle of wine from one of the defendants (as did all other Baker Hughes' directors) for a virtual happy hour during COVID, failed to value the derivative claim, failed to include in the SLC's report the SLC's investigation into advisor conflicts, and reached unreasonable conclusions.

After an evidentiary hearing before the Chancery Court on December 2022, Vice Chancellor Lori W. Will issued a 77-page opinion granting the SLC's motion to terminate. "To be sure, the committee was imperfect. Having a single member is not ideal. Nor is the fact that the member exchanged a handful of messages with an investigation subject. But despite these flaws, the committee's independence, the thoroughness of its investigation and the reasonableness of its conclusions are not in doubt." According to VC Will, none of the issues raised by plaintiffs "raise material questions of facts about whether the [SLC's] investigation was reasonable in scope and conducted in good faith."

The court also rejected the plaintiffs' challenge to the reasonableness of the SLC's conclusions, characterizing the criticisms as "scattershot" and "largely amount[ing] to disagreements with the SLC's analysis," which are not appropriate challenges under Zapata. The court rejected complaints about the SLC's failure to value the derivative claims: "Because [the SLC] determined that the 2018 transactions fell within the range of fairness, the [SLC] concluded the derivative claims asserted against GE and the remaining director defendants 'were unlikely to have value' as a litigation asset of Baker Hughes." And, "[e]ven if there were some potential for a positive monetary recovery, the [SLC] was not obligated to pursue the litigation if its good faith judgment indicated that doing so was not best for the corporation."

If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to reach out to:

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