

Case Name: **In Re El Paso Corp. Shareholder Litigation**
Case Conclusion: December 2012
Caption: Delaware Court of Chancery, C.A. No. 6949-CS
Keywords: Economic Damages; Entire Fairness; Fiduciary Duties
Industry: Natural Gas Pipelines
Professionals: David G. Clarke, ASA, Martin J. Ferguson, Michael J. Mattson, William Jeffers, CFA, and William P. McInerney, ASA

In October 2011, counsel for plaintiffs filed a class action complaint in the Delaware Court of Chancery on behalf of shareholders of natural gas pipeline company El Paso Corporation, challenging the proposed \$38 billion sale of the company to competitor Kinder Morgan, Inc. Among other things, the complaint alleged that El Paso's Board of Directors breached their fiduciary duties in connection with the merger, and that the consideration to be paid to El Paso shareholders was inadequate. Goldman Sachs and Morgan Stanley served as financial advisors to El Paso's Board of Directors.

David G. Clarke, ASA, a Managing Principal of the Griffing Group, submitted opening and rebuttal expert reports and testified at deposition, opining that (i) the financial analyses prepared by Goldman Sachs and Morgan Stanley contained significant errors that should have been recognized by El Paso's Board of Directors, and (ii) if the errors had been recognized, it would have been clear to the board that the consideration to be paid to El Paso shareholders was inadequate.

In February 2012, Chancellor Leo E. Strine, Jr. denied the preliminary injunction motion, finding that while "plaintiffs [had] a reasonable likelihood of success in proving that the Merger was tainted by disloyalty," the "balance of harms counsel[ed] against a preliminary injunction." Plaintiffs proceeded with a damages case, and in September 2012, the parties entered into a settlement agreement under which the plaintiff class would receive \$110 million in cash. In December 2012, Chancellor Strine granted final approval of the settlement.

David G. Clarke, ASA was assisted by Martin J. Ferguson, Michael J. Mattson, William Jeffers, CFA, and William P. McInerney, ASA. The plaintiffs were represented by Stuart M. Grant, Megan D. McIntyre, and Christine M. Mackintosh of Grant & Eisenhofer P.A.; Christine S. Azar, Ira Schochet, and Charles B. Vincent of Labaton Sucharow LLP; and Mark Lebovitch and Jeremy Friedman of Bernstein Litowitz Berger & Grossmann LLP.