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Case No. 2020-0707-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

STEVEN WOLOSKY, on behalf of himself and all similarly situated holders of THE WILLIAMS COMPANIES, INC.,

Plaintiff,

v.

ALAN S. ARMSTRONG, STEPHEN W. BERGSTROM, NANCY K. BUESE, STEPHEN I. CHAZEN, CHARLES I. COGUT, MICHAEL A. CREEL, VICKI L. FULLER, PETER A. RAGAUSS, SCOTT D. SHEFFIELD, MURRAY D. SMITH, WILLIAM H. SPENCE, THE WILLIAMS COMPANIES, INC., and COMPUTERSHARE TRUST COMPANY, N.A.,

Defendants.

C.A. No. _____

UNSWORN VERIFIED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Steven Wolosky ("Plaintiff"), on behalf of himself and all similarly situated holders of The Williams Companies, Inc. ("Williams" or the "Company") common stock, by and through his undersigned counsel, brings this Complaint for Declaratory and Injunctive Relief (the "Complaint") against the Williams board of directors (the "Board") for breaches of their fiduciary duties in connection with their adoption of an unprecedented poison pill or shareholder rights plan (the "Poison Pill"

or the "Pill"). The Company and Computershare Trust Company, N.A. ("Computershare Trust") are named herein as defendants in their capacity as parties to the rights agreement (the "Rights Agreement") that governs the Poison Pill. The allegations in the Complaint are based on Plaintiff's knowledge as to himself and on information and belief, including the investigation of counsel and review of publicly available information as to all other matters.

I. NATURE OF THE ACTION

1. This action seeks to force the elimination of an extremely aggressive overreach of corporate power. On March 19, 2020, the Williams definitive proxy statement was mailed for its April 28, 2020, annual meeting of stockholders. On March 20, 2020, the Board announced that it had unilaterally adopted an extraordinary and novel version of a "Poison Pill" shareholder rights plan. As explained below, the peculiar combination of a 5% trigger and a vague and grossly overbroad definition of "Acting-in-Concert" in the Poison Pill exceeds any prior notion of permissible exercise of director power.

2. The Poison Pill is unprecedented for two reasons. *First*, the Pill utilizes a 5% triggering threshold (the "5% Trigger"), which, outside of the limited category of pills adopted to protect substantial net operating losses ("NOLs"), has never been upheld as an appropriate triggering threshold for a rights plan. The Company does not have substantial at-risk NOLs, and the Board did not claim to be protecting such

NOLs when it announced its adoption of the Pill. Implicit or express judicial approbation for this Pill would set a new low "clear day" trigger that would hobble all forms of stockholder activism, regardless of any notion of proportionality.

3. *Second*, the Pill also contains broad and facially unmanageable "aggregation" and "acting in concert" provisions (the "Wolfpack" provisions), which go far beyond the aggregation provisions previously approved in the context of rights plans. In concert with the ultra-low 5% Trigger, these Wolfpack provisions are so draconian as to be effectively preclusive and coercive and shut down the ability of any stockholder or group of stockholders to seek to influence the direction of the Company.

4. Standing alone, both the 5% Trigger and the Wolfpack provisions separately undermine the stockholder franchise, which our law recognizes as the single most important legitimizing factor to the Delaware corporate governance scheme. The two working in tandem are so insidious as to render the franchise meaningless.

5. Delaware cases have given directors a certain degree of leeway to act to protect the Company from reasonably perceived threats to corporate policy and effectiveness. But that same case law requires proportionality: the device utilized by the Board must be "proportional" to the threat reasonably perceived. *Unocal Corp. v. Mesa Petroleum Corp.*, 493 A.2d 946 (Del. 1985). Delaware law does not

empower directors to respond to a threat in a manner which is so draconian that it effectively strips stockholders of the ability to effectively exercise the franchise. As the late Chancellor Allen explained in *Blasius Industries, Inc. v. Atlas Corp.*, 564 A.2d 637 (1988): "The theory of our corporation law confers power upon directors as the agents of the shareholders; it does not create Platonic masters."

6. The Company, through its Chief Financial Officer ("CFO"), expressly admitted that the Poison Pill was "***not***" adopted "in response to any specific threat."

7. Where, as here, the Board did not act in response to "any specific threat" but instead, at best to an "environment" that the Board felt threatened by, utilizing the twin nuclear weapons of the 5% Trigger and the Wolfpack provisions in this Pill cannot stand as a "reasonable" response to a non-specific "threat."

8. By moving to undermine the ability of any dissident to mount an effective proxy contest, the Defendants effectively denuded the corporate franchise and breached their fiduciary duties.

9. A prompt adjudication of this matter is essential to protect and restore the franchise.

II. THE PARTIES

10. Plaintiff is and has been a common stockholder of the Company at all relevant times.

11. Defendant Alan S. Armstrong is a director and the Company's

President and Chief Executive Officer.

12. Defendant Stephen W. Bergstrom has served as a director of the Company and as the Chairman of the Board since 2016.

13. Defendant Nancy K. Buese has served as a director of the Company since 2018.

14. Defendant Stephen I. Chazen has served as a director of the Company since 2016.

15. Defendant Charles I. Cogut has served as a director of the Company since 2016.

16. Defendant Michael A. Creel has served as a director of the Company since 2016.

17. Defendant Vicki L. Fuller has served as a director of the Company since 2018.

18. Defendant Peter A. Ragauss has served as a director of the Company since 2016.

19. Defendant Scott D. Sheffield has served as a director of the Company since 2016.

20. Defendant Murray D. Smith has served as a director of the Company since 2012.

21. The Defendants described in ¶¶ 11–20 are the "Defendant Directors."

22. Defendant Williams is a Delaware corporation headquartered in Tulsa, Oklahoma, that operates in the energy infrastructure business. The Company's shares are traded on the New York Stock Exchange ("NYSE") under the ticker symbol "WMB." It is named herein solely as a party to the rights agreement governing the Pill.

23. Defendant Computershare Trust is named herein in its capacity as the rights agent for the Poison Pill and as a party to the Rights Agreement. Computershare Trust is incorporated in Massachusetts.

III. SUBSTANTIVE ALLEGATIONS

A. The Williams Board Unilaterally Adopts a Poison Pill

24. On March 20, 2020, Williams announced that the Board had approved the adoption of the Poison Pill and declared a dividend of one right (each a "Right" and together the "Rights") for each share of Williams common stock outstanding as of close of business on March 30, 2020, which the Board set as the record date. By its terms, the Pill expires on March 20, 2021.

25. Under the terms of the Pill, the Rights become exercisable if a person or group, including a group of persons deemed to be "acting in concert" with each other, acquires beneficial ownership of 5% or more of Williams common stock in one or more transactions not approved in advance by the Defendant Directors.

26. In the event that the Rights become exercisable, each holder of Rights,

other than the "acquiring person" or group, whose Rights become void, will have the right to purchase (upon payment of the exercise price in accordance with the terms of the Pill) a number of shares of Williams common stock having a market value of twice such price. Likewise, if Williams is acquired after an acquiring person acquires 5% or more of Williams common stock, each holder of the Rights will thereafter have the right to purchase a number of shares of common stock of the acquiring person having a market value of twice the price paid to exercise the holder's Rights.

B. The Stunningly Low 5% Trigger

27. The Poison Pill is extraordinary in two respects that interact here: the 5% Trigger and the Wolfpack provisions.

28. The initial poison pill, first litigated and approved in Delaware in 1984, had a 20% triggering threshold. Thereafter, following the passage of 8 *Del. C.* § 203 ("Section 203") in 1988, pills began to migrate to 15% triggering thresholds, mimicking the 15% threshold in Section 203.

29. Rather than utilize the common 15% triggering threshold, however, the Pill utilizes a stunningly low 5% trigger.[1]

[1] According to Institutional Investor Services, of the 14 companies to adopt poison pills between March 13 and March 31, 2020 in response to the COVID-19 pandemic, only Williams adopted a threshold trigger below 10%.

30. There is only one circumstance in which a 5% trigger has ever been judicially authorized under Delaware jurisprudence. Specifically, a board acting to protect valuable NOL assets which were directly threatened by an acquiror acting in a manner which put the company's NOL assets at risk was permitted to utilize a 5% trigger. *See Versata Enters., Inc., & Trilogy Inc. v. Selectica, Inc.*, 5 A.3d 586 (Del. 2010) (henceforth, "*Selectica*").

31. NOL pills draw the justification for their extremely low trigger from the fact that federal tax law—specifically, certain provisions of Internal Revenue Code Section 382 ("Section 382")—aggregates the ownership changes of 5% holders, or those that become 5% holders, during a defined period of time. Section 382 then precludes the use of NOLs where a certain threshold of aggregated 5%-or-above transactions is exceeded. Thus, a NOL pill is designed to protect a very specific corporate asset (NOL carryforwards) against destruction as a result of block trading in the market.

32. But the Defendant Directors did not attempt to justify their use of the 5% Trigger based on the need to protect Williams' NOL assets. Indeed, Williams' NOLs are not a meaningful part of the overall value of the Company,[2] and, unlike

[2] According to the Company's Form 10-K filed with the U.S. Securities and Exchange Commission on February 24, 2020, as of December 31, 2019, the Company had $544 million in "federal loss carryovers" and $362 million in "state

Selectica, the sole Delaware case to support the use of an NOL pill to protect such assets, there was no specific market activity which posed a "threat" to NOLs here.

33. The Company gave no indication that they were concerned about any block acquisitions of the Company's stock, or that they even faced contemporaneous stockholder activism. While Williams had faced stockholder activism from Corvex Management LP and Soroban Capital Partners between 2013 and 2016, as of August 2020, no Schedule 13D filing had been filed disclosing over 5% ownership in Williams in over two years.

34. Instead, the Defendant Directors appear to have relied on a general "threat" of low prices for oil and gas related stocks and market volatility resulting from the COVID-19 pandemic. In a Schedule 14A amendment filed by the Company on March 30, 2020, the Company explained:

> The Board determined that the adoption of the Rights Agreement is appropriate in light of the extreme market dislocation that has resulted in the company's stock being fundamentally undervalued. The conditions stemming from the impact of COVID-19 on the economy and the volatility of the oil market have resulted in significant declines in the company's stock price. The Rights Agreement is intended to enable all Williams stockholders to realize the full value of their equity investment and to reduce the likelihood of those seeking short-term

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losses and credits." *Id*. at 110. Williams' tax losses represent a mere fraction of the more than $46 billion in assets listed on the Company's balance sheet (*see id*.at 78) and approximately $26 billion market capitalization. In stark contrast, Selectica had $160 million in NOLs for federal tax purposes and a roughly $23 million market capitalization. *Selectica*, 5 A.3d at 590.

> gains taking advantage of current market conditions at the expense of the long-term interests of stockholders or of any person or group gaining control of Williams through open market accumulation or other tactics (especially in volatile markets) without paying an appropriate control premium.

35. In other words: the share price was low and the Defendant Directors did not believe that the market was efficient.

36. Nothing about the "threat" identified justified the use of either the 5% Trigger or the Wolfpack provisions, described in greater detail below.

37. The 5% Trigger is a third of the triggering amount customarily utilized in poison pills, and there is nothing about the market capitalization of Williams (currently approximately $26 billion) or its stockholder profile which suggested that utilizing a 5% Trigger was necessary or appropriate.

38. Not only is the 5% Trigger not a "reasonable" response to the threat of market volatility, but it also has direct and profound effects on the corporate franchise, which make it coercive and effectively preclusive.

39. The 5% Trigger precludes any stockholder interested in mounting a proxy contest for any reason from buying 5% or more of the shares of the Company and, as explained in greater detail below, from reaching out to other similarly minded stockholders. Thus, any proxy contestant would have to begin a contest to unseat the Board with holdings of under 5%, regardless of how well it is funded; regardless of how beneficial its platform for the Company; and regardless of how poorly the

Director Defendants had performed as stewards of Company assets and stockholder interests. The inability to purchase or amass more than 5% of the stock of the Company in connection with a proxy fight puts any proxy contestant at a severe disadvantage and is likely to dissuade or preclude proxy contests as long as the Pill is in force.

C. The Vague, Overbroad and Unmanageable Wolfpack Provisions

40. The 5% Trigger is not the only evidence to suggest that this Board was focused more on its own incumbency than the supposed "threat" it found in a supposedly inefficient market for Williams' stock.

41. At the same time that the Defendants approved the 5% Trigger, they also approved a highly preclusive and coercive method of counting shares for purposes of determining whether a stockholder or group of stockholders held (collectively) more than 5% of the Company's outstanding common shares – the Wolfpack provisions.

42. The Poison Pill deems a person the "Beneficial Owner" of any securities that:

> are beneficially owned, directly or indirectly, by any other Person (or any Affiliate or Associate thereof) and with which such Person or any of its Affiliates or Associates (A) is Acting in Concert or (B) has any agreement, arrangement or other understanding (whether or not in writing) for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy or consent as described in the proviso . . . above . . . .

43. Pills that have been the subject of litigation in the Delaware Courts almost universally have defined "beneficial ownership" by reference to the second of the two definitions set forth above, that found in subpart (B). That definition, borrowing liberally from the aggregation rules of Section 13D of the Securities Exchange Act of 1934, is widely utilized, and has a fairly well-established basis for interpretation and application.

44. What differentiates the Pill is the addition of a new definition of "beneficial ownership": the "Acting in Concert" prong added in subpart (A) above.

45. The Pill deems a Person to be "Acting in Concert" with another:

> if such Person knowingly acts (whether or not pursuant to an express agreement, arrangement or understanding) at any time after the first public announcement of the adoption of this Rights Agreement, in concert or in parallel with such other Person, or towards a common goal with such other Person, relating to changing or influencing the control of the Company or in connection with or as a participant in any transaction having that purpose or effect, where (i) each Person is conscious of the other Person's conduct and this awareness is an element in their respective decision-making processes and (ii) at least one additional factor supports a determination by the Board that such Persons intended to act in concert or in parallel, which additional factors may include exchanging information, attending meetings, conducting discussions, or making or soliciting invitations to act in concert or in parallel; provided that, the additional factor required shall not include actions by an officer or director of the Company acting in such capacities. A Person who is Acting in Concert with another Person shall be deemed to be Acting in Concert with any third party who is also Acting in Concert with such other Person.

46. As is evident on its face, the definition of "Acting in Concert" goes far beyond the previously customary "agreement, arrangement or understanding."

47. No longer does the Board need to find proof of a handshake or even an "understanding." Now, all that needs happen to trigger the Pill is that the Board determines that Party A has decided to try to "influence" (but not even change) control of the Company; Party B is "conscious" of Party A's conduct (and Party A of Party B's); that awareness is an "element in their respective decision-making"; and they attend the same meeting (whether or not for any particular purpose or even knowingly so); exchange information (apparently of any sort); *or* have a discussion (it appears that weather patterns would suffice).

48. While the permutations which could trigger this aggregation clause are seemingly endless, it is useful to unpack the provision with a simple hypothetical. Assume that Berkshire Hathaway buys 4.99% of the stock of the Company (to avoid the 5% Trigger) and, in order to capture the Board's attention in a public manner, files a Schedule 13D with the SEC. Party B, an investor whose investment strategy is to emulate Berkshire's investments, buys Williams shares and files its own Schedule 13D. Berkshire, monitoring the Williams SEC filings, becomes aware of Party B's filing but has no idea who Party B is. Berkshire has no communication whatsoever with Party B, and vice versa.

49. Both Warren Buffett and Party B (independently) attend the Williams annual stockholders meeting. They don't meet; they don't talk; they don't even wink

at each other. In those circumstances, they have triggered the Pill since they are "Acting in Concert" for purposes of the definition in the Pill set forth above.

50. Whatever anyone's views of particular forms of activism or activists, Delaware law has to date ensured the ability of investors to exercise their franchise rights. Boards have been permitted to wield the extraordinary power of the poison pill only when the pill does not materially chill or preclude the ability to exercise franchise rights – including running a proxy contest. By preventing legitimate forms of activism by associating unrelated investors together, the Wolfpack provisions render the Poison Pill invalid.

51. The Wolfpack provisions sweep far too broadly, and, together with the 5% Trigger, are an unreasonable and non-proportional response to the "threat" of an inefficient market in Williams securities. Indeed, the Wolfpack provisions are, on their face, unrelated to the supposed "threat" identified by the Defendants, even if it were a threat that would justify adopting a "plain vanilla" 15% rights plan. To the contrary, they betray an overt entrenchment animus on the part of the Board and are evidence of a breach of each Defendant Directors' duty of loyalty.

52. Even more insidiously, the Wolfpack provisions are asymmetric, that is, they apply to stockholders, but contain express carve-outs for the Company's officers and directors. Thus, when faced with a threat to their incumbency, the officers and directors of the Company can each buy as much stock as they wish up

to the 5% Trigger, and hold as many meetings, discussions, or solicitations to act in parallel as they please, all without triggering the Wolfpack aggregation provisions. The asymmetric nature of the Wolfpack provisions further tilts the franchise against stockholders and is further evidence of an entrenchment animus by Defendants and a breach of their duty of loyalty.

53. Finally, the Wolfpack provisions "daisy chain" aggregation such that it is likely that a person subject to the provision would have no way to know with whom he or she is "Acting in Concert," since the provision states that "A Person who is Acting in Concert with another Person shall be deemed to be Acting in Concert with any third party who is also Acting in Concert with such other Person."

54. A direct result of this unknowable aggregation is that any rational actor is likely to be coerced not to mount a proxy or consent contest precisely because there would be no way to understand whether the aggregation rules in such a contest would present a triggering of the Pill or not.

D. The "Threat" Facing Williams Is Nothing of the Sort

55. The "threat" the Defendant Directors point to in order to justify the draconian Pill is not a "threat" recognized by Delaware law. Indeed, recent cases in this Court and the Delaware Supreme Court in the appraisal context make clear that the NYSE is an efficient market. It follows that a "threat" built upon the proposition that a widely held and deeply traded NYSE listed company like Williams is

especially at risk during a period of market volatility that affected nearly every industry is no "threat" at all.

56. Even if that were not the case and the mid-March 2020 trading patterns in Williams securities on the NYSE were a sufficient "threat" for the Defendant Directors to take action of some sort, the Poison Pill at issue here was a wildly disproportionate response to what was at most a mild threat.

57. The 5% Trigger and the Wolfpack provisions of the Pill go far beyond what is otherwise a "proportional" response to the supposed threat. The provisions, alone and together, will create (and likely have created) a chilling effect on *all* stockholder activism and are thus coercive and very likely preclusive.

58. In fact, these provisions are so extreme as to be *prima facia* evidence of a breach of the Defendant Directors' duty of loyalty and entrenchment animus.

59. Moreover, even assuming that the market conditions in March of 2020 justified some response short of this Poison Pill in particular, Defendant Directors are continuing to breach their fiduciary duties by keeping the Pill in place now that market volatility has subsided.

60. Indeed, in the month leading up to the March 20, 2020 announcement of the Pill, Williams' stock price had fallen by nearly half from $21.54 on February 21, 2020 to $10.82 on March 19, 2020.

61. But in the few short months since the Pill was adopted, not only has

Williams' stock price recovered, the stock closed at $22.34 on August 17, 2020, *above* where it closed before it began the precipitous fall that supposedly caused the Defendant Directors to act.

62. Thus, to the extent that external conditions justified some response, that threat has long since evaporated and the continued existence of the Pill can only be for entrenchment purposes.

CLASS ACTION ALLEGATIONS

63. Plaintiff brings this action pursuant to Rule 23 of the Rules of the Court of Chancery, individually and on behalf of all other holders of Williams common stock that have been or will be harmed or threatened with harm by the conduct described herein and their successors in interest (the "Class"). Excluded from the Class are the Defendants named herein and any person, firm, trust, corporation, or other entity affiliated with any of the Defendants and their successors in interest.

64. This action is properly maintainable as a class action.

65. A class action is superior to other available methods of fair and efficient adjudication of this controversy.

66. The class is so numerous that joinder of all members is impracticable. As of July 30, 2020, Williams had 1,213,558,476 common shares outstanding held by thousands of holders throughout the nation and the world.

67. The case presents questions of law and fact that are common to all class

members and predominate over any questions affecting only individuals, including, but not limited to:

a. Whether the Pill was a proportional response to any reasonably perceived threat to the Company and its stockholders;

b. Whether the Defendant Directors breached their fiduciary duties by adopting, implementing and maintaining the Pill;

c. Whether the Class has been or will be harmed by the Defendant Directors' conduct; and

d. Whether the Class is entitled to injunctive or equitable relief.

68. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature.

69. Plaintiff's claims and defenses are typical of claims and defenses of other class members, and Plaintiff has no interests antagonistic or adverse to the interests of other class members. Plaintiff is an adequate representative to protect the interests of the Class.

70. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent adjudications with respect to individual members of the Class, and accordingly incompatible standards of conduct for Defendants; or adjudications with respect to individual members of the Class that would, as a

practical matter, be dispositive of the interests of other Class members or substantially impair or impede their ability to protect their interests.

71. Defendants have acted in a manner that affects Plaintiff and all members of the Class alike, thereby making appropriate injunctive relief with respect to the Class as a whole.

COUNT I

(Direct Claim for Breach of Fiduciary Duty against the Defendant Directors)

72. Plaintiff repeats and realleges paragraphs 1-71 above as if fully set forth herein.

73. The adoption of the Pill with its 5% Trigger and Wolfpack provisions was not a proportional response to any reasonably perceived and legally cognizable threat to corporate policy and effectiveness and constitutes a breach of the fiduciary duty of loyalty by all of the Defendant Directors.

74. Together with the 5% Trigger, the asymmetric nature of the Pill's Wolfpack provisions as well as the "daisy chain" aggregation concept inherent therein are likewise non-proportional and strong evidence of an intent to entrench and preclude any stockholder from mounting a challenge to the Board's incumbency.

75. The Poison Pill was adopted with the purpose, and has the effect of, inequitably entrenching Defendants.

76. The Poison Pill has the effect of coercing stockholders not to mount

challenges to the Defendants' incumbency, and potentially precluding any such challenges.

77. The adoption of the Poison Pill as well as its continued maintenance are both in breach of each Defendants' duty of loyalty.

78. The continued maintenance of the Poison Pill is causing all stockholders imminent and irreparable harm as it inequitably chills, and potentially even precludes the fair exercise of the Williams stockholders' franchise.

79. An actual controversy exists as to the validity, legality and enforceability of the Pill.

80. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff respectfully prays the Court to enter its Orders, Judgments and Decrees:

a. Declaring that this action is properly maintainable as a class action, and certifying Plaintiff as Class representative and Plaintiff's counsel as Class counsel;
b. Declaring and decreeing that the Poison Pill is unenforceable;
c. Declaring and decreeing that the Defendant Directors have each breached their fiduciary duty of loyalty by adopting the Poison Pill;
d. Declaring and decreeing that the Defendants have each breached their fiduciary duty of loyalty by maintaining the Poison Pill in effect;

e. Temporarily, preliminary and permanently enjoining the continued operation of the Poison Pill;

f. Awarding Plaintiff his attorneys' fees and costs; and

g. Granting such other and further relief as may be just and equitable in the circumstances.

Dated: August 27, 2020

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

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