

Attorneys denied 'over-the-top' payout in M&A disclosure lawsuits

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(Reuters) - A federal judge in Manhattan has rejected a shareholder law firm's bid for \$400,000 in attorney's fees for lawsuits that prompted an energy company to make extra disclosures before a merger, saying the added information was of little value.

U.S. District Judge Ronnie Abrams ruled Monday that Monteverde & Associates and its co-counsel are not entitled to attorneys fees after their clients client dropped two lawsuits challenging the disclosures that SemGroup Corp made ahead of its \$5 billion acquisition by Energy Transfer LP in 2019. SemCorp and its lawyers at Vinson & Elkins had urged the judge to reject the request, calling it "over-the-top."

Abrams found that while an informed shareholder vote can be a substantial benefit that merits an award of attorneys fees, the cash flow projections and other details disclosed after several SemGroup shareholders sued were immaterial.

"Not all corporate disclosures are per se substantially beneficial to shareholders," she wrote.

Juan Monteverde of Monteverde & Associates said Monday that the judge had not properly assessed the importance of the disclosures, and suggested he would appeal the decision to the 2nd U.S. Circuit Court of Appeals.

Monteverde & Associates has been among the top five filers of lawsuits challenging pre-merger disclosures in recent years, according to analysis by Cornerstone Research.

Michael Holmes of Vinson & Elkins, who represents SemGroup, did not immediately respond to a request for comment on Monday.

Plaintiffs' attorneys have increasingly filed pre-merger lawsuits in federal court after a 2016 Delaware Chancery Court ruling disallowed fee awards in cases that only result in disclosures to shareholders. According to Cornerstone Research, 90% of those federal claims between 2010 and 2019 were dismissed.

After plaintiffs voluntarily drop a merger lawsuit, their attorneys often negotiate payment of what are referred to as "mootness fees" by defendants.

SemGroup was not one of them. The Tulsa, Oklahoma-based pipeline company contested shareholders Barb Hill and Mark Topley's July motions for fees in their lawsuits seeking additional disclosures ahead of SemCorp's merger with Dallas, Texas-based pipeline operator Energy Transfer.

Hill, represented by the Monteverde firm, and Topley, who was represented by Monteverde and Ademi & O'Reilly, were among shareholders who had filed a total of seven related lawsuits. All dropped their claims after the company provided underlying valuation metrics and other additional information ahead of a vote on the merger in December 2019.

Hill and Topley's motion sought fees for 131.8 attorney hours, more than 40% of which were spent pursuing fees, according to Abrams' ruling. The total was \$75,737, which the shareholders proposed should be multiplied by 5.25, because the law firms had taken the cases on a contingency basis.

SemGroup balked at everything about the request, calling the base rate "bloated," the inclusion of fees incurred while seeking fees "impermissible," and the resulting \$400,000 bill "exorbitant." The company noted that lawsuits filed by Hill and another Monteverde client were not the first of the seven that were filed.

Ruling on Monday, Abrams said that while the lawsuits by Hill and others had prompted the subsequent disclosures, they only elicited "additional details about information (shareholders) already had," and therefore did not create a substantial benefit.

The case is Hills v. SemGroup Corp, No. 19-cv-10412, U.S. District Court, Southern District of New York.

For SemGroup: Michael Holmes, Marisa Antonelli and Robert Ritchie of Vinson & Elkins

For the shareholders: Juan Monteverde and Miles Schreiner of Monteverde & Associates; and Guri Ademi and Jesse Fruchter of Ademi & O'Reilly

References

[ENERGY TRANSFER LP; SEMGROUP CORP; VINSON AND ELKINS LLP](#)