



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE TRANSATLANTIC HOLDINGS : CONSOLIDATED
INC. SHAREHOLDERS LITIGATION : C.A. No. 6574-CS

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Chambers
New Castle County Courthouse
500 North King Street
Wilmington, Delaware
Thursday, February 28, 2013
2:00 p.m.

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BEFORE: HON. LEO E. STRINE, JR., Chancellor.

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TELECONFERENCE

CHANCERY COURT REPORTERS
500 North King Street
Wilmington, Delaware 19801
(302) 255-0521

1 APPEARANCES: (via telephone)

2 CARMELLA P. KEENER, ESQ.
Rosenthal, Monhait & Goddess, P.A.

3 -and-

4 JOSEPH RUSSELLO, ESQ.
of the New York Bar
Robbins Geller Rudman & Dowd LLP

5 -and-

6 JAMES S. NOTIS, ESQ.
of the New York Bar
Gardy & Notis, LLP
7 for Plaintiffs

8 RAYMOND J. DICAMILLO, ESQ.
Richards, Layton & Finger, P.A.

9 -and-

10 BRIAN M. LUTZ, ESQ.
of the New York Bar
Gibson, Dunn & Crutcher LLP
11 for Defendants Transatlantic Holdings,
Inc., Stephen R. Bradley,
12 Ian H. Chippendale, John G. Foos,
John R. McCarthy, Robert E. Orlich,
13 Richard S. Press, Thomas R. Tizzio,
and Michael C. Sapnar

14 WILLIAM M. LAFFERTY, ESQ.
15 D. MCKINLEY MEASLEY, ESQ.
Morris, Nichols, Arsht & Tunnell LLP

16 -and-

17 TARIQ MUNDIYA, ESQ.
of the New York Bar
Willkie Farr & Gallagher, LLP
18 for Defendants Allied World Assurance
Company Holdings, AG and GO Sub, LLC

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1 THE COURT: Good afternoon. May I
2 have appearances for the record, please?

3 MS. KEENER: Yes. Good afternoon,
4 Your Honor. Carmella Keener, Rosenthal Monhait &
5 Goddess, on behalf of the plaintiffs. I have my
6 co-counsel on the line. I'll allow them to introduce
7 themselves so you can be sure you can hear them.

8 MR. RUSSELLO: This is Joseph Russello
9 from Robbins Geller representing the plaintiffs.

10 MR. NOTIS: Also from plaintiffs, this
11 is James Notice from Gardy & Notis. Good afternoon,
12 Your Honor.

13 MR. DICAMILLO: Good afternoon,
14 Your Honor, for the Transatlantic defendants, it's Ray
15 DiCamillo. Also on the line from Gibson Dunn is Brian
16 Lutz.

17 MR. LAFFERTY: And Your Honor, last
18 but not least, you've got Bill Lafferty on behalf of
19 the Allied World defendants; and Mac Measley is with
20 me, Your Honor; and Tariq Mundiya from Willkie Farr &
21 Gallagher is on the lane as well.

22 MR. MUNDIYA: Good afternoon,
23 Your Honor.

24 THE COURT: Good afternoon.

1 Everybody can relax. I don't think
2 you're going to enjoy what I'm going to say, but there
3 is no -- I've received all the supplements that
4 anybody in the world would want. And I rarely have
5 done this in my career, but there is at some point
6 where the Court's, frankly, duty to make sure that
7 classes are effectively represented requires the Court
8 to act even in the absence of any kind of opposition
9 to a settlement.

10 I've given the proponents, the
11 plaintiffs, every chance to explain. I did it in
12 advance of the original hearing. The original hearing
13 was extremely disappointing in terms of the inability
14 of the party proposing itself to be the representative
15 of a class of stockholders to explain in any rational
16 way why the disclosures that they had obtained were in
17 any meaningful way of utility to someone voting on the
18 merger. That was in spite of me clearly explaining in
19 advance of that hearing that I was having difficulty
20 grasping the utility of the disclosures.

21 I've read the supplemental
22 supplemental submission, and it explains to me why
23 there was more information. It does really absolutely
24 nothing in my mind to explain why that additional

1 information would have been meaningful -- I'm not even
2 going to use the word "material" -- would have been
3 meaningful, would have been interesting, in any real
4 way to someone voting on this transaction.

5 There is simply parroting, out of
6 context, of other cases where, for example, an
7 investment banker disclosure was meaningful because it
8 tilted incentives one way or the other. There's some
9 rote stuff about insurance ratios with absolutely no
10 attempt at all to explain why those different ratios
11 would have been meaningful to a voter.

12 I'm asked to do the traditional three
13 things here, I believe, which is to certify a class
14 and approve a settlement and award a fee. I'm
15 actually not going to do any of them, because I also
16 asked to know what stake did the actual named
17 plaintiffs have and how did they consider the merger.
18 And I think it's very telling. And I think it links
19 up the concern the Court has about whether the class
20 was getting anything to the question of whether I
21 should be certifying as adequate these plaintiffs.

22 I suspect that Plaintiff Kramer didn't
23 bother to vote on the merger. And that's pretty
24 rational because Plaintiff Kramer only had two shares.

1 I think that makes Plaintiff Kramer not at all typical
2 of any kind of rational investor in a company. No
3 rational investor with two shares would bring a suit
4 challenging a merger, not bothering to vote on the
5 merger. He had two shares. It's not clear why
6 anybody would buy two shares in this company anyway.

7 Plaintiff Ivers has more, but
8 plaintiff Ivers just couldn't recall if or how he
9 voted on the merger and didn't keep any records. Now,
10 I suppose that's ordinarily okay, but Mr. Ivers --
11 well, I don't know Mr. Ivers and I'm not going to get
12 into whether Mr. Ivers or Mr. Kramer really made a
13 thoughtful examination of the proposed transaction and
14 then shopped for counsel to sue.

15 One suspicion is that that would have
16 been an awful lot of work for these two people who
17 don't -- one didn't even vote and only had two shares,
18 and the other one just can't really remember, doesn't
19 keep records. And he allows himself to be proposed as
20 a class representative and to be certified and to bind
21 all the stockholders of a company, but just, you know,
22 no big deal. I don't know how I voted.

23 See, it brings -- there is a burden
24 here when a Court is going to release claims on the

1 part of absent parties for the Court to have some
2 confidence that the class is actually represented in
3 the right way.

4 I don't fault the defendants, who face
5 an imponderable situation in which the cost of getting
6 rid of non-meritorious claims, you know, on the merits
7 exceeds settling by giving out information which
8 can't -- which doesn't possibly impair the vote.

9 And what is most -- what is also
10 telling about the meaningfulness of the information is
11 that without contradiction from the plaintiffs, the
12 defendants say that of those who voted, 99.85 percent
13 voted in favor of the transaction. So they voted --
14 that's the recommendation of the board from the
15 beginning, was to vote for the transaction. This is
16 like beyond Ivory soap, almost.

17 How is one supposed to -- I mean, I
18 defy anyone -- there are probably smarter people in
19 the world than me who can glean from these submissions
20 how these disclosures were of any utility. And I have
21 in the past bent and tried to say, Well, that could be
22 kind of -- yeah, I mean, that could kind of give
23 somebody some extra confidence, even though, really,
24 you're supposed to be getting disclosures which

1 contradict or meaningfully affect the flow of
2 information in a way that's different from what the
3 board is suggesting. I hear -- I just think it's just
4 more.

5 And I don't have any confidence,
6 unfortunately, that there was a real plaintiff behind
7 this monitoring counsel. And in this situation, what
8 the class is getting is of so little apparent utility
9 that the option value of having some more diligent
10 plaintiff be able to come forward with a damages
11 action in the future, if there is something that
12 arises, frankly, that option value exceeds this.

13 That said, being fair to the
14 defendants, I have no basis to believe the defendants
15 face any fear of liability at all. But that's also
16 because the plaintiffs in their papers do no
17 meaningful, really, examination of the grounds for
18 liability, which also suggests that there probably
19 wasn't any, really, grounds to bring this suit to
20 begin with.

21 So a suit without any real
22 investigation or depth was immediately traded away by
23 the plaintiffs for simply more information which did
24 not contradict the mix of information that was already

1 available. And the only checkpoint on the approval of
2 that by counsel are a couple of stockholders who own,
3 frankly, amounts of shares which suggest it was
4 irrational for them to cause a suit to be brought in
5 the first instance, and who can't even recall how they
6 voted or if they voted in the merger.

7 There's just -- and I'll leave it at
8 that. I don't wish to embarrass anyone. Things
9 happen in life. People are busy. But I can't get to
10 a place where I can certify these plaintiffs as
11 adequate class representatives. And not being able to
12 certify them, I certainly can't approve the
13 settlement.

14 So that leaves me with a case on my
15 docket. If the plaintiffs believe their claims are as
16 weak as their brief presents, then they're obviously
17 welcome to dismiss their claims with prejudice as to
18 themselves and to move on if they don't wish to
19 prosecute. And there could be appropriate disclosure
20 of that so that if there is somebody who actually
21 wishes to get something real in terms of trying to
22 prove damages or something like that, they can do
23 that.

24 I don't know what effect this has on

1 any cases pending in other jurisdictions. And, again,
2 to the extent that I feel badly for the defendants,
3 who -- again, I just have to rely on -- that's one of
4 the difficulties on this, when you're just relying on
5 plaintiffs' counsel. Plaintiffs' counsel's papers
6 indicate that there were no real good claims against
7 the defendants. So that makes the Court feel, you
8 know, concern for the defendants, because if that's
9 true, then the defendants are essentially being kept
10 in litigation for no reason. But then again, it's the
11 duty of the Court to look out for the class.

12 So the Solomonic approach to this
13 would be if these plaintiffs here would reflect
14 maturely on the record, I think they would recognize
15 that they've achieved nothing substantial for the
16 class that could justify the release; that the actual
17 named plaintiffs that they represent have taken no
18 personal interest in the litigation, have participated
19 in no meaningful way in making sure that the class got
20 something meaningful; and they can dismiss with
21 prejudice as to themselves; and the defendants can
22 deal with others or just move on with the risk.

23 And it would probably be pretty quiet,
24 given that the vote was 99.85 percent of the shares

1 voted in favor of the deal and nearly 93 percent of
2 the total electorate actually cast votes.

3 But the motions before the Court are
4 denied for the reason I've given. I want a report
5 back in 30 days about what you've decided to do with
6 this matter.

7 Thank you.

8 MS. KEENER: Thank you, Your Honor.

9 MR. LAFFERTY: Thank you, Your Honor.

10 (Conference adjourned at 2:16 p.m.)

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CERTIFICATE

I, JEANNE CAHILL, Official Court Reporter for the Court of Chancery of the State of Delaware, do hereby certify that the foregoing pages numbered 3 through 11 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF I have hereunto set my hand this 1st day of March, 2013.

/s/ Jeanne Cahill

Official Court Reporter
of the Chancery Court
State of Delaware

Certificate Number: 160-PS
Expiration: Permanent