IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CRAIG W. THOMAS, on Behalf of Himself and All Others Similarly Situated,	)	
Plaintiff,	)	
v.	)	C.A. No. 2019-0641-MTZ
AMERICAN MIDSTREAM GP, LLC n/k/a THIRD COAST MIDSTREAM HOLDINGS, LLC,	)	
Defendant.	)	

POST-TRIAL MEMORANDUM OPINION

Date Submitted: April 24, 2026
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ZURN, Vice Chancellor.[1]

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[1] Sitting by designation under Del. Const. art. IV, § 13(2). *See* Docket Item ("D.I.") 236.

This case arises from a conflicted merger between a master limited partnership and its sponsor, which was affiliated with the general partner. The general partner seeks a safe harbor from its conflicted role in the transaction, which the limited partnership agreement provides if an independent conflicts committee grants special approval. The limited partnership agreement also provides that grant of special approval is presumed to be in good faith, leaving any party challenging that approval to show otherwise.

The plaintiff has taken on that mantle. He seeks to dislodge the presumption the conflicts committee granted special approval in good faith by blaming the sponsor for the partnership's financial difficulties, and arguing the conflicts committee should have done more. But after trial, the preponderance of the evidence points the other way. Each conflicts committee member subjectively believed the merger was in the partnership's best interest. The plaintiff has failed to rebut the presumption that special approval was granted in good faith and effective.

I. BACKGROUND[2]

[2] Citations in the form "[Last Name] Tr. —" refer to trial testimony of the referenced witness, available at D.I. 218. Citations in the form "JX —" refer to the parties' joint trial exhibits. Citations in the form "PTO —" refer to the parties' stipulated pretrial order, available at D.I. 199.

The following facts were stipulated to by the parties or proven by a preponderance of the evidence at trial. *See generally* PTO; *Reynolds v. Reynolds*, 237 A.2d 708, 711 (Del. 1967) ("The side on which the greater weight of the evidence is found is the side on which the preponderance of the evidence exists.").

American Midstream Partners, LP (the "Partnership") was a Delaware master limited partnership ("MLP") that owned a portfolio of midstream energy assets.[3] Defendant American Midstream GP, LLC n/k/a Third Coast Midstream Holdings, LLC ("GP") was the Partnership's general partner.[4] GP was indirectly owned by ArcLight Capital Partners, LLC (the "Sponsor").[5]

A former Partnership unitholder challenges a merger in which the Sponsor's subsidiary Magnolia Infrastructure Holdings, LLC ("Magnolia") purchased all issued and outstanding Partnership units that the Sponsor did not already own (the "Merger").[6] Before the Merger, the Partnership's common units traded on the New York Stock Exchange.[7] The Merger presented a conflict between GP and the Partnership. The plaintiff contends GP did not satisfy its standard of conduct under the Partnership's limited partnership agreement (the "LPA").[8] GP contends the LPA

At the pretrial conference, I instructed the parties that where a witness is testifying live, substantive evidence should come from that testimony, and deposition testimony by those witnesses should be reserved for impeachment purposes. D.I. 213; *see* Ct. Ch. R. 32. Contrary to this instruction, Plaintiff cites deposition testimony from live witnesses at least 37 times in post-trial briefing. I have not considered this deposition testimony.

[3] PTO ¶ 19.

[4] *Id.* ¶ 18.

[5] *Id.* ¶ 22.

[6] *Id.* ¶ 1.

[7] *Id.* ¶ 20.

[8] D.I. 222 at 35–67 [hereinafter "Plaintiff Opening Br."].

supplies it with a presumption that it satisfied that standard of conduct because a conflicts committee provided special approval.[9]

LPA Section 7.9(e) eliminates common law fiduciary duties and replaces them with contractual duties.[10] Section 7.9(b) imposes a duty of "good faith" on GP and any conflicts committee whenever either "makes a determination or takes or declines to take any other action . . . unless another express standard is provided for" in the LPA.[11] In order for a determination to be in good faith, "the Person or Persons making such determination . . . must subjectively believe that the determination . . . is in, or not opposed to, the best interests of the Partnership."[12]

Section 7.9(a) addresses the resolution of conflicts of interest between GP and the Partnership "whenever" such conflicts arise, "[u]nless otherwise expressly provided in" the LPA.[13] In that context, it provides that any resolution or course of action by GP

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[9] D.I. 224 at 32–61.

[10] *See* D.I. 144 Ex. 1 § 7.9(e) [hereinafter "LPA"] ("Except as expressly set forth in this Agreement, neither the General Partner nor any other Indemnitee shall have any duties or liabilities, including fiduciary duties, to the Partnership or any Limited Partner and the provisions of this Agreement, to the extent that they restrict, eliminate or otherwise modify the duties and liabilities, including fiduciary duties, of the General Partner or any other Indemnitee otherwise existing at law or in equity, are agreed by the Partners to replace such other duties and liabilities of the General Partner or such other Indemnitee.").

[11] *Id.* § 7.9(b).

[12] *Id.*

[13] *Id.* § 7.9(a).

> shall not constitute a breach of this [LPA] . . . if the resolution or course of action in respect of such conflict of interest is (i) approved by Special Approval, (ii) approved by the vote of a majority of the Outstanding Common Units . . . (iii) on terms no less favorable to the Partnership than those generally being provided to or available from unrelated third parties or (iv) fair and reasonable to the Partnership, taking into account the totality of the relationships between the parties involved (including other transactions that may be particularly favorable or advantageous to the Partnership).[14]

Thus, proper Special Approval shields GP's participation in a conflicted transaction from judicial review.[15] "Special Approval" is defined as "approval by a majority of the members of the Conflicts Committee."[16] The Conflicts Committee must comprise one or more members of the Board who meet the LPA's independence criteria.[17] Section 7.9(a) provides that "[i]f Special Approval is sought, then it shall be presumed that, in making its decision, the Conflicts Committee acted in good faith."[18]

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[14] *Id.*

[15] *Id.*; *see also Dieckman v. Regency GP LP*, 2021 WL 537325, at *23 (Del. Ch. Feb. 15, 2021), *aff'd*, 264 A.3d 641 (Del. 2021) ("It is logical to refer to the Special Approval and Unitholder Approval clauses in Section 7.9(a) as 'safe harbors' since each entails using a conflict-cleansing mechanism as a condition of approval of a conflicted transaction . . . that, if employed properly, would preclude judicial review of the General Partner's approval of such transaction.").

[16] LPA § 1.1.

[17] *Id.*

[18] *Id.* § 7.9(a).

GP also holds a call right to acquire Partnership units it does not already own, which carries its own safe harbor from judicial review.[19]

A. The Partnership Struggles.

The Partnership's investors expected distributions: its business model was based on securing capital to fund acquisitions that in turn would generate sufficient cash flow to pay for the investments and support cash distributions.[20] Starting in 2015, the Partnership suffered from two adverse market conditions: capital to fund growth dried up, and so did cash flow from the assets it already held.

In 2015, energy prices fell and MLP capital markets began to close.[21] By the end of 2017, Congress passed the Tax Cuts and Jobs Act, which reduced corporate tax rates.[22] The Federal Energy Regulatory Commission also changed the procedure for regulated assets and MLPs were no longer allowed to recover an income tax allowance.[23] Combined, these factors resulted in a higher leverage ratio for MLPs.[24]

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[19] *Id.* § 15.1.

[20] *See* JX 34 at 6; Kendall Tr. 159 ("MLPs are set up to distribute the bulk of their cash flow, so one thing is distributions, but then in addition to grow, which makes sense for increasing the value of the units, we basically looked at internal capital expenditures, acquisitions, and basically maintenance CapEx.").

[21] Tywoniuk Tr. 24–25.

[22] *Id.* at 25.

[23] *Id.*

[24] *Id.* at 24–26.

The Partnership turned to the debt markets, which would increase its leverage ratio.[25] In 2017, the Partnership amended an existing credit agreement (the "Credit Agreement"), approving a higher interest rate and leverage ratio covenants that, if exceeded, would trigger an event of default.[26] The Partnership's leverage ratio continued to rise.[27]

The Partnership still hoped to close an acquisition to generate cash flow, called the Southcross merger, in Q2 2018.[28] But closing was contingent on financing, and the capital markets were still unyielding.[29] The Partnership tried to raise cash by selling assets, but the process was unpredictable and the sales fell through.[30] The Partnership's unit and standalone valuation suffered.[31] And without

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[25] *See id.* at 25–26; JX 34 at 96.

[26] JX 12 at 9, § 8.01(b); Tywoniuk Tr. 32.

[27] JX 34 at 96.

[28] *See* JX 22 at 3–4; JX 32 at 4–5; JX 34 at 8, 47–48; JX 36 at 6.

[29] JX 34 at 48; JX 36 at 6; JX 40; JX 20 at 1.

[30] JX 21 at 13; JX 36 at 11, 15; JX 40; JX 61 at 3–11; Fasullo Tr. 127–28 (stating the Partnership was looking at asset sales but "the problem is, when you have to sell assets, you can't control those, the timing of those assets. You can't control what you might receive for those assets. You're lowering your EBITDA, so your earnings. And you're going to be lowering your valuation, too. You have to replace those asset sales with other projects that can give you greater EBITDA").

[31] Fasullo Tr. 127–28; Tywoniuk Tr. 33–34 ("So it was important to not only the valuation of the units, but also in evaluating the stand-alone case, what do our prospects look like remaining as an independent public company should we fail to come to terms with ArcLight or not agree on a price and want to remain independent.").

financing for the Partnership, the Southcross seller terminated the merger agreement, causing the Partnership to pay a $17 million termination fee.[32]

Management still expressed hope its existing assets would generate cash.[33] But they too would falter. An asset called Delta House supplied over 25% of the Partnership's cumulative gross profit margins, and the Partnership expected to enjoy profitable pricing through February 2020.[34] But at the end of 2017, Delta House was choked off by damage to an upstream pipeline; the Partnership estimated a $17 million revenue shortfall.[35] Delta House was projected to take an additional hit of $7.3 million in 2018.[36]

The Sponsor offered to help the Partnership avoid triggering the default covenants by providing financial support "up to" the amount of the Delta House shortfall for the first three quarters of 2018.[37] The Sponsor was not obligated to

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32 JX 341 at 48.

33 JX 36 at 4–5; JX 32 at 3–9; JX 13 at 10; JX 61 at 18.

34 JX 37 at 44–45; JX 327 at 19; Tywoniuk Tr. 19–21.

35 JX 19; JX 25 at 11; JX 27.

36 JX 186; Tywoniuk Tr. 76.

37 JX 31; JX 34 at 96, 193.

provide anything but ultimately paid \$17.7 million over two quarters.[38] It stopped support payments in August 2018.[39]

In these conditions, the Partnership's leverage ratio was still projected to approach the Credit Agreement cap.[40] To avoid default, it negotiated the First Amendment to the Credit Agreement to raise the leverage ratio–and interest rate–even further, as of June 29, 2018.[41] Indeed, by the end of July, the Partnership's leverage ratio surpassed the pre-amendment cap.[42]

In turn, the Sponsor concluded distributions would have to be cut.[43] In July, the Board agreed the Partnership's liquidity issues left no option but to cut distributions.[44] The Board hoped doing so, along with selling assets in 2018 and 2019, would benefit unitholders in the long run by reducing leverage and providing

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[38] *See* JX 31; JX 34 at 51–52; JX 39 at 4; JX 62 at 98; JX 341 at 25; Tywoniuk Tr. 21–22; Kendall Tr. 180–82.

[39] JX 62 at 57.

[40] *Id.* at 46; Tywoniuk Tr. 26.

[41] JX 46 §§ 2.1(a), 2.2(a), 2.4.

[42] JX 51.

[43] JX 362 at 25; JX 69; JX 70 at 1, 3; Tywoniuk Tr. 60.

[44] *See* JX 50; JX 51; JX 52.

capital to fund growth.[45] But nearly $400 million in asset sales had to be pushed to Q2 2019 or later.[46]

The day after the cuts, the Partnership's unit price dropped from $11.55 to $6.60.[47]

B. The Sponsor Moves In.

In August 2018, the Sponsor bought more Partnership units to reach a majority stake.[48] The Sponsor disclosed this in a corrected Schedule 13D in December.[49] On September 27, the Sponsor, through Magnolia, proposed an acquisition of all issued and outstanding publicly held Partnership units that it did not already own for $6.10 per unit.[50]

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[45] JX 140 at 77; JX 52 at 8, 14; JX 45 at 5; JX 55 at 1–2; JX 61 at 3–6; JX 36 at 11; Tywoniuk Tr. 28 ("[W]e needed to make the reduction because our leverage ratio was too high, and by doing the reduction, we could either put that cash towards reducing debt or going into growth projects…and allow us to improve our credit metrics over time."); Kendall Tr. 168 ("So I was very supportive of this to make sure we retained cash to help improve our financial situation."); *cf.* JX 69 (September 12, 2018 email stating "Arclight should indemnify all non arclight directors…since it was their idea and the one who pushed it").

[46] JX 502 at 4; JX 56 at 55; Tywoniuk Tr. 33–34 (describing several asset sales that were projected to close fell through causing the Conflicts Committee to question the viability of the Partnership as a standalone company).

[47] JX 26 at 12. The Board anticipated this reaction and did not believe that drop was indicative of the Partnership's underlying value. Tywoniuk Tr. 29 ("That's the market price, which can be—you know, move in different ways relative to the underlying value of the business.").

[48] JX 64.

[49] JX 170.

[50] PTO ¶ 36; JX 81.

Because the transaction presented a conflict of interest, GP created a conflicts committee of independent directors (the "Conflicts Committee") to obtain "Special Approval."[51] Under the LPA, that Special Approval would shield GP's actions in the Merger from judicial review.[52] The Board picked members Gerald Tywoniuk as chair, Peter Fasullo, and Donald Kendall to serve on the Conflicts Committee.[53] All were indisputably independent, qualified, sophisticated and experienced in the oil and gas industry, and owners of common units.[54]

Tywoniuk was a senior finance executive in the oil and gas industry for over 20 years.[55] Before joining the Board in 2011, he served as a director for several oil and gas companies, overseeing financial operations and evaluating complex mergers.[56] Fasullo worked in the oil and gas industry for more than 40 years, playing key roles in MLP transactions.[57] He sat on the Board from June 2016 to July 2019.[58]

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[51] PTO ¶ 37.

[52] LPA § 7.9(a).

[53] PTO ¶¶ 37–38; JX 90.

[54] *See* JX 90 at 4; Tywoniuk Tr. 5–7; Fasullo Tr. 121–23; Kendall Tr. 154–57.

[55] Tywoniuk Tr. 5–7.

[56] *Id.*

[57] Fasullo Tr. 121–23.

[58] *Id.* at 121–22.

Kendall had over 45 years of experience in the midstream sector and previously served on conflicts committees.[59]

On September 8, the Board authorized the Conflicts Committee to review, evaluate, and negotiate the Merger, and to determine whether to grant Special Approval.[60]

C. The Conflicts Committee Gets To Work.

From late 2018 to early 2019, the independent Conflicts Committee worked on the proposed merger with Magnolia. In total, the Conflicts Committee had twenty-eight formal meetings, including with its advisors and management, considered ten financial presentations, and countered the Sponsor's offers three times.[61]

The Conflicts Committee's "first step was to hire expert counsel and expert independent financial advisors."[62] It promptly retained Thompson & Knight LLP ("TK") and Morris, Nichols, Arsht & Tunnell LLP ("MNAT") as legal advisors, and Evercore Group LLC ("Evercore") as its financial advisor.[63] Evercore was

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[59] Kendall Tr. 155–57.

[60] JX 90 at 4–5.

[61] PTO ¶¶ 35, 39, 41–46, 48, 55–63, 65–79; JX 189; JX 244; JX 252; JX 251; JX 259; JX 264; JX 275; JX 313; JX 327; JX 328. *Compare* JX 202 at 2, *with* JX 278 at 2, *and* JX 298 at 1, *and* JX 301.

[62] Kendall Tr. 157.

[63] *See* PTO ¶¶ 24–26, 40.

particularly experienced in MLPs in the midstream sector.[64] The Evercore lead, Robert Pacha, was "well-known as being a good banker in the midstream space."[65] All advisors confirmed they had no conflicts.[66]

The Conflicts Committee and its advisors quickly began evaluating the offer. Within 24 hours of the initial proposal, the Conflicts Committee asked management to update the Partnership's projections from July.[67] This took some time and the Sponsor pushed for quick updates.[68] But the Conflicts Committee checked in regularly and management told them the projections were close to being complete.[69]

Investors sent numerous letters to the Conflicts Committee about the proposed transaction.[70] The Conflicts Committee set up a review process to ensure they

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[64] JX 100 at 3; Kendall Tr. 158 ("[F]rom the work we'd done in other transactions with Evercore and from my experience elsewhere, their team that we used, and Evercore itself was probably one of the best in master limited partnership."); Pacha Tr. 186 ("Q. And has it done a lot of that work in the midstream oil and gas space? A. Yes."); Fasullo Tr. 128–29 ("It actually was a recommendation by Gerry Tywoniuk. He had worked with Evercore in the past. They were a well-known investment banker and well-known in the midstream space.").

[65] Fasullo Tr. 128–29.

[66] *See* JX 121 at 4–5; JX 129 at 4; JX 115; JX 100 at 3.

[67] *See* JX 99; Kendall Tr. 162; Tywoniuk Tr. 13–14.

[68] JX 142 (November 9, 2018 email from the Sponsor asking if they could discuss the status of the offer with the Conflicts Committee since it had been six weeks); Tywoniuk Tr. 16.

[69] *See* JX 104; JX 109; JX 117; JX 142; Tywoniuk Tr. 15–16.

[70] JX 179; JX 220; JX 255.

considered every single one.[71] Any letters containing independent models were forwarded to Evercore for further evaluation.[72]

On November 30, management provided updated projections to the Conflicts Committee.[73] They had been adjusted downward from July, accounting for the changes in the MLP market, the Partnership's high leverage ratio, and cash flow issues.[74] On December 4, the Conflicts Committee held a two-part meeting lasting several hours to discuss them with management.[75] The Conflicts Committee questioned the underlying assumptions.[76]

Also at that meeting, the Sponsor's financial advisor Bank of America Merrill Lynch ("BAML") presented on the Sponsor's rationale behind the Merger.[77] The presentation noted the Partnership's lack of access to capital, and that the Sponsor intended to "pursue a more fair and balanced approach" for supporting the Partnership moving forward.[78] The Conflicts Committee understood the Sponsor

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[71] Tywoniuk Tr. 46–47 (stating the Conflicts Committee reviewed each letter in detail and "made sure that any points being raised . . . had already [been] considered"); Fasullo Tr. 134; Kendall Tr. 178.

[72] Fasullo Tr. 134; Kendall Tr. 178.

[73] JX 160; JX 146; Tywoniuk Tr. 17.

[74] Tywoniuk Tr. 26. *Compare* JX 52 at 12, *with* JX 186.

[75] JX 165; Tywoniuk Tr. 17–18.

[76] Fasullo Tr. 134–35.

[77] *See* PTO ¶ 44; JX 165; JX 168.

[78] JX 168 at 4, 10; Kendall Tr. 166.

had no obligation to continue making support payments, and that their absence would make capital even more scarce for the Partnership.[79] It also knew that stopping support payments could help the Sponsor take the Partnership private.[80] On December 14, management updated its projections to reflect the absence of support payments.[81]

D. The Partnership Continues To Founder; The Sponsor Takes An Earnout At $6.17 Based On VWAP.

At the same time, the Partnership owed the Sponsor an earnout under an agreement governing the Partnership's purchase of an asset from a Sponsor subsidiary.[82] That agreement specified the Partnership owed the Sponsor $5 million, either in cash or units calculated on the volume-weighted average price ("VWAP") of the Partnership's units.[83] The contractually mandated use of VWAP resulted in an implied valuation of $6.17 per unit.[84] On December 3, the Board approved the Sponsor's request to be paid in units, given the Partnership's cash constraints.[85]

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[79] *See* JX 31 at 1; JX 284; Tywoniuk Tr. 22; Kendall Tr. 165–66.

[80] JX 151 at 1; JX 189 at 14; JX 244 at 18.

[81] JX 177 at 17.

[82] JX 341 at 173.

[83] JX 169 at 2; Tywoniuk Tr. 37–38.

[84] JX 169 at 3.

[85] JX 169 at 3; *see* JX 131 at 2.

Tywoniuk and Fasullo opposed this decision to avoid "the misimpression . . . that $6.17 per unit" showed the Partnership's value.[86]

Consistent with that view, the Conflicts Committee did not raise the $6.17 VWAP price in negotiating the Merger. The Conflicts Committee considered the VWAP price as an additional data point but not conclusive of underlying value, as VWAP focused on market perception.[87] Tywoniuk likened comparing VWAP to a forward-looking valuation to "comparing an apple to an orange."[88]

In the background, the Partnership's leverage ratio continued to creep up towards the threshold for triggering a Credit Agreement default; it was 5.79x on December 3.[89] On December 20, management and the Board deferred renewal of the Credit Agreement and instead secured a second amendment.[90] The amended agreement raised the leverage ratio cap from 5.50x to 6.25x[91] and prohibited the Partnership from making any distributions while its leverage ratio was above 5.00x.[92] To comply with the amended agreement and avoid default, the Board voted

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86 Tywoniuk Tr. 38–39.

87 *See id.* at 39; Kendall Tr. 177.

88 Tywoniuk Tr. 87.

89 *Id.* at 31; JX 188 at 1; JX 341 at 156.

90 JX 140 at 47; JX 188; Tywoniuk Tr. 62.

91 JX 196 § 2.4.

92 *Id.* § 2.3; JX 199 at 2–3.

to eliminate distributions for Q4 2018.[93] The Conflicts Committee was not involved.[94]

E. Negotiations Continue.

On December 20, Evercore presented its 150-page initial valuation to the Conflicts Committee.[95] The presentation included an analysis of the Partnership's current market situation, including the impact of the July distribution cut, exceeding leverage ratios, and several valuation methodologies.[96] The Conflicts Committee discussed for several hours and "continued on into the next day."[97]

On December 21, the Conflicts Committee decided to accept the Sponsor's September 27 initial proposal at $6.10, subject to Evercore's fairness opinion.[98] They believed $6.10 was in the Partnership's best interest as it exceeded the Partnership's valuation, conditions had deteriorated, and another amendment to the credit facility was forthcoming.[99] But before the Conflicts Committee could accept

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[93] JX 199 at 2–3; Tywoniuk Tr. 32–33.

[94] *See* JX 188 at 1–2.

[95] JX 189.

[96] *See id.*; Fasullo Tr. 130.

[97] JX 190; JX 192; Tywoniuk Tr. 24.

[98] JX 192 at 2; Kendall Tr. 172.

[99] Tywoniuk Tr. 40; Kendall Tr. 172.

the initial proposal, the Sponsor withdrew it, citing those same deteriorating conditions and poor financial performance.[100]

On January 2, the Sponsor made a revised offer of $4.50 per unit.[101] The Conflicts Committee and its advisors met the next day to discuss the offer and the prospect of staying a public partnership.[102] They thought the Sponsor was being "heavy-handed" and the price "needed to be much higher."[103] Evercore perceived the Sponsor was relying on the Partnership's "short-term issues," "recent change in commodity prices," and distribution cut to justify the reduced offer.[104]

While the Conflicts Committee was considering the revised offer, the Partnership got some good news. On January 8, BP announced additional oil discoveries in the Gulf of Mexico.[105] The Conflicts Committee and Evercore jumped to incorporate this positive news into the Partnership's projections.[106] But the projections had already accounted for future discoveries, and the news did not offer

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[100] *See* JX 209; Tywoniuk Tr. 40.

[101] JX 202 at 2; Tywoniuk Tr. 40.

[102] JX 205; Tywoniuk Tr. 41–43.

[103] Tywoniak Tr. 43; Pacha Tr. 202.

[104] Pacha Tr. 202–04.

[105] JX 231 at 2.

[106] *See* JX 228; Tywoniuk Tr. 50–51.

many specifics.[107] So a few labels were changed, but the projections remained largely the same.[108]

In mid-January, Evercore presented its updated valuation to the Conflicts Committee over three meetings.[109] It incorporated the failed asset sales, the BP discovery, and the broader MLP market trends.[110] Evercore also addressed the Partnership's debt and prospects as a standalone company.[111] The Conflicts Committee discussed all of this, including the ability to refinance and deleverage.[112]

The Conflicts Committee decided to try to regain negotiating power by making the Sponsor bid against itself, and told the Sponsor the Conflicts Committee would accept a valuation between $6.50 to $7 per unit.[113] The Sponsor came back at $4.85.[114] Evercore and the Conflicts Committee regrouped.[115] The Conflicts

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[107] *See* Tywoniuk Tr. 50–51.

[108] *See id.*

[109] *See* JX 242; JX 250; JX 260; JX 244.

[110] JX 244 at 10–11, 48; Tywoniuk Tr. 84–85.

[111] *See* JX 205; JX 259; JX 262; Tywoniuk Tr. 41–43.

[112] *See* JX 260; Tywoniuk Tr. 41–43.

[113] JX 263; Tywoniuk Tr. 43–44; Pacha Tr. 192–93.

[114] JX 278; Tywoniuk Tr. 44; Kendall Tr. 173.

[115] *See* JX 275; JX 276; JX 278; JX 285.

Committee countered at \$6.25, sending a message the price needed to be much higher.[116]

The Conflicts Committee took a beat to consider one of the Sponsor's alternatives: GP's call right under the LPA.[117] On February 10, TK advised the Conflicts Committee and Evercore that the call right would cost the Partnership more than \$6 per unit.[118] This was not discussed with the Sponsor.[119]

On February 17, the Sponsor came back at \$5.10.[120] Then the Conflicts Committee got down to brass tacks with a \$5.30 offer.[121] On February 19, the Conflicts Committee and the Sponsor agreed to \$5.25 per unit, subject to Evercore's fairness opinion.[122]

F. Evercore Offers A Fairness Opinion, And The Conflicts Committee Grants Special Approval.

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[116] JX 285 at 2; Kendall Tr. 173; Tywoniuk Tr. 44 ("We were not happy with that number . . . I think we quoted a number of \$6.25. But, again, it was—the point was it needs to be much higher and so go to work ArcLight.").

[117] *See* LPA § 15.1; JX 294; Tywoniuk Tr. 115–16 ("Because we were trying to understand the alternatives that ArcLight had as alternative purchase mechanisms for acquiring the entirety of the partnership kind of outside independent of the current process.").

[118] JX 294; Tywoniuk Tr. 95–96.

[119] Tywoniuk Tr. 95–96.

[120] *Id.* at 44–45; JX 298.

[121] Tywoniuk Tr. 45; JX 298 (Conflicts Committee meeting minutes noting: "the [Conflicts] Committee unanimously authorized Mr. Tywoniuk to go back to ArcLight with an offer of \$5.30 per common unit, with the authority to go as low as \$5.25 per common unit").

[122] *See* JX 301; Tywoniuk Tr. 98.

On March 16, Evercore delivered a 155-slide presentation on its fairness opinion to the Conflicts Committee.[123] The presentation covered prior offers, current assets, and situation analysis including market data, leverage, and liquidity.[124] While the VWAP served as a market indicator, it did not inform whether the offer was fair.[125] On every valuation analysis, $5.25 was in the top half or better of the range.[126]

After the presentation, the Conflicts Committee unanimously determined the Merger was "in the best interests of the Partnership and the unaffiliated unitholders" and granted Special Approval.[127] Each member of the Conflicts Committee concluded $5.25 was better for unitholders than staying a standalone enterprise.[128]

Tywoniuk favored the deal as a way to provide liquidity in the absence of distributions.[129] He was concerned about the Partnership's standalone access to liquidity, specifically the difficult capital market environment for MLPs, the

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[123] JX 330; JX 338 at 2–5; JX 327.

[124] JX 327.

[125] Pacha Tr. 206–07 ("Committee members will sometimes look at premiums as a perspective on how the market might judge the transaction value. It has zero bearing with respect to a fairness opinion.").

[126] JX 327 at 74; Tywoniuk Tr. 117; Kendall Tr. 175–76; Fasullo Tr. 131–32.

[127] JX 330 at 6; Tywoniuk Tr. 57; Fasullo Tr. 137; Kendall Tr. 174.

[128] Tywoniuk Tr. 9; Fasullo Tr. 125–26; Kendall Tr. 158–59, 177. This testimony was straightforward, consistent with the record, and highly credible—I believe it to be the truth, not a coached litigation position.

[129] Tywoniuk Tr. 9 ("It provided liquidity to the unit holders at a time when we were not paying distributions.").

Partnerships' probability and cost of refinancing its debt, and its ability to sell assets.[130] He believed the price was the best they could negotiate and was supported by Evercore's thorough work.[131] He thought it "to be in the best interests of the partnership and the unaffiliated unitholders."[132]

Fasullo came to the same conclusions. He "had real concerns whether American Midstream could stand alone as a publicly traded MLP" due to its high debt load, its inability to issue more debt, and its lenders' pressure to lower its leverage ratio.[133] He, too, wanted to provide liquidity to unitholders accustomed to distributions, but recognized the Partnership had no cash for distributions, capital expenditures, or growth.[134] He did not view asset sales as a solution, because the timing and price were far from certain, selling assets lowered earnings and the Partnership's valuation, and sold assets had to be replaced with more lucrative assets for the Partnership to continue to perform.[135] These concerns combined with his

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[130] *See id.* at 17, 25–26, 52–53.

[131] *Id.* at 9 ("It was the best price that we were able to negotiate.").

[132] *Id.* at 57.

[133] Fasullo Tr. 125 ("[I]t had a very high debt load. It really was in a situation where it couldn't issue more debt, and the banks were putting pressure on the partnership to lower its debt.").

[134] *Id.* at 126 ("[O]ur distributed cash flow could hardly cover our distribution, which meant we had really no cash flow available for . . . growth.").

[135] *Id.* at 127–28 ("[T]he problem is, when you have to sell assets, you can't control those, the timing of those assets. You can't control what you might receive for those assets. You're lowering your EBITDA, so, your earnings. And you're going to be lowering your

experience in the midstream sector and Evercore's evaluations led him to believe the Merger was "fair . . . for the partnership and the unaffiliated unitholders."[136]

And Kendall was in accord. He "did not think the stand-alone opportunity was very attractive," given the MLP lending environment at the time, the Partnership's struggles raising capital, and its assets.[137] He believed $5.25 was the best the Partnership could get from the Sponsor.[138] And that the Merger was "a better transaction for the unaffiliated unitholders than stand-alone."[139]

Later that day, the Board met to consider the Conflicts Committee's grant of Special Approval.[140] After presentations sharing the Conflicts Committee's advisor's work and its recommendation, the Board approved the Merger.[141]

G. Litigation Ensues.

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valuation, too. You have to replace those asset sales with other projects that can give you greater EBITDA.").

136 *Id.* at 125–26.

137 Kendall Tr. 158–59 ("Given how difficult the environment was for master limited partnerships at that point in time and the struggles American Midstream had raising external capital and just some of the businesses we had internally, I did not think the stand-alone opportunity was very attractive.").

138 *See id.* at 177 ("We still were quite comfortable that was a better transaction for the unaffiliated unitholders than stand-alone or stand-alone and liquidation.").

139 *Id.*

140 *See* D.I. 144 Ex. 12 at 1.

141 *Id.* at 2; JX 324; JX 325.

Plaintiff Craig W. Thomas, a former minority Partnership unitholder, filed this class action against GP in August 2019.[142] The January 2020 amended complaint pleads four counts in connection with the Merger.[143] GP moved to dismiss in February 2020, and Chancellor Bouchard dismissed Counts II, III, and IV.[144] Count I, Thomas's only remaining claim, alleges GP breached Section 7.9(a) of the LPA by engaging in conflicted transactions without proper and valid Special Approval.[145] Chancellor Bouchard held it was reasonably conceivable that the Conflicts Committee did not grant Special Approval in good faith, and that the Merger was either on terms no less favorable to the Partnership than those generally being provided to or available from unrelated third parties, or was fair and reasonable

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[142] D.I. 1.

[143] D.I. 21 ¶¶ 156–75 [hereinafter "Compl."].

[144] D.I. 48; D.I. 53; PTO ¶¶ 6–7. Chancellor Bouchard dismissed Plaintiff's implied covenant claim in Count II "without prejudice to plaintiff's right to reassert the claim if there is a basis to do so after plaintiff takes discovery." D.I. 55 at 34–35. Plaintiff reasserted the claim on GP's motion for summary judgment, but I did not reach the implied covenant argument there. *Thomas v. Am. Midstream GP, LLC*, 2024 WL 5135828, at *4 n.51 (Del. Ch. Dec. 17, 2024). Plaintiff did not brief the implied covenant after trial. D.I. 224; D.I. 226. He reintroduced the implied covenant at oral argument on rebuttal, as a framework to hold the Sponsor accountable if it "intentionally act[ed] to depress the unit price." D.I. 235 at 65. That is too little too late: the claim remains dismissed. *Emerald P'rs v. Berlin*, 726 A.2d 1215, 1224 (Del. 1999) ("Issues not briefed are deemed waived."). Moreover, as found herein, the MLP's unit price took blows from a number of sources.

[145] Compl. ¶¶ 156–58.

to the Partnership.[146] Count I survived GP's motion to dismiss.[147] After Chancellor Bouchard's retirement, the matter was reassigned to me.[148]

On February 5, 2024, with leave, GP moved for summary judgment on Count I.[149] My December 17 ruling on that motion rejected GP's attempts to secure a conclusive presumption of good faith and contractual safe harbor under the LPA.[150]

On January 27, 2025, I granted GP's request for a one-day trial on the validity of the Conflicts Committee's grant of Special Approval for the Merger.[151] That issue was tried on May 19, 2025.[152] Post-trial argument was held on April 24, 2026.[153]

II. ANALYSIS

The Conflicts Committee purported to give Special Approval of the Merger, which would remove GP from judicial review.[154] The Conflicts Committee had to be independent: it undisputedly was.[155] The Conflicts Committee presumably acted in good faith in granting Special Approval: its members presumably "subjectively

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[146] D.I. 55 at 23–24, 32.

[147] *Id.* at 32–33.

[148] D.I. 105.

[149] D.I. 141.

[150] *Thomas*, 2024 WL 5135828, at *5–9.

[151] PTO ¶ 12; D.I. 184.

[152] D.I. 212.

[153] D.I. 234.

[154] *See* LPA § 7.9(a).

[155] *See id.* § 1.1.

believe[d] that the determination or other action [wa]s in, or not opposed to, the best interests of the Partnership."[156] Plaintiff seeks to remove GP from the Special Approval safe harbor by rebutting that presumption.[157]

"For purposes of trial, the contractual standard meant that the plaintiff bore the burden of proving by a preponderance of the evidence that the Committee members did not hold the necessary subjective belief."[158] "Proof by a preponderance of the evidence means proof that something is more likely than not. It means that certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe that something is more likely true than not."[159]

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[156] *Id.* §§ 7.9(a), 7.9(b).

[157] *See id.* § 7.9(a) ("[I]n any proceeding brought by any Limited Partner . . . challenging such approval, the Person bringing or prosecuting such proceeding shall have the burden of overcoming such presumption.").

[158] *In re El Paso Pipeline P'rs, L.P. Deriv. Litig.*, 2015 WL 1815846, at *15 (Del. Ch. Apr. 20, 2015).

The Delaware Supreme Court has noted that "[i]n order to rebut a legal presumption, courts uniformly have applied an intermediate standard of proof that is more strict than the 'preponderance of the evidence' standard . . . ." *Hudak v. Procek*, 806 A.2d 140, 147 (Del. 2002). Rather than dive into whether a contractual presumption amounts to a "legal presumption" born of common law, I have held Plaintiff to the lower preponderance of the evidence standard *El Paso* used for identical contractual provisions, which he still fails to clear.

[159] *Agilent Techs., Inc. v. Kirkland*, 2010 WL 610725, at *13 (Del. Ch. Feb. 18, 2010) (quoting *Del. Exp. Shuttle, Inc. v. Older*, 2002 WL 31458243, at *17 (Del. Ch. Oct. 23, 2002)).

So Plaintiff must persuade this Court it is more likely true that the Conflicts Committee did not subjectively believe the Merger was in the Partnership's best interests. He can do so by showing it is more likely true that the Conflicts Committee believed it was acting or intended to act against the Partnership's best interests, or consciously disregarded its duty to form the presumed subjective belief.[160] The transaction can "suffer[] from many flaws as long as the Committee members reached a rational decision for comprehensible reasons."[161]

> [T]he subjective good faith standard remains distinct from an objective, "reasonable person" standard. Therefore, the ultimate inquiry must focus on the subjective belief of the specific directors accused of wrongful conduct. The directors' personal knowledge and experience will be relevant to a subjective good faith determination, which must focus on measuring the directors' approval of a transaction against their knowledge of the facts and circumstances surrounding the transaction.[162]

In the absence of credible evidence demonstrating the director's state of mind, "[o]bjective facts therefore remain relevant to the extent they permit an inference that the defendants lacked the necessary subjective belief."[163]

Plaintiff has not come close to rebutting the presumption of good faith. Instead, the preponderance of the evidence offered exactly what the *El Paso* Court

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[160] *See Allen v. Encore Energy P'rs, L.P.*, 72 A.3d 93, 106 (Del. 2013); *El Paso*, 2015 WL 1815846, at *15–16.

[161] *El Paso*, 2015 WL 1815846, at *16.

[162] *Allen*, 72 A.3d at 107.

[163] *See El Paso*, 2015 WL 1815846, at *16.

expected would show good faith in offering Special Approval: "a credible account of how [the Conflicts Committee members and their financial advisor] evaluated the [transaction], negotiated with [the Sponsor], and ultimately determined that the transaction was in the best interests of [the] MLP."[164] The only evidence at trial is consistent with the presumption that each Conflicts Committee member subjectively believed the Merger was in the Partnership's best interests.

Each member credibly testified that he believed just that, offering a multitude of reasons supported by the record about the Partnership, negotiations, expert advice, the member's experience, and common sense.[165] The members met with their advisors dozens of times,[166] considered letters from investors,[167] reviewed analyses from a highly qualified financial advisor,[168] and pushed back against the Sponsor on multiple occasions.[169] As changes emerged, the Conflicts Committee rapidly

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[164] *Id.* at *1.

[165] *See* Tywoniuk Tr. 9; Fasullo Tr. 125–26; Kendall 158–60, 177.

[166] PTO ¶¶ 35, 39, 41–45, 48, 55–58, 60–62, 65–67, 69–71, 73–79; Tywoniuk Tr. 18, 24, 57.

[167] JX 179; JX 220; JX 255; Tywoniuk Tr. 46–47; Fasullo Tr. 134; Kendall Tr. 178.

[168] JX 189; JX 244; JX 252; JX 251; JX 259; JX 264; JX 275; JX 313; JX 327; JX 328; Tywoniuk Tr. 36–37; Fasullo Tr. 130–31; Kendall Tr. 175.

[169] JX 205; JX 263; JX 285; JX 298; Tywoniuk Tr. 43–45; Pacha Tr. 191–92.

updated projections to place the Partnership in the best light possible.[170] Even so, each member of the Conflicts Committee decided the Merger was the best option.[171]

Plaintiff does not offer any reason to question the preponderance of the evidence showing the members sincerely believed the Merger was in the Partnership's best interest. Rather, Plaintiff zooms out, asking the Court to blame the Sponsor for the Partnership's difficulties, then contending the Conflicts Committee's process failed to push back against what the Sponsor had done.

But this too fails. Special Approval is met if the Conflicts Committee subjectively believed the Merger was in the best interests of the Partnership.[172] Nothing in the record suggests the Conflicts Committee thought otherwise. Unlike *El Paso*, the Conflicts Committee did not simply go "through the motions."[173] It did not contradict itself in internal communications or hire advisors that selectively overlooked unfavorable metrics.[174] Instead, the Conflicts Committee confronted each problem head on and concluded the Merger was the best option.

And Plaintiff's propositions are not supported by the record. The Partnership faced industry headwinds the Sponsor had nothing to do with. To be sure, the

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[170] *See* JX 228; Tywoniuk Tr. 50–51.

[171] Tywoniuk Tr. 9; Fasullo Tr. 125–26; Kendall Tr. 158–59, 177.

[172] LPA §§ 7.9(a), 7.9(b).

[173] *El Paso*, 2015 WL 1815846, at *16.

[174] *See id.* at *17–19, *21–24.

Sponsor was opportunistic: it favored cutting distributions in July 2018 which depressed the common unit trading price, after which it bought more units to obtain the majority and then submitted its initial proposal; it declined to provide additional financial support, leaving the Partnership to defer renewal of its credit agreement and eliminate distributions for Q4 2018; and it withdrew its initial proposal in December 2018 and revised it dramatically downward. But the Sponsor did not cause energy prices and the MLP capital markets to sink, the Partnership's asset sales and acquisition of Southcross to fail, or the Delta House constriction. More fundamentally, a difficult adversary across the table does not alone impugn the fiduciary's independence or good faith.[175]

And the Conflicts Committee took the Partnership's difficulties into account when valuing the Partnership and determining that its standalone fate was uncertain. Facing a declining MLP market and mounting debt, the Partnership was struggling

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[175] *Frank v. Mullen*, 337 A.3d 824, 839 (Del. Ch. 2025) ("But where that large blockholder does not exercise actual control over the corporation's business and affairs, independent directors can still retain their presumed independence and control over the transaction . . . . An independent target board may agree with—or yield to—a tough negotiator in its own business judgment: independent concession does not support an inference of control. When there is an independent special committee, an independent board, and a clean process, a plaintiff cannot plead actual control over the transaction simply by pointing to a large block holder's negotiating leverage."); *Dieckman*, 2021 WL 537325, at *27 ("Controlling the timing of a merger is not sufficient by itself, however, to demonstrate unfair dealing by a controller."); *In re Atlas Energy Res., LLC*, 2010 WL 4273122, at *14 (Del. Ch. Oct. 28, 2010) (explaining that a party maintaining a "dominant negotiating position" is insufficient to show bad faith).

to stay afloat.[176] Lenders began pressuring the Partnership to decrease their leverage ratios.[177] But selling assets was not a viable option and the Partnership was unable to issue more debt.[178]

Despite these challenges, the Conflicts Committee negotiated strategically and intensely against the Sponsor. The Conflicts Committee responded to the Sponsor's initial proposal immediately, retaining legal and financial advisors, and requesting updated projections from management.[179] They countered the reduced offer with prices specifically chosen to "send[] a message" that the price needed to come up.[180] And, the strategy worked: the Conflicts Committee successfully negotiated three price increases.[181] The negotiations took the price from $4.50 to $5.25.[182] Simply put, the Conflicts Committee did not just "roll[] over."[183]

While the Conflicts Committee may not have reached the conclusion that Plaintiff wanted, that does not prove bad faith. Six years of litigation cannot change

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[176] Tywoniuk Tr. 24–25, 52–53; Fasullo Tr. 125; Kendall Tr. 158–59.

[177] Fasullo Tr. 125.

[178] *Id.* at 125, 126–28; Tywoniuk Tr. 52–53.

[179] PTO ¶¶ 24–26, 40; JX 99; Kendall Tr. 157, 162; Tywoniuk Tr. 12–14.

[180] Tywoniuk Tr. 44.

[181] JX 263; JX 285; JX 298.

[182] *Compare* JX 202 at 2, *with* JX 301.

[183] *See* Plaintiff Opening Br. 2, 40.

the bottom line: the Conflicts Committee held the requisite subjective belief. That is all the LPA required.

III. CONCLUSION

Plaintiff failed to rebut the presumption that the Conflicts Committee provided Special Approval in good faith. That was the only issue presented in this bifurcated trial. I trust the parties can work that conclusion through the LPA and submit a stipulated order and final judgment on Count I. If other issues arise, the Court stands ready to assist.