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Williams, ETE Battle Over Briefs As Del. Merger Trial Looms

By **Jeff Montgomery**

Law360, Wilmington (June 16, 2016, 9:06 PM ET) -- A swollen brief, and not shrunken mega-merger values, briefly dominated legal grappling Thursday over joining of The Williams Cos. Inc. and Energy Transfer Equity LP, with Williams attorneys put on the defensive after blowing past a Delaware Chancery Court word limit days ahead of a trial.

ETE attorneys asked Vice Chancellor Sam Glasscock III to throw a flag on Williams for submitting an initial 24,199-word pretrial brief that weighed in at 172 percent of the court's usual limit, without advance approval from the court or agreement from ETE.

The issue surfaced in the runup to a two-day trial slated to begin Monday on a Williams motion to compel ETE to follow through with the two pipeline companies' merger. The cash, stock and debt deal was estimated to have a $37.7 billion value in September but was pegged at about $21 billion more recently because of falling oil prices and share values.

ETE has said tax consequence assessments now make the deal un-doable by its June 28 deadline, while Williams is holding tight and demanding in court that ETE unwind a recent securities issue by ETE that it said would dilute the merger benefit.

"We felt there was simply no excuse for lobbing a request just 12 hours before the brief is due" for a significantly longer briefing, said ETE attorney James M. Yoch Jr. of Young Conaway Stargatt & Taylor LLP. "They waited until that extension would be prejudicial to the defendant, and when they weren't permitted that extension, they took it anyway."

ETE, which submitted a 13,997-word brief, wanted Williams' feet held to the fire Thursday. The company suggested at one point that Williams' reply brief be held to a quarter of the usual size to balance the books in a case that already had been expected to put 56,000 words of legal arguments in front of Vice Chancellor Glasscock by the weekend, based on ordinary limits.

Williams attorney Kenneth J. Nachbar of Morris Nichols Arsht & Tunnell LLP said that Williams suggested an agreement on initial and reply briefs of up to 33,000 words for each side Wednesday afternoon, and said ETE was open to a 30,000-word total. But Williams found itself forced to push ahead, Nachbar said, when an after-hours call for court approval went unanswered.

"The alternative would have been not to file any brief last night. We didn't think that was a good idea, so we filed the brief we had. That would have been acceptable if the court had accepted either party's position," Nachbar said.

Vice Chancellor Glasscock, facing the fast-approaching deadline and trial, said he found himself recalling lyrics from a song by Johnny Cash in searching for a fix, quoting, "I don't like it, but I guess things happen that way," and then trimming Williams' sails.

The court allowed Nachbar only another 5,001 words for its reply, with ETE granted until Sunday for its response.

"I'm not sure it's the best idea to simply assume you're going to get some extension, but who knows how much," Vice Chancellor Glasscock said. "What I don't want is to set a precedent, and 'let's go ahead and violate the rules, because the court will be in a position where it won't be able to provide a real remedy.'"

Nachbar said ETE knew the court might have approved the longer brief and said that it pursued the change given the magnitude of the case.

"It's certainly not a precedent. It was never our intention to impose unfair burdens on the court, or have the court over a barrel," Nachbar said.

Dozens of spectators are expected for the trial Monday and Tuesday in Delaware's small Chancery Court building in Georgetown, about 85 miles south of Wilmington.

Earlier this week, Institutional Shareholder Service recommended that Williams shareholders approve the merger by their June 27 voting deadline. The deal offers Williams $6.02 billion in cash, or $8 per share, as well as stock in a new ETE subsidiary and debt assumptions.

Although Williams traded at $22 per share after hours, the ETE deal, set in September, offers an implied $43.50 per share value, making it far more attractive to Williams than to ETE.

ETE has submitted counterclaims blaming Williams for failing to support the deal and jeopardizing the merger, and has demanded Williams pay a $1.48 billion termination fee.

Williams is represented by Kenneth J. Nachbar and Zi-Xiang Shen of Morris Nichols Arsht & Tunnell LLP and Sandra C. Goldstein, Antony L. Ryan and Kevin J. Orsini of Cravath Swaine & Moore LLP.

ETE is represented by Rolin P. Bissell, Tammy L. Mercer and James M. Yoch Jr. of Young Conaway Stargatt & Taylor LLP and Michael C. Holmes, John C. Wander, Michael L. Charlson and Craig E. Zieminski of Vinson & Elkins LLP.

The case is The Williams Cos. Inc. v. Energy Transfer Equity LP et al., case numbers 12337 and 12168, in the Court of Chancery of the State of Delaware.

--Editing by Brian Baresch.