

## Management-led buyout disputed by class

### 'Going-private' takeover deal criticized, deemed less than value of shares

By: Michigan Lawyers Weekly Staff in Verdicts & Settlements August 19, 2011

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In a class-action lawsuit filed in Shawnee County District Court in Kansas, shareholder plaintiffs challenged the acquisition of defendant Kinder Morgan, Inc. (KMI) by a group led by Richard Kinder, KMI's largest stockholder and chairman.

On May 28, 2006, Kinder's group announced a \$100-per-share merger proposal. A petition was filed in Shawnee County, Kansas, on June 9, 2006, seeking to require that the KMI board of directors fulfill its fiduciary duties and obligations to the company's public shareholders in the face of the "going-private" takeover proposal.

On Aug. 28, 2006, KMI announced that it had agreed to be acquired by Kinder's group in a "going private" transaction for \$107.50 per share. Plaintiffs filed their consolidated and amended class action petition that same day, and on Oct. 2, 2006, their second consolidated and amended class action Petitions were filed.

Both amended petitions alleged that the \$107.50 price agreed to in connection with the buyout was materially less than the value of KMI's shares; that the consideration was inadequate; and represented an attempt by the buyout group to wield its control to force out the public shareholders in order to reward itself with the profits of KMI's shareholders.

The case was then assigned to former Delaware Supreme Court Justice Joseph T. Walsh as special master, and expedited discovery commenced.

During the course of extensive document and deposition discovery, plaintiffs filed their third consolidated and amended class action petition under seal of confidentiality on Nov. 21, 2006. Plaintiffs sought a preliminary injunction to halt the buyout. Although no injunction was issued, Walsh noted that the buyout process was flawed from the date that the buyout group made plans to take KMI private.

On Jan. 25, 2008, plaintiffs filed a motion for class certification, and on Jan. 9, 2009, the Special Master submitted his report and recommendation to certify this action as a class action. On Feb. 20, 2009, the Shawnee County entered an order certifying a plaintiff class.

The parties then engaged in extensive mediation efforts. In August 2010, the mediator's proposal was formally accepted. Following approval of the settlement, several parties appealed. The appeals were dismissed April 1, 2011, and the settlement became final May 1, 2011.

**Type of action:** Injunction and damages in conjunction with a "going private" transaction

**Type of injuries:** Difference between tender price and fair value for the shares

**Name of case:** *In re Kinder Morgan, Inc. Shareholders Litigation*

**Court/Case no./Date:** Shawnee County District Court (Kansas); 06-C-801; May 1, 2011

**Name of judge:** David E. Bruns

**Settlement amount:** \$200 million

**Attorneys for plaintiff:** E. Powell Miller, Marc L. Newman, David H. Fink

**Attorney(s) for defendant:** Withheld

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