



Court Ruling on Post-Spill Access to Records Highlights Importance of Corporate Safety Culture

AUGUST 15, 2017

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On August 8, 2017, a Delaware Chancery Judge ruled that investors in Plains All American Pipeline LP (“Plains”) are entitled to review the company’s books and records following a 2015 oil spill that resulted from a pipeline breach. The court found that investors had demonstrated a “credible basis” to investigate whether the incident was the result of corporate mismanagement. This decision is a reminder that after a serious safety or environmental incident, companies may face investigations from a broad range of stakeholders seeking accountability, and courts may establish very low bars to the ability of investors to obtain corporate records relating to such incidents. The decision reinforces the reasons that robust safety and compliance cultures embraced by top levels of a company are important to managing litigation and reputational risks.

The Spill and Resulting Criminal Charges

Plains is a publicly-traded master limited partnership that, through subsidiaries, owns and operates various types of energy infrastructure, including crude oil pipelines in the United States and Canada. On May 19, 2015, a rupture occurred on a Plains pipeline in Santa Barbara County, California, resulting in a release of crude oil on a Pacific Ocean beach and the surrounding area and damaging the natural environment and wildlife. The line where the rupture occurred had been inspected two weeks before the spill, but the results of the inspection had not been finalized. In May 2016, a Santa Barbara County grand jury returned an indictment against Plains and a Plains employee, alleging that Plains “knowingly engaged in or caused, or reasonably should have known that [it] was engaging in or causing the discharge or spill of oil into the waters of the state.”

The Delaware Court Decision

Plaintiffs—investors in Plains—filed suit in the Chancery Court of Delaware, seeking access to Plains’ books and records for the purpose of investigating whether the Board of Directors had engaged in corporate mismanagement or wrongdoing in connection with the spill in violation of the standard of care in the Plains limited partnership agreement. Under Delaware law, investors (i.e., limited partners) may obtain the books and records of a limited partnership if they can demonstrate that the information sought is reasonably related to the limited partner’s interest as a limited partner. Investigating possible mismanagement or wrongdoing has been found to be related to a limited partner’s interest. The court stated that limited partners may obtain books and records by establishing a “credible basis” to show mismanagement, waste or wrongdoing through “documents, logic, testimony, or otherwise.”

The court found that the Plaintiffs had established a “credible basis,” citing a number of factors. Stating that hearsay evidence is admissible to establishing a “credible basis”, the court cited a *Los Angeles Times* article interpreting data Plains had submitted to the Pipeline and Hazardous Materials Safety Administration as showing that “Plains’ rate of incidents per mile of pipe is more than three times the national average.” The court also cited a *New York Times* article quoting the leader of a nonprofit pipeline watchdog group as characterizing Plains’ incident rate as higher than the national average. The court also supported its conclusion by citing the pre-rupture inspection of the pipe segment and the Santa Barbara County indictment. The court placed certain limitations on Plaintiffs’ access to the company’s books and records, including the execution of a confidentiality agreement, and ordered that Plains incur the costs associated with the gathering, reviewing, and redacting of the materials.

The court denied Plaintiffs’ request for the emails of Plains’ chairman and chief executive officer, noting that he is on the Board of Directors, and that no evidence suggested that he had concealed information from the other directors. The court also ruled that Plaintiffs had not demonstrated that board-level materials would not be sufficient for the stated purposes.

Potential Implications

The Delaware decision is a reminder that, in addition to governmental authorities, accident investigators, and tort plaintiffs, investors also may pursue investigations of corporate conduct and potential mismanagement. The decision reinforces the importance of implementing a robust safety, environmental protection, and compliance culture that is embraced by all levels of the company, including senior management and the board of directors. It is reasonable to expect that companies that have a demonstrated safety and environmental protection culture will be in a better position to manage and mitigate risks following a serious incident. On the contrary, if evidence suggests that a safety and environmental protection culture is absent, companies, corporate executives, and boards of directors likely face heightened exposure to the risk of protracted litigation and reputational harm following a serious incident.

For more information

Van Ness Feldman's team of former agency officials and industry experts has extensive experience handling safety and environmental incidents that occur on many different types of facilities, including: oil and gas pipelines; LNG facilities; offshore oil and gas rigs/platforms; electricity generation plants and transmission lines; hydropower projects; nuclear reactors; chemical plants; and many others. Our attorneys also represent companies and other organizations in providing objective "fresh eye" reviews of existing compliance and risk management systems, creating and implementing compliance programs and safety management systems, and other risk management/mitigation activities.

If you would like further information about Van Ness Feldman's capabilities, please contact [Michael Farber](#), [Susan Olenchuk](#), or [Bryn Karaus](#) at 202-298-1800.

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