



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE EL PASO CORPORATION
SHAREHOLDER LITIGATION

)
) Consolidated
) C.A. No. 6949-CS
)

**PLAINTIFFS' MOTION TO STRIKE
DEFENDANTS' EXPERT REPORT OF KENNETH D. LEHN**

1. For the reasons set forth herein, Lead Plaintiffs respectfully move this Court for an Order striking the Expert Report of Kenneth D. Lehn from the record on Lead Plaintiffs' pending Motion for a Preliminary Injunction.

2. On December 2, 2011, the Court entered a Scheduling Order, which is attached hereto as Exhibit A, that required, among other things, Plaintiffs to identify any experts upon whom they intend to rely in support of their motion for injunctive relief (and a summary of the topics on which an opinion would be rendered) by December 11, 2011. On December 11, 2011, Plaintiffs served their identification of experts, a copy of which is attached hereto as Exhibit B. Specifically, Plaintiffs disclosed their intent to rely on David G. Clarke.

3. The Scheduling Order also required that Defendants identify any experts upon whom they intend to rely in opposing Plaintiffs' motion for injunctive relief (and a summary of the topics on which an opinion would be rendered) by December 21, 2011. On December 21, 2011, Defendants served their identification of experts, a copy of which is attached hereto as Exhibit C. Specifically, Defendants disclosed their intent to rely on H. Stephen Grace.

4. On January 14, 2012, Plaintiffs served the Expert Declaration of David G. Clarke.

5. Without giving any prior notice to Plaintiffs or making any request for a waiver of the Scheduling Order or any request to confer and reach a compromise regarding the same, on the evening of January 18, 2012, Defendants filed an Amended Expert Disclosure, a copy of

which is attached hereto as Exhibit D. Specifically, Defendants purported to withdraw their prior identification of Mr. Grace and replace it with an identification of Kenneth D. Lehn as a testifying expert.

6. During a teleconference among the parties on January 20, 2012, Plaintiffs objected to Defendants' noncompliance with the Scheduling Order in connection with their purported replacement of Mr. Grace's expert designation with the designation of Mr. Lehn. Plaintiffs stated that if Mr. Grace had experienced some pragmatic conflict, like a health issue or similar problem, Plaintiffs could justify not filing this Motion to Strike. In response, Defendants' counsel stated that Mr. Grace was not ill and did not have a similar reason for being unavailable to issue a report. When further detail was requested, Defendants' counsel declined to further explain why they withdrew the notice of Mr. Grace. As a result, Plaintiffs can only infer that Mr. Grace in fact agreed with the sum and substance of Mr. Clarke's expert opinion and that Defendants had to scramble to replace Mr. Grace with an expert who would be willing to dispute Mr. Clarke's opinions.

7. Shortly after the teleconference among the parties, Plaintiffs objected in writing to Defendants' non-compliance with the Scheduling Order. *See* Exhibit E hereto. Again, Defendants offered no response.

8. On January 23, 2012, Defendants served an Expert Report by Mr. Lehn. The Report purports to disagree with the opinions of Mr. Clarke. There is nothing about Mr. Lehn's Report that would not have fit squarely within Mr. Grace's area of experience, had Defendants been willing to permit the Court to hear Mr. Grace's views about Mr. Clarke's report.

9. The Court has the inherent power to enter Orders regarding the scheduling of pending matters, and should exercise that power to direct that Mr. Lehn's report be stricken due to Defendants' failure to comply with the Scheduling Order.

FOR ALL THE ABOVE REASONS, Plaintiffs respectfully request that the Court enter the Order submitted herewith, striking from the record on Plaintiffs' Motion for Preliminary Injunction the Expert Report of Kenneth D. Lehn.

Dated: January 24, 2012

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CERTIFICATE OF SERVICE

I, Megan D. McIntyre, hereby certify that on January 24, 2012, Plaintiffs' Motion to Strike Defendants' Expert Kenneth D. Lehn, was served via Lexis File and Serve on the following counsel of record:

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