Del. Supreme Court Clarifies Elements of Aiding and Abetting Claims Against Third-Party Buyers

By Nathaniel J. Stuhlmiller
Delaware Business Court Insider
July 2, 2025

Aiding and abetting claims against arm's-length third parties have often been described as some of the most difficult claims to prove under Delaware law. Despite this truism, in two recent post-trial opinions—*In re Mindbody Stockholder Litigation* and *In re Columbia Pipeline Group Merger Litigation*—the Delaware Court of Chancery held third-party buyers liable for aiding and abetting breaches of fiduciary duty by officers and directors of the selling company. The Delaware Supreme Court has now reversed both *Mindbody* and *Columbia Pipeline* and, in so doing, has reconfirmed that, in most instances, the bar for successfully proving an aiding and abetting claim against a third-party buyer remains quite high.

Court of Chancery Opinions

In *Mindbody*, the Court of Chancery found that Mindbody's founder and chief executive officer breached his fiduciary duties during the course of Vista Equity Partners Management's acquisition of Mindbody by, among other things, initiating and running a flawed sales process that enabled Vista to "sprint" ahead of other potential buyers. The Court of Chancery also held that Vista aided and abetted disclosure breaches by Mindbody's board of directors because Vista had the opportunity—and a contractual obligation under the merger agreement—to review Mindbody's proxy statement with respect to the deal and had knowledge of material facts about the sale process that were omitted (including disclosures regarding Vista's interactions with Mindbody's founder). For the aiding and abetting claims, the Court of Chancery ultimately found Vista liable for "nominal" damages of $1 per share (or approximately $35 million).

In *Columbia Pipeline*, the Court of Chancery held that TransCanada aided and abetted fiduciary breaches by the officers and directors of Columbia Pipeline during the sale process. In particular, the Court of Chancery found that TransCanada had constructive knowledge that Columbia Pipeline's officers were motivated to pursue a sale for personal financial reasons and that TransCanada used that information to its advantage during negotiations (including by routing negotiations through officers motivated to sell, allegedly violating a standstill agreement with the company and reducing its offer price at the last minute). As in *Mindbody*, the Court of Chancery found that TransCanada aided and abetted disclosure breaches by Columbia Pipeline's board of directors by failing to correct or supply omitted disclosures in the proxy statement regarding the deal process, despite having a contractual obligation in the merger agreement to do so. For the aiding and abetting claims, the Court of Chancery ultimately awarded "nominal" damages of $0.50 per share (or approximately $199 million).

Supreme Court Reversals

The Supreme Court reversed the Court of Chancery in both cases. In each decision, the Supreme Court's analysis focused on the "knowing participation" element of the four-part test for proving an aiding and abetting claim (with the other three parts being the existence of a fiduciary relationship, a breach of fiduciary duty, and damages proximately caused by the breach).

In *Mindbody*, the Supreme Court clarified that the "knowing" aspect of "knowing participation" requires a plaintiff to prove that an aider and abettor knew that the primary actor's conduct constituted a breach of fiduciary duty *and* that the aider and abettor acted with scienter (meaning that it also knew that its own conduct was legally improper). In

Columbia Pipeline, the Supreme Court emphasized that an aider and abettor must have *actual* knowledge of an underlying fiduciary breach—constructive knowledge (i.e., showing that an aider and abettor should have known) of the primary actor's breach is not enough. It was this aspect of the claim that the Supreme Court ultimately found to be lacking in its reversal of the process-based aiding and abetting claims in *Columbia Pipeline*. While the Court of Chancery had found that TransCanada *should have known* that the officers it was negotiating with were breaching their fiduciary duties, the Supreme Court held that the same facts could not support a finding that it *actually knew* of the underlying breach.

With respect to the "participation" aspect, the *Mindbody* court stated that an aider and abettor must provide "substantial assistance" to the primary actor in order satisfy this element of the claim. In this regard, the Supreme Court in both *Mindbody* and *Columbia Pipeline* stated that active participation on the part of the aider and abettor is required and that "passive awareness" of wrongdoing is not enough. This aspect of the claim undermined the disclosure-based aiding and abetting claims in both *Mindbody* and *Columbia Pipeline*. In both cases, the alleged aider and abettor reviewed the proxy statement and arguably knew that material facts regarding the sales process were omitted or mischaracterized. However, the Supreme Court declined to find that either "actively participated" in the disclosure violations because neither Vista nor TransCanada provided comments or suggested changes to the proxy statement that directly resulted in any omissions or factual mischaracterizations. And in both cases, the Supreme Court refused to equate provisions in the merger agreement giving the buyer the right to review the proxy statement and obligating the buyer to notify the seller of misstatements in the proxy statement with "active participation" in the preparation of the seller's proxy statement sufficient to impose liability as an aider and abettor.

Conclusion

Taken together, the Supreme Court opinions in *Mindbody* and *Columbia Pipeline* appropriately reconfirm the traditionally high bar for third-party buyer aiding and abetting claims under Delaware law. The Supreme Court's clarification of the level of conduct required to show "knowing participation" in an underlying breach should provide comfort that hard bargaining tactics and boiler plate provisions in a merger agreement will not result in aiding and abetting liability for a third-party buyer.

Nathaniel J. Stuhlmiller *(stuhlmiller@rlf.com) is a director of Richards, Layton & Finger. His practice focuses on transactional matters involving Delaware corporations, including mergers and acquisitions, corporate governance and corporate finance.*