

Chancery Lets Pipeline Co. Investors See Oil Spill Records

By **Matt Chiappardi**

Law360, Wilmington (August 8, 2017, 6:46 PM EDT) -- A Delaware Chancery judge ruled Tuesday that investors in Plains All American Pipeline LP can access records related to a nearly 3,000-barrel oil spill in California stemming from a 2015 breach in one of its lines, finding they had a credible basis to investigate possible corporate mismanagement.

The 16-page order from Vice Chancellor Tamika Montgomery-Reeves also found that the investors did not have standing to access records from Plains GP Holdings LP, which manages Plains All American Pipeline's operations and employees, because they are not unitholders of that particular entity.

But Vice Chancellor Montgomery-Reeves did grant the investors a look at every other entity in the partnership they targeted, ruling they had shown they had proper purpose to access the records and that there was enough evidence to open an investor probe into whether the spill had a connection to mismanagement at the board level.

"The evidence plaintiffs presented at trial sufficiently establishes a credible basis to warrant further investigation into whether the Plains board complied with its standard of care under the Plains limited partnership agreement," the vice chancellor wrote. "The production shall be incorporated by reference into any subsequent derivative complaint."

The issue stems from a major **crude oil leak** from a corroded segment of pipeline west of Santa Barbara, California, some of which reached the Pacific Ocean, fouling a beach, killing wildlife, and shutting down a public recreation and fishing area.

Vice Chancellor Montgomery-Reeves wrote Tuesday that a Santa Barbara County grand jury's indictment of Plains All American Pipeline, which includes four felony counts and allegations of knowing violations of law, was a major factor in her finding that the investors had a credible basis to investigate.

It was unclear Tuesday how Vice Chancellor Montgomery-Reeves' finding that Plains GP Holdings LP is off limits would impact the information the investors are seeking. The vice chancellor noted in her order that the investors didn't address standing to get the records of the entity — which trades separately on the New York Stock Exchange, has a different set of unitholders and a different partnership agreement — and thus waived their argument.

Representatives of the investors did not immediately respond to requests for comment Tuesday.

The vice chancellor additionally denied the investors' request to access emails belonging to Plains All American Pipeline's board chairman and CEO Greg L. Armstrong.

The investors had argued they should be able to see the emails because Armstrong would have unique insights into Plains All American Pipeline's operations as CEO, but Vice Chancellor Montgomery-Reeves ruled that the unitholders hadn't shown the board records alone weren't sufficient to their investigation.

"No evidence suggests that the board was not informed of facts relevant to the board's oversight of

pipeline safety,” the vice chancellor wrote. “In contrast, Armstrong is on the board, and nothing suggests that he concealed information from the other directors. The Plains board-level materials that Plains agreed to produce at trial are necessary and sufficient for plaintiffs’ purpose.”

The scope of the documents to be produced comes from a stipulated order Vice Chancellor Montgomery-Reeves approved before a **one-day trial** on the issue in February.

If the court found that the investors were entitled to the records, the sides stipulated that they would include board and committee minutes stretching back as far as 2010, according to court records.

“We are gratified by Vice Chancellor Montgomery-Reeves’ opinion, particularly her agreement with us that the books and records demand was properly limited to the documents she ordered we produce and did not extend to emails,” Plains All American Pipeline attorney Michael C. Holmes of Vinson & Elkins LLP told Law360.

The investors filed their books and records action in February 2016, about a year before other Plains All American Pipeline unitholders filed a related derivative lawsuit, but without the benefit of discovery.

Under Delaware law, investors can have the Chancery Court compel companies to turn over their corporate records if they show they have a proper purpose for doing so. The information gleaned is often used to support larger lawsuits.

The investors are represented by Robert D. Goldberg of Biggs & Battaglia, Ira M. Press and Mark A. Strauss of Kirby McInerney LLP, Howard T. Longman and Mark Levine of Stull Stull & Brody, and Lynda J. Grant of The Grant Law Firm PLLC

Plains All American Pipeline L.P, et al, are represented by Srinivas M. Raju and Matthew W. Murphy of Richards Layton & Finger PA, and Michael C. Holmes, Craig E. Zieminski, Kimberly R. McCoy and Bryan U. Gividen of Vinson & Elkins LLP.

The case is In re: Plains All American Pipeline LP et al., case number 11954, in the Court of Chancery of the State of Delaware.

--Additional reporting by Jeff Montgomery. Editing by Emily Kokoll.