

CONSOLIDATED CAUSE NO. 07-1779

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In re TXU, Inc. Derivative Litigation

§ IN THE DISTRICT COURT OF
§ DALLAS COUNTY, TEXAS
§
§
§
§ 44th JUDICIAL DISTRICT

GARY M. LIN
FITZSIMMONS
DALLAS CO., TEXAS
DEPUTY

CONSOLIDATED AMENDED SHAREHOLDER DERIVATIVE PETITION FOR BREACH OF FIDUCIARY DUTY

Plaintiffs, by and through their attorneys, allege upon information and belief (said information and belief being based, in part, upon the investigation conducted by and through their undersigned counsel), except with respect to their ownership of shares of common stock of TXU Corp. ("TXU" or the "Company") and their suitability to serve as derivative plaintiffs, which allegations are based upon personal knowledge, against defendants as follows:

DISCOVERY LEVEL

1. Pursuant to Texas Rule of Civil Procedure 190, plaintiffs would show that discovery is intended to be conducted under Level 3 of this Rule due to the complexity of the case.

NATURE OF THE ACTION

2. Plaintiffs bring this action for breach of fiduciary duty derivatively on behalf and for the benefit of nominal defendant TXU against the individual defendants, who are directors and senior officers of the Company as well as third-parties with whom they conspired or who aided and abetted their breaches of fiduciary duty. No claims are asserted against TXU, for whose benefit relief is sought.

3. This action arises out of the unlawful actions of the Director Defendants (as defined below), in conspiracy with or aided and abetted by the third parties, in undertaking a

management-led leveraged buy-out (the "LBO") of TXU to take the Company private at \$69.25 cash per share by means of a merger (the "Merger") among defendants TXU, Kohlberg Kravis Roberts & Co. ("KKR"), a private equity investment firm, and Texas Pacific Group ("TPG"), a private equity firm and fund manager. The LBO is at a grossly inadequate and unfair price and was arrived at by an unfair and tainted process that was intended to provide valuable assets of TXU to defendants for unfair and inadequate consideration. Defendants have acted together, in concert, or in conspiracy to the detriment of the Company and in breach of the Director Defendants' fiduciary duties to TXU.

4. Plaintiffs seek to enjoin consummation of the Merger and completion of the LBO under the grossly inadequate and unfair price of \$69.25 per share. Alternatively, in the event that the Merger is consummated, plaintiffs seek to recover damages caused by the breach of fiduciary duties owed by the Director Defendants. The Merger and the acts of the Director Defendants, as more particularly alleged herein, constitute a breach of defendants' fiduciary duties to TXU and a violation of applicable legal standards governing the defendants herein.

5. The Director Defendants' decision to pursue the Merger was in breach of their fiduciary duties owed to TXU and its public stockholders to take all necessary steps to ensure that the stockholders will receive the maximum value realizable for their shares in any transaction effecting the change of corporate control. In the context of this action, the Board, having agreed to the Merger, failed to take all reasonable steps to assure the maximization of stockholder value, including, among other things, (i) the implementation of a bidding mechanism to foster a fair auction of the Company to the highest bidder; (ii) the acquiescence to an excessive and punitive breakup fee of at least \$375 million (and as much as \$1 billion) that has operated to deter competing bids and violates all governing principles pertaining to liquidated

damages provisions and contract penalties; the (iii) the failure to pursue and encourage expressions of interest from potential strategic partners and/or bidders; or (iv) the exploration of strategic alternatives that will return greater or equivalent short-term value to the Company's public stockholders.

JURISDICTION AND VENUE

6. This Court has jurisdiction over nominal defendant TXU because TXU is a Texas corporation, conducts business in the State of Texas, and has its principal place of business in Texas at the address set forth below. Certain of the defendants, including defendant C. John Wilder, are citizens of Texas. All of the defendants engaged in conduct in Texas upon which this action is based, making them subject to jurisdiction in Texas. This action is not removable.

7. Venue is proper in this County pursuant to Tex. Civ. Prac. & Rem Code § 15.002(a)(1) and (3) because TXU has its principal office in this County and because all or a substantial part of the events and omissions giving rise to the claim occurred in this County.

PARTIES

8. Plaintiffs, Walter and Rita Goldmann, are and have been owners of shares of TXU common stock at all relevant times described herein.

9. Nominal Defendant TXU is a holding corporation organized and existing under the laws of the State of Texas. TXU maintains its principal offices in this district at 1601 Bryan Street, Dallas, Texas, 75201-3411. TXU manages a portfolio of competitive and regulated energy businesses in Texas. The company, through its subsidiary, TXU Energy Company LLC, engages in electricity generation, residential and business retail electricity sales, and wholesale power and natural gas market activities; and through another subsidiary, TXU Electric Delivery Company, engages in regulated electricity transmission and distribution operations providing power to approximately 3 million electric delivery points. The company serves residential and

small businesses, municipalities, electric co-operatives, and other distribution companies. The Company's stock is traded on the New York Stock Exchange under the symbol TXU.

10. Defendant C. John Wilder is and has served as a director of the Company since 2004, and as Chairman and Chief Executive Officer of TXU since 2005.

11. Defendant James E. Oesterreicher is and has served as a director of the Company since 1996.

12. Defendant Leonard H. Roberts is and has served as a director of the Company since 2005.

13. Defendant Kerney Laday, Sr., is and has served as a director of the Company since 1993.

14. Defendant Jack E. Little is and has served as a director of the Company since 2001.

15. Defendant Glenn F. Tilton is and has served as a director of the Company since 2005.

16. Defendant E. Gail De Planque is and has served as a director of the Company since 2004.

17. Defendant Leldon E. Echols is and has served as a director of the Company since 2005.

18. Defendant Gerardo Lopez is and has served as a director of the Company since 2006.

19. Defendant Michael Ranger is and has served as a director of the Company since 2003.

20. The individual defendants named above are referred to collectively herein as the "Director Defendants."

21. Defendant Kohlberg Kravis Roberts & Co. ("KKR"), is a private equity investment firm with an office at 9 West 57 Street, Suite 4200, New York, NY 10019.

22. Defendant Texas Pacific Group, ("TPG"), with an office at 301 Commerce Street, Suite 3300, Fort Worth, TX 76102, is a private equity firm and fund manager founded in 1992 that has over \$30 billion of capital under management.

23. The Director Defendants owe fiduciary duties, including the highest obligations of good faith, loyalty, fair dealing, due care, and full candor to TXU and its shareholders.

24. The Director Defendants, by reason of their corporate directorships and/or executive positions, are fiduciaries to and for the Company's stockholders, which fiduciary relationship requires them to exercise their best judgment, and to act in a prudent manner and in the best interests of the Company's stockholders.

25. Each Director Defendant herein is sued individually as a conspirator and aider and abettor, as well as in his capacity as an officer and/or director of the Company, and the liability of each arises from the fact that he or she has engaged in all or part of the unlawful acts, plans, schemes, or transactions complained of herein.

DERIVATIVE AND DEMAND ALLEGATIONS

26. Plaintiffs bring this action derivatively on behalf and for the benefit of TXU pursuant to Section 21.551, *et seq.*, of the Texas Business Organizations Code (the "Code"). The Company is named as a nominal defendant only, and no claim is asserted against it. This is not a collusive action to confer jurisdiction upon this Court that it would not otherwise have.

27. Plaintiffs have standing pursuant to Section 21.552 of the Code, as they are and have been shareholders of TXU during the period of wrongdoing alleged herein. Plaintiffs will fairly and adequately represent the interests of the Company in enforcing its rights.

28. Beginning in February 2007, derivative plaintiffs wrote various letters to the Board of Directors of TXU (the "Demand Letters"), comprised of the Director Defendants named herein, on plaintiffs' behalf and demanded, pursuant to Section 21.553 of the Code, that the Board bring action against themselves to remedy the breaches of fiduciary duty alleged herein and in the Demand Letters. True and correct copies of the Demand Letters are attached to the initial complaints filed herein.

29. To date, counsel for plaintiffs have not received any substantive response to the Demand Letters from or on behalf of the Board of Directors.

30. Although 91 days have not passed since the Demand Letters were sent to the Board of Directors, the waiting period required by Subsection (a) of Section 21.553 of the Code is not required pursuant to Subsection (b) thereof, for the following reasons:

a. the Company is suffering substantial irreparable harm because of the pendency of the Merger and the adverse publicity it has caused;

b. the Company is suffering substantial irreparable harm because of the continued threat that the defendants will continue to pursue the Merger and attempt to consummate it despite the facts alleged herein; and

c. the Company will suffer substantial irreparable harm by waiting for the expiration of the 90-day period of Subsection (a) because of the threat that defendants will continue to pursue the Merger and attempt to consummate it despite the facts alleged herein, all of which will harm the Company and its shareholders.

31. Pursuant to Section 21.554 of the Code, the Board of Directors is unable to determine how to proceed on the allegations in this Petition because none of its members is independent and disinterested for at least the following reasons:

a. each of the directors of TXU is charged with oversight and operation of the Company and the conduct of its affairs, and has breached his or her fiduciary duties to TXU and its public shareholders by, *inter alia*, approving the LBO, agreeing to the Merger, and failing to take reasonable and adequate steps to protect the interests of TXU and its public shareholders;

b. in their capacity as directors of TXU, each of the directors has taken steps to cause the Company to agree to the Merger, including the assumption of approximately \$24 billion in debt to fund the LBO, all of which exposes them to the substantial likelihood of personal liability to the Company for breach of fiduciary duty as alleged herein;

c. certain of the directors of TXU, including defendant Wilder, stand to reap tens, if not hundreds, of millions of dollars of personal benefits at the expense of the Company and its public shareholders if the Merger is consummated, including the right to roll over their interests in TXU into the surviving company and the right to receive change-in-control benefits (such as the acceleration of their stock options), thus putting their own personal financial interests irreconcilably in conflict with the interests of the Company and its public shareholders;

d. all of the directors have supported the LBO and approved the Merger – none of them has taken any steps to protect the interests of the Company or its public shareholders; and

e. because of the substantial risk of personal liability they each face, and because such an action will jeopardize their insurance protection under the so-called “insured-versus-insured” policy exclusion, none of the directors can or will authorize suit to be brought against themselves or their fellow directors for the relief sought herein.

SUBSTANTIVE ALLEGATIONS

32. On Monday, February 26, 2007, TXU announced that it had signed a definitive agreement to be acquired by KKR and TPG in a “leveraged buyout” transaction at a price of \$69.25 per share in cash. The total transaction is valued at approximately \$45 billion.

33. The transaction price of \$69.25 per share represented a 15% premium to the \$60.02 closing price on Friday, February 23, 2007.

34. The Agreement has been structured as a “leveraged buyout” transaction. Assisted by current management, KKR and TPG will borrow against TXU’s assets, adding debt to TXU’s balance sheet and reducing the amount KKR and TPG will have to pay from their own pockets. According to Bloomberg News, TXU spokeswoman Lisa Singleton said that, “about \$12 billion in debt will be assumed.”

35. Bloomberg also reported that, “investors are providing \$8.5 billion in cash and the rest of the deal will be debt, according to people familiar with the matter.”

36. The consortium of investment banks providing committed financing to the investor group in support of the transaction includes Citigroup, Goldman Sachs, JP Morgan, Lehman Brothers and Morgan Stanley. According to the press release announcing the Agreement, “GS Capital Partners, Lehman Brothers, Citigroup and Morgan Stanley intend to be equity investors at closing.”

37. Bloomberg further reported that, “credit-default swaps on TXU debt soared, signaling that investors now consider the debt to be riskier. Moody's Investors Service said it's reviewing the Ba1 rating on TXU senior unsecured debt for a possible downgrade on concern that the company's financial profile ‘will experience a significant increase in leverage’ from the takeover.”

38. If the Agreement is consummated, TXU management, KKR and TPG will obtain a continuing interest in the Company's business going forward, thereby taking advantage of TXU's future growth and capture such value for themselves to the detriment of TXU's public shareholders at a wholly inadequate price.

39. As announced, no changes in operations or staffing are expected in the short-term.

40. In May 2006, TXU Energy Company, a division of TXU, entered into a \$1.5 billion, 364-day revolving credit agreement with Lehman Brothers, which is providing financing for this transaction as well as participating as an equity investor. Lehman Brothers served as co-lead lender of this credit facility with Credit Suisse, which acted as financial advisor to TXU in connection with the merger transaction.

41. The consideration to be paid to TXU's public stockholders is grossly unfair, inadequate, and substantially below the fair or inherent value of the Company. TXU's public stockholders will be denied their right to share proportionately in the true value of TXU's valuable assets, profitable business, and future growth in profits and earnings, while usurping the same for the benefit of defendants KKR and TPG.

42. According to David Koenig, AP Business Writer, "private-equity firms have often steered clear of utilities, viewing them as highly regulated businesses with relatively low return on investment. But Texas deregulated its electricity market in 2002, and TXU is generating tremendous amounts of cash and profit -- Wall Street expects the company to report Tuesday that it earned about \$2.5 billion in 2006."

43. Bloomberg reported that Perry Sioshansi, president of Menlo Energy Economics, a consulting firm in Walnut Creek, California, said that TXU "turned into a good cash machine." According to Bloomberg, "TXU, after almost going bankrupt in 2002 because of a failed

overseas expansion, has rebounded and may earn \$2.6 billion in 2006, up 51 percent from a year earlier, according to the average of six analyst estimates compiled by Bloomberg. Natural-gas prices that more than tripled this decade have raised Texas power prices, making TXU's coal and nuclear plants more valuable."

44. The "go shop" provision included in the Merger Agreement is insufficient to protect the interests of TXU's public shareholders. If any potential suitor for the Company's shares is able to complete its due diligence within the short time permitted by the "go shop" provision and were to propose a transaction more favorable to TXU's public shareholders, the Company would be required to pay the sum of \$375 million to KKR and TPG as a break-up fee, thus thwarting the prospect of a more favorable transaction from being proposed.

45. The proposed LBO is wrongful, unfair and harmful to TXU's public stockholders and represents an attempt by defendants to aggrandize the personal and financial positions and interests of board members at the expense of and to the detriment of the stockholders of the Company. The proposed transaction will deny the public shareholders of TXU their rights to share appropriately in the true value of the Company's assets and future growth in profits and earnings, while usurping the Company's assets for the benefit of the Director Defendants and KKR and TPG at an unfair and inadequate price.

46. By virtue of their positions as directors and senior officers of the Company, the Director Defendants have access to and knowledge of TXU's internal financial information which reveals the true financial and operating condition and prospects of the Company, and have shared such information with KKR and TPG. Defendants are using this information to benefit themselves at the expense and to the detriment of TXU and the public shareholders.

47. The defendants have not sought to maximize the price to be paid for the shares of TXU in the LBO. Rather, they have sought to minimize the amount the new corporation will have to pay for the shares by, among other things, the amount of debt the new corporation will incur. The defendants have, therefore, favored the interests of the new corporation and their own personal interests, including their stake in the new corporation, at the expense of TXU and its public shareholders.

48. Because some or all of the Director Defendants stand on both sides of the proposed LBO, the transaction is subject to scrutiny for "entire fairness." The defendants bear the burden of demonstrating both fair dealing and a fair price.

49. For example, Defendants have acquiesced to an unfair and punitive breakup fee of at least \$375 million to be paid by the Company to the equity fund acquirers in the event the Merger Agreement were terminated due to a higher bid from a competing bidder. If the Merger Agreement were terminated for any other reason, including attractive offers for parts of the company or for other strategic combinations, the fee is \$1 billion. These fees have operated to deter and prevent competing offers from other financial or strategic bidders. In addition, the fees cannot be justified as contractual liquidated damages provisions and will exceed any actual damages from termination by more than nine (9) times and thereby constitute an unlawful punitive damages provision. The breakup fees also amount to illegal contractual penalties because they far exceed any reasonable approximation of the potential damages to the equity fund acquirers resulting from a termination. As a result, the acquiescence to the fees without tying them to any affirmative post-termination proof of actual out-of-pocket costs resulting from termination constitutes a breach of fiduciary duty and a waste of corporate assets.

50. Moreover, in April 2007 it was disclosed that Sharyland Utilities LP of McAllen, Texas had indicated its intention to make an offer for TXU's electric delivery division, but that it had been threatened by litigation and, therefore, did not present the offer. A TXU spokeswoman, Lisa Singletary, confirmed as much to the Dallas Morning News in a news report published on April 10, 2007: "Don't issue a public statement about a bid that's not going to be a competing bid just so you can get in the middle of the public discussion about it, because we believe that would be interference that could cause damage to both parties."

51. Defendants did not deal fairly in connection with the LBO. In particular, they did not give reasonable or adequate consideration to the LBO or alternative transactions, they did not engage in a fair or open bidding process, they did not properly consent to the LBO or to the terms and conditions of the Merger, and they have not fairly sought the approval of TXU's public shareholders.

52. Moreover, the price of \$69.25 is unfair and inadequate given the Company's financial and operating condition and prospects.

53. In light of the foregoing, the Director Defendants have breached their fiduciary duties to maximize stockholder value and have not fully informed themselves about whether greater value can be achieved through the sale of the Company, or parts thereof, to a third party in a manner designed to obtain the highest possible price for TXU's public stockholders and without placing the Company's balance sheet at risk.

54. The Company has no adequate remedy at law.

**FIRST CAUSE OF ACTION FOR BREACH OF
FIDUCIARY DUTY AGAINST THE DIRECTOR DEFENDANTS**

55. Plaintiffs incorporate by reference paragraphs 1 through 54 above as if set forth herein.

56. The Director Defendants have breached their fiduciary duties owed to the public shareholders of TXU and put their own personal interests and the interests of defendants KKR and TPG ahead of the interests of the TXU public shareholders and have used their control positions as officers and directors of TXU for the purpose of reaping personal gain for board members at the expense of TXU's public shareholders.

57. The Defendant Directors failed to:

- a. inform themselves or undertake an adequate evaluation of TXU's worth as a potential merger/acquisition candidate;
 - b. take adequate steps to enhance TXU's value and/or attractiveness as a merger/acquisition candidate;
 - c. effectively expose TXU to the marketplace in an effort to create an active and open auction for TXU; or
 - d. act independently so that the interests of public shareholders would be protected.
- Instead, defendants have set an acquisition price for the shares of TXU stock that does not reflect the true value of TXU and without an appropriate premium and adding debt to the Company's balance sheet.

58. While the Defendant Directors of TXU should seek out other possible purchasers of the assets of TXU or its stock in a manner designed to obtain the highest possible price for TXU's shareholders, or seek to enhance the value of TXU for all its current shareholders, they have instead resolved to wrongfully allow management along with KKR and TPG to obtain the valuable assets of TXU at a bargain price, using TXU's own assets to help pay for the Agreement, which under the circumstances here, disproportionately benefits KKR and TPG.

59. The acts and omissions committed by the Director Defendants are, and will continue to be, wrongful, unfair and harmful to TXU's public shareholders, and are an attempt by certain the Director Defendants to usurp the assets of TXU for their own personal financial benefit and to aggrandize their personal positions, interests, and finances at the expense of and to the detriment of TXU and its public stockholders. These actions and omissions by the Director Defendants deny TXU's public shareholders their right to share appropriately in the true value of TXU's valuable assets, future earnings, and profitable businesses to the same extent as they would if the Company were not bought out.

60. By contemplating, planning, acting, or failing to act as alleged herein, by pursuing the LBO, and by agreeing to the terms and conditions of the Merger, the Director Defendants have not acted and are not acting in good faith toward TXU or its public shareholders, and they have breached and are breaching their fiduciary duties to TXU and the public shareholders.

61. Because the Defendant Directors dominate and control the business and corporate affairs of TXU and because they are in possession of private corporate information concerning TXU's businesses and future prospects, there exists an imbalance and disparity of knowledge and economic power between the defendants and the public shareholders of TXU which makes it inherently unfair to TXU's public shareholders.

62. As a direct result of the acts and omissions of the Director Defendants alleged herein, the Company has been and will be harmed in that the Company has been exposed to potential liability for the break-up fee, has been exposed to potential liability in several shareholder class actions that have been filed challenging the LBO and the Merger, and will lose valuable assets to the Director Defendants if the Merger is consummated.

63. As a direct result of the acts and omissions of the Director Defendants alleged herein, the Company is being and will be irreparably harmed in that it will cease to exist as a public company. Unless enjoined by the Court, the Director Defendants will continue to breach their fiduciary duties to TXU and the Company's public shareholders.

64. TXU has no adequate remedy at law.

**SECOND CAUSE OF ACTION FOR AIDING AND ABETTING
BREACH OF FIDUCIARY DUTY AGAINST DEFENDANTS KKR AND TPG**

65. Plaintiffs incorporate by reference paragraphs 1 through 64 above as if set forth herein.

66. The Director Defendants owed and owe fiduciary duties to TXU as alleged herein.

67. By acting and failing to act as alleged herein, the Director Defendants have breached their fiduciary duties to TXU.

68. Defendants KKR and TPG have acted and are acting with the Director Defendants with knowledge or with reckless disregard that the Director Defendants are in breach of their fiduciary duties to TXU and its public shareholders, and have participated and are participating in such breaches of fiduciary duties by the Director Defendants. Defendants KKR and TPG have thus aided and abetted the Director Defendants' breaches of their fiduciary duties.

69. Defendants KKR and TPG have colluded and conspired with or aided and abetted the Director Defendants for their own financial gain. Defendants KKR and TPG stand to reap huge benefits from acting as alleged by, *inter alia*, acquiring the Company at a grossly inadequate and unfair price, all to the detriment and harm of TXU and its public shareholders.

70. As a direct result of the acts and omissions of defendants KKR and TPG alleged herein, the Company has been and will be harmed in that the Company has been exposed to

potential liability for the break-up fee, has been exposed to potential liability in several shareholder class actions that have been filed challenging the LBO and the Merger, and will lose valuable assets to the Director Defendants if the Merger is consummated.

71. As a direct result of the acts and omissions of the defendants KKR and TPG alleged herein, the Company is being and will be irreparably harmed in that it will cease to exist as a public company. Unless enjoined by the Court, defendants KKR and TPG will continue to cause harm to TXU and the Company's public shareholders.

72. TXU has no adequate remedy at law.

WHEREFORE, plaintiffs demand judgment against defendants, jointly and severally, as follows:

A. declaring that the LBO the proposed Merger are unfair, unjust, and inequitable to TXU and the Company's public shareholders;

B. preliminarily and permanently enjoining the defendants, or any of them, from taking any steps necessary to accomplish or implement the proposed Merger at a price that is not fair and equitable;

C. requiring defendants to compensate TXU for all losses and damages suffered and to be suffered by it as a result of the acts and omissions complained of herein, together with prejudgment and post judgment interest;

D. awarding plaintiffs the costs and disbursements of this action, including reasonable attorneys', accountants', and experts' fees; and

E. granting such other and further relief as may be just and proper.

Dated: April 11, 2007

Respectfully submitted,



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Co-Lead Counsel for Derivative Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the foregoing were served this 11th day of April, 2007, upon the following counsel via the methods indicated:

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