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## Delaware Supreme Court Rules on ETE-Williams Case

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**April 7, 2017** – In The Williams Cos., Inc. v. Energy Transfer Equity, L.P., et al., the Delaware Supreme Court has held that the buyer (Energy Transfer Equity, or “ETE”) was not liable for breach of a merger agreement with Williams. At issue was whether ETE breached its covenant to use “commercially reasonable” efforts to obtain a tax opinion that was a condition to closing.

The majority found, in part, that ETE pointing out a potential problem to its tax counsel that later led to their inability to issue the required opinion was not sufficient evidence to show that ETE breached the covenant. Chief Justice Strine wrote a dissent that focused on ETE’s known desire to get out of the merger agreement, and cited additional facts from the record indicating that ETE had influenced its tax counsel’s decision not to produce the opinion. The Chief Justice would have remanded the case for a new trial, and placed the burden of proof on ETE to show that it did not materially contribute to its tax counsel’s failure to provide the required tax opinion.

This case may be seen to support the proposition that it can be very difficult to breach a “commercially reasonable efforts” covenant, even when there is evidence of buyer’s remorse.

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