

# Insights: Delaware Alert

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## Delaware Supreme Court Reaffirms Protection of Arm's-Length Bargaining

On June 17, 2025, the Delaware Supreme Court reversed a post-trial finding of aiding and abetting liability against a third-party arm's-length buyer. In doing so, the court built upon another recent decision and reaffirmed its commitment to protecting arm's-length bargaining by requiring "actual knowledge" of wrongful conduct and substantial active assistance of such conduct to prove liability against an independent third-party buyer.

### Background

In 2016, Columbia Pipeline Group, Inc. was acquired by Canadian energy company TC Energy Corp. (formerly TransCanada) for approximately \$10 billion. The transaction resulted in significant change-in-control payments to Columbia's top executives, who were also leading the sale negotiations.

After the deal closed, Columbia's stockholders sued, alleging that Columbia's executives and board of directors had breached their fiduciary duties by prioritizing their own interests — specifically, their lucrative retirement packages — over maximizing value for stockholders. The stockholders also claimed that TC Energy, as the buyer, had aided and abetted these breaches.

The Columbia executives settled before trial for \$79 million, while TC Energy went to trial.

The Delaware Court of Chancery found TC Energy liable and ordered it to pay nearly \$200 million in damages, an amount that was eventually cut in half. Building on its recent decision in *In re Mindbody, Inc. Stockholder Litigation*, the Delaware Supreme Court reversed the judgment against TC Energy.

In doing so, it provided helpful guidance on the legal standards and high bar necessary to hold a buyer liable for aiding and abetting fiduciary breaches.

### Aiding and Abetting — Sale Process Claim

The core of the sale process claim was that Columbia's executives, motivated by personal financial gain, steered the sale to TC Energy at a time and in a manner that benefited themselves rather than stockholders. The plaintiffs argued that TC Energy aided and abetted these breaches by exploiting the executives' conflicts and pushing aggressively for a lower price, including by violating standstill agreements that were supposed to limit negotiations.

The Supreme Court clarified that, for a buyer to be liable for aiding and abetting, it must have actual knowledge — not just suspicion or constructive knowledge — of both the seller's breach of duty and the wrongfulness of its own conduct. The court found that while TC Energy negotiated hard and may have benefited from the executives' eagerness to sell, there was no evidence that TC Energy actually knew the executives were breaching their duties or that its own conduct was improper.

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The court emphasized that arm's-length negotiations, even if aggressive, do not amount to aiding and abetting unless the buyer actively participates in or encourages the breach with actual knowledge.

## Aiding and Abetting — Disclosure Claim

The disclosure claim centered on alleged misstatements and omissions in the proxy statement sent to Columbia shareholders before the merger vote. The plaintiffs argued that TC Energy aided and abetted disclosure breaches by failing to correct or disclose material information it knew was missing or misleading, as required by the merger agreement.

The Supreme Court held that a buyer's contractual obligation to review and comment on proxy materials does not, by itself, make the buyer liable for aiding and abetting if the seller's disclosures are inadequate.

The court found that TC Energy did not take any affirmative steps to assist in the seller's disclosure breaches and that mere passive awareness or failure to act is not enough. For liability to attach, the court said, the buyer must have actual knowledge that its own conduct is wrongful and must substantially assist in the breach, which was not the case here.

## Four Key Points for Buyers

1. **Actual knowledge is required.** Delaware courts require clear evidence that a buyer actually knew about the seller's fiduciary breaches and the wrongfulness of its own conduct. Constructive knowledge is not sufficient. And mere suspicion, aggressive negotiation or benefiting from the seller's mistakes is not enough for liability.
2. **Delaware law vigorously protects arm's-length negotiations.** Buyers are generally free to negotiate the best possible deal for themselves, even if the seller's side is conflicted or inexperienced. Only conduct that crosses the line into active collusion or knowing exploitation of a breach will create liability.
3. **Contractual disclosure duties do not equal liability.** Even if a merger agreement requires the buyer to review and comment on proxy statements, failing to correct the seller's disclosure breaches does not automatically make the buyer liable for aiding and abetting, unless the buyer takes affirmative steps to assist in the breach with actual knowledge.
4. **Delaware still has no finding of aiding and abetting liability against an arm's-length buyer.** With this reversal, there is still no Delaware opinion finding that an arm's-length buyer aided and abetted a breach of fiduciary duty in a sale process. This is consistent with Delaware law holding that the purposefully high bar makes this claim "among the most difficult to prove."

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