

Energy Transfer Equity, L.P. v Corvex Mgt. LP

2018 NY Slip Op 32579(U)

October 10, 2018

Supreme Court, New York County

Docket Number: 160690/2016

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH **PART** IAS MOTION 32

Justice

INDEX NO. 160690/2016

ENERGY TRANSFER EQUITY, L.P., ENERGY TRANSFER CORP
LP, ETE CORP GP, LLC, LE GP, LLC, ENERGY TRANSFER
EQUITY GP, LLC

MOTION DATE N/A

MOTION SEQ. NO. 001

Petitioners.

- v -

CORVEX MANAGEMENT LP, KEITH MEISTER, SOROBAN
CAPITAL PARTNERS LP, ERIC MANDELBLATT,

DECISION AND ORDER

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 26, 27, 28, 29, 30, 31, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 82, 83, 86

were read on this motion to/for

MISC. SPECIAL PROCEEDINGS

This special proceeding involved petitioners' request for documents to support claims in a Delaware litigation. No respondent here is a party to that Delaware action.

The Court previously directed respondents Meister and Mandelblatt to respond to petitioners' subpoenas (NYSCEF Doc. No. 72 [Interim Order]). In its interim order, the Court held that respondents would be entitled to reasonable production costs pursuant to CPLR 3122(d) (*id.* at 11). The Court stressed that "New York law requires a requesting part to defray the costs of production incurred by a non-party" (*id.*).

At an appearance on August 9, 2018, the parties agreed that the document production was complete and the only outstanding claim was respondents' demand for attorneys' fees. A hearing was held on September 26, 2018 to determine reasonable fees.

Meister and Corvex Management LP (“Corvex”)

Corvex seeks \$489,000 in attorneys’ fees for its work in producing the requested documents to petitioners. This work included an initial review by outside contract attorneys, in-firm reviews and the creation of a document-by-document privilege log. The most troubling aspect of Corvex’s bills is the number of hours worked by a partner for Corvex’s counsel (Corvex exh 17). The partner assigned to the matter billed 141.1 hours from March 2017 to August 2018. That amounts to \$167,518 (this partner’s hourly rate increased from \$1,155 in 2017 to \$1,240 in 2018).

At the hearing, the partner testified that when this proceeding began he had an ‘of counsel’ and another more junior attorney working on the case. For various reasons, these attorneys (both of whom billed at lower rates than the partner) stopped working on the matter. The partner claimed that he felt it was not necessary to bring on more attorneys and decided to do the work himself along with staff attorneys. Unfortunately, this decision drastically increased the amount of fees now sought by Corvex. The Court finds that it was unreasonable to have a partner, billing more than one-thousand dollars an hour, perform many of the labor-intensive tasks required in this proceeding.

For instance, in the April 12, 2017 bill, the partner billed 7.8 hours of the 9.2 hours billed that month. 2.8 hours were devoted to “search” terms even though the “of counsel” (Mr. Delgado) was still working on the matter and billed \$330 dollars less per hour. This top-heavy division of labor is most evident in the bills dated September 13, 2017 and October 11, 2017. The September invoice includes 7.2 hours (\$8,316) of document review by the partner. October includes 31 hours of the partner’s document review (\$35,805).

Although the partner might have initially intended to reduce costs by keeping the team assigned to this matter small, his substantial involvement in the case drastically increased the bill. This is the purpose of having junior, mid-level and senior associates. The Court recognizes that a partner must have some involvement—but the bills submitted in this case show a partner failing to delegate tasks that should have been delegated. This is crucial to the Court's inquiry because the Court ruled *before* the document production began that petitioners would have to pay respondents' reasonable production costs. Given that directive, the fact that the partner chose to do so much of the work himself, at his billing rate, is unreasonable.

The partner testified that he reviewed every document that was produced and gave no reason why that was necessary. He did not claim, for example, that he needed to review the documents because the client demanded it or explain why he could not have reviewed a random sample of documents. The effect is clear: if the partner had used an associate to perform a "third-level review", then he could have significantly reduced the bill.

The Court has no reason to conclude that the partner did not actually put in the time billed. Indeed, the Court believes he put in the time but concludes that 80% of that time was spent doing work that an associate should have been doing. Because 80% of the partner's time was spent doing an associate's work, he should be compensated at an associate's rate.

Therefore, if an associate been used for 80 percent of the partner's hours at \$550 per hour (the rate an associate working on this matter charged) and the partner billed the remaining 20 percent, then cost for the work billed would be about \$89,000 (not the \$167,518 billed).

Therefore, the total bill should be reduced by \$78,518 (the difference between the total charged for the partner's hours and the \$89,000). This reduction is based on the nature of the work required—document review does not require the services of a partner for many of the tasks

involved. Most tasks, such as performing second and third level reviews, inserting redactions and creating a privilege log can be handled primarily by more junior associates. The Court has no doubt that if a client received these bills, it would complain about the lack of junior associates assigned to labor intensive tasks.

In addition to reducing the partner's billing rate for 80% of his time, there should be another reduction. Too much time was billed for search terms and setting up the document database. A review of the bills dated May 18, 2017 and June 14, 2017 demonstrates that although the initial document review was sent to contract attorneys outside the firm, petitioners were billed \$89,749 for these two months combined. The Court recognizes that contract attorneys must be supervised, a database must be generated and that a document review protocol must be drafted to ensure that the documents are properly categorized. But the bills for these two months reflect a substantial amount of work done *before* the in-firm second or third level review commenced. The bill entries include many hours devoted to the document review memo and internal discussions about the review. The purpose of using outside contract attorneys is to reduce the cost of the review, not to generate more billable hours by micromanaging that review. The Court finds that Corvex is not entitled to \$89,749 charged; rather, it is entitled to the reasonable amount of \$20,000 for these two months combined. That reduces Corvex's total recovery to \$340,733. Because the Court is reducing Corvex's recovery by about \$150,000, the Court also finds that Corvex is not entitled to attorneys' fees related to the hearing.

Mandelblatt and Soroban Capital Partners LP ("Soroban")

The fee dispute between petitioners and Soroban relates only to work done after the initial document review. The first-level review was completed by outside attorneys and

petitioners paid Soroban about \$80,000. Soroban seeks an additional \$317,000 for the additional work completed (second level reviews and privilege reviews).

Petitioners claim that it received an estimate of \$62,500 for this work and refuses to pay any more. Soroban contends that amount was for a “dispute-free” second level review and notes that there were many meet and confers.

The Court finds that Soroban’s recovery will be reduced by \$35,000 based on two sets of issues: 1) the redactions for non-responsiveness and the 2) the privilege redactions. As part of the document production, Soroban inserted redactions for non-responsiveness to 403 documents. Soroban insisted that many of Mr. Mandelblatt’s emails contained references to unrelated investments because Soroban is a hedge fund. Petitioners challenged these redactions and eventually Soroban decided to turn over 250 documents without redactions, 130 with some redactions removed and 20 documents were left unchanged. Petitioners also challenged documents marked as privileged and eventually received about 20 additional documents from Soroban.

The Court finds that petitioners should not have to fully compensate Soroban for seeking documents that Soroban eventually turned over. Admittedly, it is difficult for the Court to monetize the amount Soroban’s counsel billed for these two issues because some bill entries contain references to multiple tasks (*see* Soroban’s entries about redactions in January 2018 and February 2018) and so the Court finds a reduction of \$35,000 reasonable.

In addition, because Soroban has substantially prevailed in this hearing, the Court finds it is reasonable to award Soroban attorneys’ fees for the hearing (including preparation for the hearing). Based upon the testimony, the Court awards the reasonable amount of \$45,000, bringing the total award to which Soroban is entitled to \$327,000.

Summary

The Court is not concerned with the estimates petitioners claimed they relied upon or petitioners' insistence that the bills for the privilege log were too expensive. Estimates about a document review reflect a best-case scenario. Every time petitioners sent a letter, held a meet and confer or fought about redactions, the reasonable production costs increased. And petitioners asked for a document-by-document privilege log instead of a categorical privilege log—they cannot make a demand for such a time-intensive task and be surprised when it dramatically increases the legal fees.

The fact is that petitioners brought a proceeding to get documents from non-parties. After this Court ordered that documents had to be produced and that petitioners would have to pay reasonable costs, petitioners had a choice. They could choose to go forward and pay respondents' reasonable legal fees or decide that it was not worth the expense to seek these documents. Petitioners chose to go forward, knowing that the firms retained by respondents charge high rates.

And here, petitioners asked for sensitive documents relating to a multibillion-dollar failed merger in Delaware. Petitioners cannot be surprised that the discovery process was expensive, complicated and contain unexpected costs. Therefore, the Court rejects petitioners' claims that discussions with counsel for Williams (a party in the Delaware action) about redactions should not be part of reasonable legal fees. It is not unreasonable for respondents to consult with Williams' counsel—after all, petitioners sought documents from Meister and Mandelblatt because of their status as board members for Williams.

Respondents' respective firms handled this case differently. Counsel for Soroban used a senior associate and junior associates to handle the vast majority of issues—a partner apparently supervised, but did not bill very much; no partner appeared at the hearing for attorneys' fees. Corvex's firm primarily used a staff attorney and a partner (only the partner appeared at the attorneys' fees hearing). This caused Corvex's bills to be much higher than Soroban's fees. Ordinarily, the Court has no interest in telling attorneys how to handle a matter. But in this instance, because petitioners are paying the bill, the Court has concerns with the way Corvex divided up the work and Corvex's bill should be reduced. It is not reasonable to have a partner with such a high billing rate perform so many tasks, especially given that junior attorneys for Soroban completed many of those same tasks.

Accordingly, it is hereby

ADJUDGED that the petition is granted to the extent that the parties have agreed that petitioners have received all the documents they desired; and it is further

ORDERED that respondents Keith Meister and Corvex Management LP are awarded reasonable attorneys' fees in the amount of \$340,733; and it is further

ORDERED that respondents Eric Mandelblatt and Soroban Capital Partners LP are awarded reasonable attorneys' fees in the amount of \$317,000; and it is further

ORDERED that petitioners' payment of these fees shall be delivered to counsel for respondents and written proof of such payment shall be provided to the Clerk of Part 32 within 45 days after service of a copy of this order with notice of entry; and it is further

ORDERED that if timely payment is not made, the Clerk of the Court, upon service upon him of a copy of this order with notice of entry and an affirmation or affidavit reciting the fact of such non-payment, shall enter a judgment in favor of the respondents and against petitioners in the aforesaid sum plus interest and costs; and it is further

ORDERED that proof of payment shall be provided to the Clerk of the Part and such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

10.10.18
DATE

ARLENE P. BLUTH, J.S.C.

HON. ARLENE P. BLUTH

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	<input checked="" type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input type="checkbox"/> FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE