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Foresight Energy Evaded Dues On \$606M Notes, Judge Says

By **Benjamin Horney**

Law360, Wilmington (December 7, 2015, 4:33 PM ET) -- Foresight Energy LP breached a redemption payment agreement on \$606 million in notes by claiming a \$1.37 billion, carefully crafted stake sale to Murray Energy Corp. did not make it the owner of Foresight's general partner, the Delaware Chancery Court ruled Friday.

According to Vice Chancellor J. Travis Laster's Friday order, Foresight and Murray intentionally attempted to deceive shareholders by structuring their deal so Murray appeared to not become the beneficial owner of Foresight Energy GP LLC, a change that would have triggered a redemption payment on the notes. Foresight Energy GP is the general partner of St. Louis, Missouri-based master limited partnership Foresight Energy LP.

The two coal mining companies had agreed in early 2015 to a deal under which Murray **would pay \$1.395 billion** to acquire an 80 percent voting interest in Foresight. But that **changed** a month later, with Murray agreeing to pay \$1.37 billion to acquire a 34 percent voting interest, and with the companies claiming the new terms did not make Murray "the beneficial owner" of Foresight and thus did not trigger the redemption payment.

"If Murray Energy truly did not gain control over the general partner and Foresight parent in the revised deal, then it means that [Foresight Founder Chris Cline], a savvy businessman with over 30 years' experience in the coal industry, extracted a control premium in the original deal of just 1.8 percent," Vice Chancellor Laster wrote. "That is preposterous."

"In fact, Murray Energy received de facto control in the revised deal, which is why it paid virtually the same amount as in the original deal," he added.

Meanwhile, Vice Chancellor Laster detailed how the deal agreement contained an option under which Murray could acquire an additional 46 percent voting interest in the general partner for \$25 million at any point during a five-year period. Once exercised, that option would give Murray an 80 percent voting interest in the general partner, or exactly what it would have received under the terms of the initial deal agreement.

The order also rejected a semantics argument from the defendants that the deal merely made Murray "a" beneficial owner rather than "the" beneficial owner, saying that being "a" owner is essentially akin to being "the" owner.

"A person may be called 'the owner,' even if that person is not necessarily 'the sole owner,'" Vice Chancellor Laster wrote. "George Steinbrenner was often referred to as 'the owner' of the New York Yankees, when in fact he was one of the owners."

Vice Chancellor Laster ruled in favor of Wilmington Savings Fund Society FSB, the trustee for the notes in question and the entity that filed suit, meaning that Foresight must perform its obligations under the redemption clause. In addition, the Vice Chancellor granted Wilmington Savings' request for attorneys' fees and costs, saying the two sides must now confer and try to come to an agreement on how much should be paid in that regard.

"If they cannot agree, the trustee shall make an application," the vice chancellor said.

Foresight said in a statement Friday that it was aware of the order.

"The partnership is evaluating its options with respect to the opinion," the company said.

Pryor Cashman LLC, representing Wilmington Savings Fund Society FSB, said in a statement Monday that the decision represents a "major victory."

Wilmington is represented by a Pryor Cashman LLC team led by Seth H. Lieberman and Patrick Sibley.

Counsel information for Foresight was not available Monday.

The case is Wilmington Savings Fund Society FSB v. Foresight Energy LLC et al., case number 11059, in the Court of Chancery of the State of Delaware.

--Additional reporting by Keith Goldberg and Tom Zanki. Editing by Edrienne Su.

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