

COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE

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Transaction ID 36510935  
Case No. 5739-VCS



LEO E. STRINE, JR.  
VICE CHANCELLOR

New Castle County Courthouse  
500 N. King Street, Suite 11400  
Wilmington, Delaware 19801-3734

Submitted: March 14, 2011  
Decided: March 16, 2011

Christine S. Azar, Esquire  
Labaton Sucharow LLP  
One Commerce Center  
1201 N. Orange Street, Suite 801  
Wilmington, DE 19801

Daniel A. Dreisbach, Esquire  
Geoffrey G. Grivner, Esquire  
Richards, Layton & Finger, P.A.  
920 N. King Street  
Wilmington, DE 19801

Kevin G. Abrams, Esquire  
Thompson Bayliss, Esquire  
Abrams & Bayliss LLP  
20 Montchanin Road, Suite 200  
Wilmington, DE 19807

RE: *In Re Dynegy Inc. Shareholders Litigation*  
Civil Action No. 5739-VCS

Dear Counsel:

The plaintiffs in this case purport to be stockholders of Dynegy Inc. They alleged that a proposed transaction whereby Dynegy would be purchased by an affiliate of the Blackstone Group L.P. was tainted by breaches of fiduciary duty. The proposed transaction was not consummated and the underlying merger agreement was terminated.

The defendants have moved to dismiss this case as moot. In response, the plaintiffs admit that they have never prosecuted this action and instead reached an agreement with certain plaintiffs in a Texas court action to jointly prosecute the case in

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that state.<sup>1</sup> Allegedly, the Texas action is “still active,”<sup>2</sup> there is “one outstanding issue”<sup>3</sup> to be decided in that case, and the plaintiffs here desire to keep this action pending but dormant until that action is finally decided. In support of that contention, the plaintiffs argue that “[t]here is no active litigation in Delaware and, thus, no costs or burden to Defendants” to keeping this case open.<sup>4</sup>

That contention is erroneous. So long as a case remains open, the parties and court must attend to it. There are costs to the public of maintaining files and of taking staff and judicial time in ensuring that an action is eventually resolved.

In their papers, the plaintiffs did not bother to identify the open issue in Texas. The defendants’ reply does: the plaintiffs in Texas intend to submit an application for fees and expenses to that court and do not intend to “further pursue any of [their] substantive claims” in the Texas action.<sup>5</sup>

To be candid, the plaintiffs’ objection to dismissal actually proves why dismissal is required. Plaintiffs are not entitled to file placeholder actions, choose not to prosecute them at all, and to keep them on file because they perceive that gives them some leverage in litigation elsewhere. This is an undue burden on the defendants, to the stockholders of Dynegy (because excess cost to the defendants could result in excess cost to Dynegy,

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<sup>1</sup> Pl. Ans. Br. at 2 (“Counsel for the Delaware Action . . . agreed to coordinate with [Texas counsel] and jointly prosecute the Texas Action on behalf of all class members.”).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 1.

<sup>4</sup> *Id.* at 3.

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through insurance, distraction of executive time, and other factors), and to the public,  
which is entitled to have scarce judicial resources focused on actual cases.

The matter is DISMISSED AS MOOT. IT IS SO ORDERED.

Very truly yours,

*/s/ Leo E. Strine, Jr.*

Vice Chancellor

LESJr/eb

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<sup>5</sup> Def. Rep. Br. Ex. A (Letter Agreement Between Texas Counsel (March 9, 2011)).