M&A Update

Chancery Court Orders Financial Advisor to Pay Millions in Damages For Aiding and Abetting Breach of Fiduciary Duty

October 13, 2014

On October 10, 2014, Vice Chancellor Travis Laster ruled that RBC Capital was liable to the former stockholders of Rural/Metro Corporation for $75.8 million – representing 83% of the total damages – for aiding and abetting breaches of the duty of care by Rural/Metro's board in connection with the 2011 sale of the company to Warburg Pincus. The decision puts a chilling exclamation point on the continuing scrutiny by Delaware courts of conflicted sell-side advisers.

Takeaways

While the Court's March opinion on the liability issues in the case offers a roadmap for exactly how not to act as a financial advisor, the Court's damages award provides lessons on the perils for sell-side advisers who seek to defend against claims that they put their interests before those of their client and its stockholders.

1. Conflicted Advisers Cannot Count on Contribution from Directors. The decision goes out of its way to prevent RBC from obtaining a reduction in damages (or contribution) based upon the pretrial settlements of $6.6 million by the Rural/Metro directors and $5 million by Rural/Metro's other financial adviser, Moelis & Co. The Court ruled that because RBC had perpetrated a "fraud on the board," allowing RBC to seek contribution would in effect be permitting it to "tak[e] advantage of the targets of its own misconduct." RBC can only receive a settlement credit for those claims that did not "involve misrepresentations and omissions by RBC towards its fellow defendants."

2. The Power of Exculpatory Raincoat Provisions Extends to Contribution. The Court found that Rural/Metro's exculpatory provision, which shields the board from liability for breach of the duty of care, required RBC to prove that each director violated his or her duty of loyalty in order to obtain contribution. Otherwise, the exculpation provided by raincoat provisions leaves the adviser who merely aided and abetted the directors violation of the duty of care alone to pay the damages. Here, the Court found only two of the six director defendants were motivated by personal interests and breached the duty of loyalty. The Court also found that Moelis, the secondary financial advisor, was not liable for contribution, as they did not have the personal motivations that RBC did.

3. Monetary Liability will be Determined by *Relative* Fault. RBC argued that the damages should be divided evenly among the defendants. The Court rejected this argument and imposed nearly the entire liability on RBC, finding that relative to the directors it misled, RBC was responsible for the bulk of the liability.

For a copy of the full opinion, click here.

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If you have any questions, please contact any of the following attorneys or your Cadwalader contact:

William P. Mills	+1 212 504 6436	william.mills@cwt.com
Martin L. Seidel	+1 212 504 5643	martin.seidel@cwt.com
Greg Markel	+1 212-504-6112	gregory.markel@cwt.com