

Delaware Court of Chancery Finds Financial Advisor Liable for Aiding and Abetting Fiduciary Duty Breaches

March 12, 2014 | Client Update | 2-minute read

On March 7, 2014, Vice Chancellor Travis Laster of the Delaware Court of Chancery found a financial advisor liable for aiding and abetting breaches of fiduciary duties by the board of Rural/Metro Corporation in connection with the company's 2011 sale to an affiliate of Warburg Pincus LLC. In its 91-page, post-trial opinion, the Court concluded that the financial advisor allowed its interests in pursuing buy-side financing roles in both the sales of Rural/Metro and Emergency Medical Services to negatively affect the timing and structure of the company's sales process, that the board was not aware of certain of these actual or potential conflicts of interest, and that the valuation analysis provided to the board was flawed in several respects. Both the Rural/Metro board of directors and a second financial advisor to Rural/Metro settled before trial for \$6.6 million and \$5.0 million, respectively.

This opinion is the latest example of the Court of Chancery's focus on conflicts of interest involving sell-side financial advisors, as most recently demonstrated in the Del Monte and El Paso decisions. Rural Metro thus underscores the very real and potentially significant liabilities to financial advisors. It also serves as a salient reminder that the actions of advisors, including those carried out unbeknownst to the board, may be imputed to boards that fail to exercise reasonable oversight of their so-called informational "gatekeepers" in a sale process.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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