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Delaware Supreme Court Holds that Disinterested Stockholder Approval of Merger Transactions Requires Dismissal of Aiding-And-Abetting Claims

The Delaware Supreme Court last week upheld the dismissal of a stockholder lawsuit against a board of directors and its financial advisor in deference to a fully informed stockholder vote. *Singh* v. *Attencorough*, No. 645, 2015 (Del. May 6, 2016) (en banc).

The appeal challenged the dismissal of claims that investment bankers had aided and abetted the directors of Zale, Inc in an alleged breach of fiduciary duty in connection with the sale of the company. Amplifying its 2015 ruling in *KKR Financial*, the Supreme Court held that when a merger is approved by an informed body of disinterested stockholders and then closes, the business judgment rule applies, further judicial examination of director conduct is generally inappropriate, and "dismissal is typically the result." The only exception is when plaintiff states a claim for "waste," an exception with "little real-world relevance, because it has been understood that stockholders would be unlikely to approve a transaction that is wasteful."

The holding of *Singh* makes clear that the rule of *KKR Financial* governs "aiding-and-abetting" claims against corporate advisors, and it thus serves as a further reminder of the importance of materially complete disclosures in connection with requests for stockholder action. The Court went on to emphasize that Delaware provides corporate "advisors with a high degree of insulation from liability by employing a defendant-friendly standard that requires plaintiffs to prove scienter and awards advisors an effective immunity from due-care liability." Referring to its decision in *RBC Capital Markets*, the Court noted that the risk of aiding-and-abetting liability arises in only extreme cases involving knowing "bad-faith actions" on the part of the advisor that "cause its board clients to breach their situational fiduciary duties."

Singh reaffirms that Delaware will grant early-stage dismissal in cases challenging mergers approved by informed, disinterested stockholders, notwithstanding allegations of advisor misconduct, and offers comfort that investment bank aiding-and-abetting liability remains reserved for exceptional circumstances.

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