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Grant & Eisenhofer

Grant & Eisenhofer Secures $148 Million Recovery for Shareholders of Dole Food Co. Over Senior Executives' Deceit in 2013 Management Buyout

Ruling by Vice Chancellor Travis Laster finds that Dole CEO David Murdock and COO Michael Carter undermined stockholders and misled board in taking company private: "what the Committee could not overcome…and what even an arguably fair price does not immunize, is fraud"

WILMINGTON, DE (August 27, 2015) – In a decisive shareholder victory, the Delaware Court of Chancery has found that the two most senior officers of **Dole Food Co. Inc**. breached their fiduciary duties in structuring a 2013 buyout of the iconic producer of fresh fruits and vegetables that drastically undervalued the company to the detriment of stockholders.

Vice Chancellor Travis Laster held that Dole CEO **David Murdock**, along with the company's chief operating officer and general counsel **Michael Carter**, undermined shareholders and misled the board of directors in their handling of Dole's privatized buyout, which closed in November 2013 in an all-cash deal valued at $1.2 billion. He ordered Messrs. Murdock and Carter to pay shareholders more than $148 million in damages.

While finding that Dole's board was able to push for a higher per-share price at the time of the transaction, Chancellor Laster wrote that "what the Committee could not overcome, what the stockholder vote could not cleanse, and what even an arguably fair price does not immunize, is fraud."

Reviewing trial documents that produced more than 1,800 exhibits, the judge held that Messrs. Murdoch and Carter "made false disclosures" about numerous aspects of the buyout in order to "freeze out" other suitors even as the food industry was awash in deals. By providing the board with "lowball management projections" and delivering inaccurate financial information to Dole's outside advisors and lenders, the two executives ended up "driving down Dole's stock price and undermining its validity as a measure of value."

The Chancellor's precise determination of damages is telling. He noted that even assuming that the ultimate price of $13.50 per share that finalized the buyout engineered by Murdock and Carter, the stockholders are not merely limited to a fair price. Rather, he wrote, "they are entitled to a fairer price, designed to eliminate the ability of the defendants to profit from their breaches of duty of loyalty." Thus he found Murdock and Carter jointly and severally liable for damages of $148,190,590.18 – "representing an incremental value of $2.74 per share."

And, he added for emphasis, "Although factually large, the award is conservative relative to what the evidence could support."

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"We are extremely pleased not only with the large financial recovery, but the forceful way in which the court excoriated the defendants for the brazen way they tried to hijack Dole for their own advantage in taking the company private," said **Stuart Grant** of **Grant & Eisenhofer**, co-lead counsel for the shareholders.

In his 106-page opinion, Chancellor Laster found that two other key defendants – Dole president David DeLorenzo and the company's financial advisor Deutsche Bank Securities – were not liable for their respective roles, though he noted that Deutsche Bank "acted improperly by favoring Murdock and treating him as the bank's real client in transactions before the merger, even when Deutsche Bank was officially representing Dole."

The case caption was: *In re Dole Food Company, Inc. Stockholder Litigation* (8703-VCL, Del. Chancery Court).

In addition to G&E, shareholders were represented by Robbins Geller Rudman & Dowd LLP, along with Kessler Topaz Meltzer & Check LLP. Grant & Eisenhofer is also primary counsel for certain shareholders in the appraisal of Dole Food Co.

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