

# **Pet Food Lawsuit Won't Neuter Wall Street**

*The Street*

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A settlement involving Barclays Capital and Del Monte Foods' over its pet food business sale is being described by lawyers as leading to "sweeping change" in investment banking, but longtime industry watchers think it will be much harder to teach old Wall Street dogs new tricks.

On Thursday, a Delaware judge accepted an October settlement with Del Monte shareholders over a dispute arising from a buyout of the company's pet foods division in 2010. The deal finalizes an \$89.4 million settlement brokered by the Delaware court that the two parties acted improperly in a sale of the business to a consortium of private equity investors led by KKR.

Some shareholders sued Del Monte and Barclays citing a potential conflict when the bank financed the debt needed for private equity investors to buy the California-based maker of Meow Mix and Milk Bone pet foods for \$5.3 billion, while also advising the board on sale negotiations.

Earlier in the year, Delaware Chancery Court, Judge Travis Laster ruled in favor of plaintiffs citing Barclays' lack of disclosure, and Thursday ruled that the \$89.4 million settlement "provides excellent consideration" to Del Monte shareholders, who will also get an additional 50 cents to the company's \$19 a share buyout.

According to October filings with the Securities and Exchanges Commission, Barclays Capital and Del Monte Foods will split a \$89.4 million payment by sending \$23.7 million and \$65.7 million respectively to Del Monte Foods shareholders. Upon the settlement both companies denied all wrongdoing.

The settlement alone, at first glance, appears to have stopped Wall Street in its tracks in a still lucrative but conflict-prone activity, just as legislation like the Dodd Frank Act cut at other often profitable revenue streams like proprietary trading.

Grant & Eisenhofer, the plaintiffs lawyers said on its Web site that "the lawsuit, which challenged the common practice by many deal advisers to simultaneously offer sell-side financing in a transaction, led to sweeping changes in the way investment banks conduct business in the M&A marketplace."

Nevertheless, deal watchers see that over time, Wall Street will return to its old habits, albeit reformed.

Calling the settlement "very unusual and significant in size," Jeffrey N. Gordon of Columbia Law School maintains of potential investment bank conflicts in providing financing and advice, "so long as this is disclosed to a sellers board and so long as an impartial fairness opinion is given, I think the practice [called staple financing] can be managed." The net result of the settlement may simply be better disclosure by investment banks in their M&A work, says Gordon.

About the settlement, John Coates of Harvard Law School asks, 'is it temporary attention, or will it change practices over a long period of time?' Since the Delaware court ruling hinged on Barclays' disclosure and not its actual investment banking practice, Coates believes in the former.

It signals that after a retreat in providing staple financing, investment banks may one day return to the practice when better able to manage potential conflicts.

In September, *Bloomberg* reported that since courts ruled in shareholders favor in February, no investment bank has done sell side financing in a public company buyout over \$1 billion. In the prior 2 1/2 years, banks provided nearly 40% of financing for similar sized deals.

The buyout deal, which closed in March, came under dispute by Del Monte shareholders who claimed that the company's sale was organized to lessen bidding competition. Shareholders depicted London-based Barclays as playing on both sides of the deal by financing buyers and advising sellers without fully disclosing the role, netting it \$50 million in banking fees.

The suit and a judge's favorable ruling shed a negative light on the potential conflicts that arise in leveraged buyout deals, where investment banks compete for both financing arrangements with buyers and advisory work with sellers.

The sale began in January 2010, when Barclays pitched buyout firms on the merits of a Del Monte Foods' pet foods business takeover. After it received interest from KKR for the transaction, Barclays bankers then began to court Del Monte management about selling its pet foods business -recommending a sale among only a small group of five private equity firms to the company.

One bidder in the process, Vestar Capital Partners, wasn't adequately disclosed as a partner with KKR to Del Monte's board and the bid wasn't paired fairly with other interested parties, argued shareholders in their lawsuit. They also argued that the deal limited a competitive bidding process and that Barclays acted deceptively in its dual role as financier and adviser. Barclays lawyers disputed that the bank's objectivity was compromised, saying it was one of nine lenders. The courts ruled in shareholders favor.

In an October judgment in favor of shareholders earlier in the year, Delaware Chancery Court Vice Chancellor J. Travis Laster said, "although Barclays' activities and nondisclosures in early 2010 are troubling, what indisputably crossed the line was the surreptitious and unauthorized pairing of Vestar with K.K.R. In doing so, Barclays materially reduced the prospect of price competition for Del Monte."