

Chancellor Strine Discusses Investment Banker Conflict Issues at New York Breakfast

BY RICHARD E. FARLEY

On May 11, 2012, Delaware Chancellor Leo Strine addressed an invitation-only breakfast gathering at The University Club of New York on a wide range of topics, including investment banking conflicts. Among Chancellor Strine's noteworthy observations were:

- The stock ownership disclosure obligation of bankers and other advisors he recently referred to in his opinion in *In Re El Paso Corporation Shareholder Litigation* certainly applies to advisors "in the room" (i.e. the individuals actually advising the board and management and/or negotiating the deal terms) but not "some trader in London" only tangentially involved in the deal process;
- Banks with the least number of potential conflicts (i.e., boutique banks) are not necessarily the best advisors for a target company – very often "access to the leverage markets on a daily basis is a very important expertise;"
- Second fairness opinions provided to supplement a fairness opinion provided by a conflicted or potentially conflicted bank that ran the sale process typically are not given much weight by the Delaware Chancery Court.

Chancellor Strine's humorous, sharp, and articulate style were well exhibited during the morning's hour-plus long question-and-answer format. (On the expense of litigating in the Chancery Court: "We are Bergdorf's, not a Dollar Store;" on how a banker-witness should not present himself on the stand to a judge: "I have a second trophy wife and *you* drive a used car;" on what clients should expect from their highly-paid lawyers: "Interpreting our opinions is not like punching in orders at a McDonald's drive-thru: you need to actually think about what is situationally appropriate".)

If you have any questions concerning these developing issues, please do not hesitate to contact the following Paul Hastings lawyer:

New York

Richard E. Farley
1.212.318.6434
richardfarley@paulhastings.com