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DEALMAKERS 2014

ACTING UP

As activist investors have grown into a force to be reckoned with, a pair of Schulte Roth partners have cornered a big share of their legal work.



DAVID ROSEWATER MARC WEINGARTEN

By Chris Johnson

WITHIN THE SPACE OF A FEW DAYS LAST AUGUST, FORBES AND CNBC BOTH RAN PIECES DECLARING THIS TO BE A “GOLDEN AGE” FOR ACTIVIST INVESTING. PUT SIMPLY, ACTIVIST INVESTORS ARE THOSE WHO TRY TO EFFECT A MAJOR CHANGE IN A COMPANY THEY FEEL IS BEING MISMANAGED OR IS UNDERVALUED, USUALLY BY ACQUIRING

large volumes of its shares or obtaining seats on its board. Activist hedge funds such as Elliott Management Corporation and Greenlight Capital Inc. now have more than \$65 billion under management, according to The Wall Street Journal—an increase of around 450 percent in the past decade.

Two people well aware of this burgeoning sector are Schulte Roth & Zabel partners Marc Weingarten and David Rosewater, who have established themselves as go-to lawyers for activist investors across the United States. In 2013 the pair acted on some of the fiercest shareholder activism campaigns and proxy contests in the market, advising TPG-Axon Capital Management in its successful replacement of the CEO and majority of the board at SandRidge Energy; and First Manhattan Co. in its successful proxy contest with Vivus for control of the board and the replacement of its CEO.

They also represented Clinton Group Inc.

in a successful proxy contest with Stillwater Mining Company. As North America’s only platinum and palladium miner, Stillwater had been attractive to investors as a way to access the market for those precious metals without taking on the political or currency risk associated with similar mines in Africa or Russia. But in 2010, majority owner MMC Norilsk Nickel, a Russian nickel and palladium miner, sold its stake in Stillwater and handed over the reins to an independent board. According to Gregory Taxin, managing director at activist hedge fund Clinton, which owned a small holding in Stillwater, things went downhill fast.

In this so-called golden age of activist investing, Weingarten and Rosewater advised on some of the fiercest shareholder activism campaigns and proxy contests in the market.

“[The new board] quickly engaged in some transactions that in our view destroyed the value and special character of Stillwater,” Taxin says. “They diversified the company into base metals and into different geographies, which was a mistake and caused investors to flee the stock.”

To protect and enhance the value of its investment, Clinton sought to replace several members of the Stillwater board—including

CEO Frank McAllister—and return the company to a pure-play precious metals strategy. The problem: Clinton only owned around 1 percent of the company, meaning it had no real control over its management or direction.

“With a stake that small, we needed to plot a very particular course to gain the influence we needed,” Taxin says.

Having turned to Weingarten and Rosewater, Clinton decided to recruit and nominate a group of directors to replace the incumbents on the Stillwater board. Fierce tactical skirmishes ensued as Clinton tried to persuade its fellow shareholders to oust the board in favor of its candidates.

In order to be formalized, the board changes needed to be voted through at the company’s annual general meeting last May. This left the process susceptible to foul play.

“One of the things you sometimes see with companies facing activist action is that they try to play with the logistics of the actual meeting,” Rosewater says. “Stillwater held its meeting at a mine in Montana, and rather than giving our team any space in the main

DEAL IN BRIEF

ACTIVIST REPRESENTATIONS

DEAL VALUE

Various

FIRM’S ROLE

Counsel to individual shareholders

PHOTOGRAPHY BY PAUL GODWIN



**DAVID ROSEWATER (LEFT)
AND MARC WEINGARTEN**
Schulte Roth & Zabel

DEAL FACT In 2013 the pair worked on activist battles on companies with an aggregate market cap of more than \$50 billion.

building, where the meeting was being held, they put us in an ancillary compound a couple miles down the road with one phone that didn't even work."

As the meeting time approached, the group, comprising Weingarten and Rosewater, representatives from Clinton, and the four directors whom Clinton was nominating for seats on the Stillwater board—including the former governor of Montana, Brian

Schweitzer—bundled into an old van for the journey up to the mine site. As they turned a corner, a herd of bighorn sheep descended the mountainside and blocked the road.

"We're not sure if the rams were working for the board," Rosewater jokes, "but after much hand-wringing and horn-blowing, thankfully they dispersed." The group made it to the meeting in the nick of time, and went on to win the vote by a wide margin,

with over 60 percent voting in favor of the board changes.

"Marc and David are much more than mere lawyers—they are an integral part of our team," says Taxin. "We've come to rely on the business judgment and tactical insight they are able to provide in these critical situations as much as their legal advice."

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