

KKR, TPG, Blackstone To Pay \$325M In LBO Collusion Suit

By Kaitlyn Kiernan

Law360, New York (August 07, 2014, 11:05 AM ET) -- KKR & Co. Inc., Blackstone Group LP and TPG Capital LP agreed to pay a combined \$325 million, the biggest settlement yet, to resolve allegations that the three firms and several other big-name private equity shops teamed up to depress prices in leveraged buyouts prior to the financial crisis, according to a federal court filing Thursday.

The settlement, which leaves just one named defendant remaining in the suit, said the three reached an agreement on July 28 to pay \$325 million but didn't say how that figure would be broken down among the three private equity firms. That amount is more than double what the total amount of money the first three firms to settle agreed to pay.

"Despite their beliefs that they are not liable for the claims asserted and that they have good defenses thereto, they have nevertheless agreed to enter into this agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation," the settlement said.

With KKR, Blackstone and TPG out of the picture, just Carlyle Group LP remains to fend off the allegations, with that private equity firm making clear last week it doesn't intend to settle.

Carlyle last week indicated it wasn't ready to throw in the towel, filing a motion for summary judgment arguing that the plaintiffs — a proposed class of shareholders of companies bought out by the PE firms — don't have any proof of injury as required in such cases.

Carlyle argued that the acquisition process is long and complex, with a number of legitimate factors other than just projected returns coming into valuation that could lead a firm to step back from a deal.

The judge on Tuesday filed a notice setting a hearing on that motion for Oct. 17, less than three weeks before a trial is scheduled to begin.

KKR's role in the settlement was first revealed early Thursday in just a couple of lines buried on page 58 of its second-quarter earnings statement. A copy of the settlement agreement made it to the case's docket later in the morning, revealing that TPG and Blackstone also joined KKR at the bargaining table.

That move comes amid a slew of other settlements with three high-profile defendants, including Goldman Sachs Group Inc., Bain Capital LLC, and Silver Lake Partners LP, which settled for \$67 million, \$54 million and \$29.5 million, respectively.

The lawsuit has wormed its way through federal court in Boston for more than a half-decade. The complaint pinpoints 19 separate deals between 2003 and 2009 in which the firms allegedly followed an elaborate set of bidding rules to artificially deflate prices, shortchanging shareholders in the target companies.

Among the buyouts highlighted in the suit are a \$21 billion deal for hospital chain HCA Holdings Inc. and a \$5.1 billion purchase of high-end retailer Neiman Marcus Group, plus another six related transactions.

Plaintiffs claim damages from the purported collusion land in the billions, a factor that could make a relatively low-cost settlement look even sweeter. The standard method for calculating treble damages calls for the deduction of partial settlement amounts only after tabulating the enhanced damages, rather than before — resulting in a higher total divided among fewer players.

KKR is represented by Joseph F. Tringali and Paul C. Gluckow of Simpson Thacher & Bartlett LLP and Ryan A. Kane of Wollmuth Maher & Deutsche LLP.

Blackstone is represented by Peter C. Thomas, Hillary C. Mintz and Abram J. Ellis of Simpson Thacher & Bartlett LLP.

TPG is represented by Franklin R. Liss and Kelly Smith Fayne of Arnold & Porter LLP and Mary Kathryn Sammons and Karen A. Oshman of Susman Godfrey LLP.

The plaintiffs are represented by David W. Mitchell, Patrick J. Coughlin, Randi D. Bandman, Susan G. Taylor and Phong L. Tran of Robbins Geller Rudman & Dowd LLP; David R. Scott, Christopher M. Burke, Walter W. Noss and Kristen M. Anderson of Scott + Scott LLP; and Lisa A. Fernald, K. Craig Wildfang, Thomas J. Undlin and Stacey P. Slaughter of Robins Kaplan Miller & Ciresi LLP.

The case is Kirk Dahl et al. v. Bain Capital Partners LLC et al., case number 1:07-cv-12388, in the United States District Court for the District of Massachusetts.

--Additional reporting by Karlee Weinmann. Editing by Sarah Golin and Christine Chun.