

## Premier Inc. Board Sued Over \$474 Million Payout to Insiders (2)

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- **COURT:** Del. Ch.
- **TRACK DOCKET:** [No. 2022-0207](#) (Bloomberg Law Subscription)
- **JUDGE:** [J. Travis Laster](#) (Bloomberg Law Subscription)
- **COMPANY INFO:** [Premier Inc.](#) (Bloomberg Law Subscription)

A pension fund sued Premier Inc.'s board in Delaware, claiming insiders were overpaid by \$224.5 million as part of a \$473.5 million transaction terminating a “tax receivable agreement” related to the health care company’s “up-C” structure.

The lawsuit, made public Thursday, also targets the company’s current and former CEOs. It accuses them of citing hundreds of millions in illusory tax benefits as they pushed to accelerate payments to the “member-owners” who held nonpublic equity units reflecting their interests in Premier before the initial public offering of its parent company.

The formula used to appraise the accelerated payments owed to company insiders dramatically overstated their value relative to a virtually identical pact reached after arm’s-length negotiations with the Greater New York Hospital Association, an early investor, according to the complaint.

“There was no justification” for that discrepancy, which “had a quick and negative impact on the company,” while giving “a windfall to the member-owners” at the expense of public investors, the heavily redacted derivative suit says.

A representative for Premier told Bloomberg Law in a short statement Friday that the company “believes the complaint is entirely without merit and intends to vigorously defend against it.” The spokesperson declined to comment further, citing the company’s policy toward ongoing litigation.

Companies that go public as up-C corporations have two ownership classes: insiders and other early investors who continue to directly hold equity in the original operating entity, and holders of class A shares in its publicly traded parent company, a shell corporation, that equal the equity units in value.

The original investors, who get tax benefits from the company's new pass-through structure, usually have the right to convert their equity units to public shares. In the meantime, they're given class B shares in the parent company that carry voting rights only.

According to the complaint in Delaware's Chancery Court, the exchange of equity units for public shares over time—gradually, due to regulatory limits—created tax benefits for the company, of which 85% were supposed to be returned to the member-owners making the exchanges.

But the decision to accelerate those payouts as a lump sum allegedly involved agreement provisions that were “extremely favorable to the member-owners and unfavorable to the company,” based on the assumption that Premier would always have enough earnings to maximize the tax benefits.

That's because the provisions were only meant to be invoked if the company was sold, the suit says.

It was originally filed under seal March 4 by the City of Warren General Employees' Retirement System.

**Cause of Action:** Breach of fiduciary duty; corporate waste.

**Relief:** Damages, costs, fees, interest, and oversight reforms.

**Attorneys:** The pension fund is represented by Friedlander & Gorris PA, Robbins Geller Rudman & Dowd LLP, Shobe & Shobe LLP, and VanOverbeke, Michaud & Timonny PC.

The case is [City of Warren Gen. Emp. Ret. Sys. v. Alkire](#) , Del. Ch., No. 2022-0207, complaint unsealed 3/10/22 .

(Updates with additional reporting. A previous update corrected that one of the defendants is the company's current CEO.)

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