Goodmans LLP Update

Mining and Natural Resources Law

March 11, 2015

Is the Greening of Financiers Leading to a Credit Squeeze in the Extractive Sector?

The New York Times recently reported that PNC Financial had joined a growing list of financiers in the United States that have "distanced themselves from coal companies involved in mountain top removal."[1] The list already includes: Bank of America, Citigroup, Morgan Stanley, JP Morgan Chase, Wells Fargo, Credit Suisse and others.

President Obama's comment on "extraordinary dirty" oil extraction in Canada and the ongoing discussion on "conflict metals" serve as reminders that coal is not the only target in the sights of the green movement and there is increasing pressure not only on producers, but on their source of funds and their means of product transportation.

Corporate social responsibility programs often focus on local communities where the extraction is taking place. This continues to be an important approach to managing project risk. However, the "distancing" by financiers from a certain type of coal extraction, demonstrates that it cannot stop there. Environmental issues can serve as a lightning rod for local conflict and a pathway to broader political action that extends beyond the local community.

A recent comprehensive study, "Costs of Company-Community Conflict in the Extractive Sector" from the Harvard Kennedy School[2] states that:

> The most frequent costs [of Company-Community conflict] were those arising from lost productivity due to temporary shutdowns or delay. For example, a major, world-class mining project with capital expenditure of between US $3-5 billion will suffer costs of roughly US $20 million per week of delayed production in Net Present Value (NPV) terms, largely due to lost sales. Direct costs can accrue even at the exploration stage (for example), for the standing down of drilling programs.

The cost of delay resonates through the recent landmark decision from the Supreme Court of Canada in *Tsilhqot'in Nation v. British Columbia* (see our January 29, 2015 Update, *Tsilhqot' in Nation*), where the Court effectively revoked a logging license after a decade-long court battle that included a trial spanning over 300 days and two appeals to higher courts.

The costs of delay represent only one cost set associated with corporate-community conflict. It is clear that reputational costs amongst a broader group of stakeholders must also be managed. Diligence in these areas is critical in any transaction in the extractive sector.

For further information regarding these developments, contact any member of our Mining and Natural Resources Group or Environmental Group.

---

1 Andrew Ross Sorkin, "A New Tack in the War on Mining Mountains", *The New York Times* (9 March 2015), online: <www.nytimes.com>.

2 Davis, Rachel and Daniel M. Franks. 2014. "Costs of Company-Community Conflict in the Extractive Sector." Corporate Social Responsibility Initiative Report No. 66. Cambridge, MA: Harvard Kennedy School.