Goodmans LLP Update

Corporate Securities Law

June 9, 2014

Two New Ontario Court Decisions Reconsider Fairness Opinions

In our April 4, 2014 client update, we summarized a recent decision of the Ontario Superior Court of Justice (the "**Champion Iron Mines Decision**") with potentially important implications for how corporate arrangements are done and, in particular, for the manner in which fairness opinions for arrangements are drafted.[1] Among other things, the Court in the Champion Iron Mines Decision held that a fairness opinion was not admissible to assist the Court in determining whether the arrangement was "fair and reasonable" because it did not satisfy the civil procedure requirements for expert evidence. Two recent decisions of the same Court appear to have significantly reduced the potential implications of the Champion Iron Mines Decision.

Bear Lake Gold Ltd. Endorsement

In an endorsement dated June 5, 2014, Wilton-Siegel J. provided the Court's reasons for approving a plan of arrangement pursuant to which Kerr Lake Mines Inc. ("**Kerr**") would acquire all of the outstanding common shares of Bear Lake Gold Ltd. ("**Bear Lake**") in exchange for securities of Kerr.

After reiterating and applying the legal test that must be met for plan approval, Wilton-Siegel J. commented on the fairness opinion provided to the board of directors of Bear Lake and included in the information circular sent to its shareholders. Referring to the comments made by Brown J. in the Champion Iron Mines Decision, Wilton-Siegel noted that a fairness opinion in M&A transactions need not, nor is it intended to, satisfy the requirements of expert evidence under the Rules of Civil Procedure. Rather, a fairness opinion in M&A transactions is "an indicia of a good faith transaction as well as of the fairness and reasonableness of the proposed transaction."

Specifically, the Court noted that a fairness opinion: (a) serves as evidence that the special committee or board of directors has considered the proposed transaction on the basis of objective criteria, and (b) allows shareholders to reach their own conclusions regarding the integrity of the directors' recommendations and the fairness of the transaction.

Accordingly, notwithstanding the Champion Iron Mines Decision, the Court found "no compelling reason to depart from the existing practice regarding the use of fairness opinions" in this context.

Royal Host Inc. Endorsement

Similarly, in an endorsement dated June 6, 2014, Newbould J. provided the Court's reasons for approving a plan of arrangement pursuant to which Holloway Lodging Corporation would acquire all of the outstanding common shares of Royal Host Inc. in exchange for cash and securities. Referring to the Champion Iron Mines Decision, and agreeing with its treatment by Wilton-Siegel J. in the Bear Lake matter, Newbould J. noted that: (a) the purpose of a fairness opinion is a commercial one, (b) it is not an expert report in a litigation context, and (c) a fairness opinion serves as an indicia of the fairness and reasonableness of the proposed transaction.

While careful consideration should continue to be given to the court process and scheduling in light of the Champion Iron Mines Decision, it appears that, notwithstanding that decision, the established practice surrounding fairness opinions in M&A transactions has been reaffirmed.

Please contact any member of our Corporate Securities Group to discuss these latest developments.

[1] Refer to our April 4, 2014 Goodmans Update "*Ontario Court Comments on Fairness Opinions in Corporate Arrangements*".