The Sons of Gwalia Are Dead!

Saturday, December 4, 2010

Our clients must be sick to death about hearing us comment on the Australian Sons of Gwalia saga (which we have been doing for more than three years) but finally there is good news to report. The short version of the saga is that Sons of Gwalia was a decision by Australia's highest court that shareholder damages claims should be treated as pari passu unsecured claims in an Australian insolvency proceeding. In contrast, in US bankruptcy cases Bankruptcy Code section 510(b) treats shareholder damages claims as having the same priority as common stock interests (i.e., behind all debt claims).

When last we commented on Sons of Gwalia in May 2010 (click here), we reported on proposed legislation to reverse the Sons of Gwalia decision. Alas, there was a setback due to elections, but the legislation was subsequently resubmitted. The excellent news is that the legislation has now passed both Houses of Parliament and it will formally become law upon Royal Assent. (In Australia, "Royal Assent" means that the Queen's representative in Australia, the Governor General, formally signs legislation into law, which typically occurs in a matter of weeks after the legislation is submitted.)

The new legislation is crystal clear – creditors are creditors and shareholders are shareholders, and no longer shall the twain meet in Australian insolvency proceedings. And lest there be any doubt, the formal title of the legislation even references "Sons of Gwalia" and can be found here: Corporations Amendment (Sons of Gwalia) Bill 2010.

The only other item to note in the legislation is that it is prospective only, meaning that it will only apply to shareholder damages claims arising after enactment. As a result, the legislation does not apply to pending shareholder lawsuits such as those against Centro Properties (CNP) and Centro Retail Trust (CER).

So the Sons of Gwalia are dead, and long live the Queen!

P.S. For those of you not aware of it, we have a blog where this will also be posted. It is called Basis Points and can be found at http://basis-points.com. You will note in the upper left of the blog that you can choose to receive automatic updates via Email, RSS or Twitter. And in the spirit of the “Poems” column on the blog:

Sons of Gwalia
Shareholders are creditors?
Nope, not anymore!

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