

October 31, 2013

REIT M&A Update: Maryland Court Upholds Special Committee's Approval
of Acquisition of REIT's External Manager

In an opinion issued last week, a Maryland court reinforced the importance of a robust, independent process in conflict transactions, dismissing with prejudice a shareholder challenge to the acquisition by the Cole REIT of an affiliated entity which had served as the REIT's external manager. The transaction had been reviewed and approved by a Special Committee of Cole's Board of Directors, composed of three independent directors. [Strub v. Cole Holdings Corporation, M.D. 24-C-13-001563 \(October 22, 2013\).](#)

In addressing allegations that the Cole board breached its fiduciary duties in approving the acquisition, the court reaffirmed Maryland's statutory principle that corporate directors will be presumed to have acted reasonably and in good faith, absent facts showing that they acted fraudulently, in their self-interest or with gross negligence. In this case, given the thorough process conducted by Cole's Special Committee, the plaintiffs could not allege the fraud, gross negligence or self-interest on the part of the independent directors necessary to overcome Maryland's statutory presumption.

The decision serves as a reminder of the value of an independent review process in conflict transactions, as well as of the reasoned deference that Maryland courts will grant the actions of independent directors of Maryland corporations.

Robin Panovka
William Savitt
Ronald C. Chen
Andrew J. Cheung
Donald P. Casey

*If your address changes or if you do not wish to continue receiving these memos,
please send an e-mail to Publications@wlrk.com or call 212-403-1443.*