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Judge to ponder Stronach buyout

By Jeff Gray
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Decision expected no later than Tuesday on controversial \$863-million deal

An Ontario Superior Court judge will spend the weekend pondering whether Magna MG.A-T controversial proposed billion-dollar buyout of chairman Frank Stronach is fair, with a ruling expected by Tuesday morning at the latest. And along with the complexity of the deal under study, there will be some entertaining reading.

In documents submitted to Mr. Justice Herman Wilton-Siegel before a two-day hearing that ended Friday, lawyers for Mr. Stronach's family trust argue that the premium for his multiple-voting shares cannot be compared to the price tags on similar past deals.

"There are no cookie-cutter comparables and the price for a Van Gogh isn't determined by what is paid for a shopping centre black velvet Elvis," the Stronach Trust's written arguments tell the judge.

Another quip lauds Ontario's former premier Mike Harris, head of the Magna board's special committee examining the deal, for getting the best price: "Jerry Maguire and Henry Kissinger notionally combined could not compel an indifferent seller to part with any asset for consideration below his or her price."

Under the deal, Magna would give Mr. Stronach \$300-million in cash and nine million new common shares in return for his multiple voting shares, which have allowed him to control the auto parts giant despite owning less than 1 per cent of its equity.

The deal's price tag of \$863-million represents a premium of 1,800 per cent on the common share price the day before the deal was announced in May. Mr. Stronach would also get an estimated \$120-million in consulting fees over four years and remain chairman.

Major pension funds, including the Canada Pension Plan Investment Board, have been fighting the deal, warning that it is an expensive precedent for other companies that seek to end their dual-class share structures. In June, the Ontario Securities Commission ordered Magna to provide more information for shareholders.

The pension funds argued in court Friday that the deal is unfair because the benefits for Magna shareholders are purely speculative, based on the expected rise in the stock price after the dual-class share structure is eliminated.

Linda Fuerst, a lawyer acting for British Columbia Investment Management Corp., said both Magna's shareholder vote - 75 per cent in favour - and the endorsements of analysts should be viewed with "caution," because of Magna's "aggressive" public relations campaign.

She said that even though Magna's special committee concluded it could not offer an opinion on the deal, "management [was] going out and trying to slant the marketplace in favour of the transaction."

Ms. Fuerst also said analysts' reports are loaded with disclaimers and are largely "marketing tools that are used by dealers to generate business."

A portion of the debate during the two-day hearing focused on what the pension funds called the "Unfairness Opinion" they obtained from investment banking firm Morgan Stanley, which surveyed comparable transactions and concluded Mr. Stronach's price was unprecedented.

Magna lawyer Mark Gelowitz pulled no punches in attacking the Morgan Stanley report and its author, Thomas Whayne, whom he called "the \$3-million man," referring to the fee paid to the firm for 12 days work in preparing the report.

"This could well be the highest fee paid, for the least amount of work, for an expert opinion in the history of Ontario litigation," Magna's written argument reads.

Magna's opponents, in their court documents, call the comments "wildly unfair and unsubstantiated" and say Magna produced no expert evidence to contradict the report.

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