

September 14, 1977

To Our Clients

Takeovers; Investment Banker's Advisory Agreements

Great Western United Corp. has commenced a derivative action against Sunshine Mining Co. and its directors and Wertheim & Co. attacking the agreement between Sunshine and Wertheim for investment banking advice with respect to the Great Western tender offer for Sunshine. The attack on the agreement is premised on the allegation that the agreement is "defensive", with its primary purpose being to block the Great Western tender. In this connection it is alleged that in addition to a \$200,000 retainer, Wertheim would receive an additional \$200,000 if the Great Western tender offer were to fail and there were no other offer for Sunshine and that Wertheim would receive an additional fee if there was a third party deal even if Wertheim provided no services in connection with that deal.

The agreement between Wertheim and Sunshine is an unusual form, particularly the provision for an additional payment in the event that Sunshine remains independent. Whatever the outcome of the Sunshine case, the customary target-investment banker agreement providing for advice as to the original offer on a retainer basis and a contingent fee based on the investment banker's services in connection with an improved offer or White Knight offer is in our opinion a legal and valid agreement that is not subject to successful attack.

M. Lipton