

December 26, 1975

To Our Clients

Tender Offers

The decision in Missouri Portland Cement Co. v. H.K. Porter Co., E.D. Mo. No. 75 1027c(A) discusses several points of interest:

The court held that a ten-day offer communicated by mailing to a year-old shareholders list and by publishing tombstones in newspapers did not meet the "publication" requirement of the Williams Act. (Actually, the Williams Act does not have a publication requirement. It has minimum time periods for withdrawal (7 days) and proration (10 days) measured from the date when a tender offer is first "published".) The opinion does not consider whether tombstone publication would be sufficient if a longer offer period was used, although there is an implication that it was the use of the ten-day offer that motivated the court. This is another example of the problems in resorting to short-period tenders. It is understood that the Staff of the SEC takes the position that tombstone publication is not sufficient.

The confusion caused by the NYSE on-again off-again 30% policy resulted in a holding that reference in the tender offer to the now abandoned 30% policy was misleading.

The court also held that an offer which was designed to increase the offeror's holdings to about 50% of the outstanding stock of the target was clearly for the purpose of control and that that should have been stated in the offer. A statement that if all the shares sought were tendered that "may give Porter effective working control of Missouri" was rejected by the court as meeting the essential disclosure of control purpose.

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