

February 4, 1976

To Our Clients

Tender Offers

In Mesa Petroleum Co. v. Aztec Oil & Gas Company, No. 3-76-001-C (N.D. Texas, Jan. 9, 1976), the target was ordered to supply a shareholders list to the offeror pursuant to Section 14(e) of the 1934 Act. This is the first holding that the offeror in a hostile tender offer situation is entitled to a list of shareholders under Section 14(e). The court did not hold that there is an absolute right to a shareholders list under Section 14(e) -- indeed, the court stated that the mere refusal to supply a list by itself would not violate Section 14(e). The court did, however, say that where the target attacks the offer on the ground of nondisclosure and the target communicates by mail with its shareholders, the offeror should have a similar opportunity. The court said:

"The moving papers of the parties, the evidence and argument suggest to this court that the opportunity to inform the shareholders of Aztec of the positions both of Aztec and Mesa can best be served hereafter by granting Mesa access to the Aztec shareholder list. Given the limitations of time, the potential benefits of this course can hardly be realized. Accordingly, the decree to be fashioned must condition that relief upon an extension [10 days] of the tender period, with all its correlative rights, such as the right of tendering shareholders to withdraw. With more time and greater access to the shareholders, hopefully many of the claims of inadequate disclosure will die in the marketplace."

The court rejected, without full discussion, the contention that where the offeror's intention is to accomplish a second-step merger exchange-offer-type disclosures must be made in the offer.

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