WACHTELL, LIPTON, ROSEN & KATZ

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To Our Clients

Tender Offers-State Regulation

The Ohio Hearing Examiner's July 22, 1976 report in The Youngstown Steel Door Co., case is of potentially great significance and is still another example of the state takeover laws being used to kill a tender offer. Thrall Car Mfg. Co. proposed a cash tender which would result in Thrall owning 52% of the common of Steel Door. The Hearing Examiner found:

(1) A 10 day offer is inherently unfair since it does not provide a sufficent period for reasoned evaluation of a tender offer.

(2) A soliciting dealer fee that is larger than a "normal" commission is inherently unfair in that it motivates dealers to advise their clients to tender.

(3) A partial cash tender is "grossly" unfair.

(4) Complete prospectus type disclosure as to the offeror and its future plans for the target is required for a partial cash tender. In addition, disclosure of transactions between the offeror and its management is material.

(5) An offeror should obtain investment banking advice that the cash tender price is fair to the shareholders of the target; merely setting a premium price designed to attract tenders does not establish fairness. (This is the first state takeover case to hold that a premium over normal market price is not per se fair.)

M. Lipton