WACHTELL, LIPTON, ROSEN & KATZ   August 23, 1976

To Our Clients:

            Conflicts of Interest – Use of Special
            Committees of Distinterested Directors

        The utility of the special committee of disinter-
ested directors to decide how a corporation should act in a
situation where a majority of the directors have a conflict
of interest was recently reaffirmed in Gall v. Exxon Corp.,
CCH Fed. Sec. L. Rep. ¶ 95,675 (S.D.N.Y. Aug. 2, 1976). Exxon
had made what were alleged to be illegal foreign political
contributions of about $59 million. After a shareholder de-
mand that Exxon bring suit against the officers and directors
involved in the contributions to recover the damage to Exxon,
the Exxon Board of Directors appointed a special committee of
directors to consider the question. The special committee
decided not to bring suit. The court held that under the
usual business judgment rule applicable to corporate deci-
sions, the determination of the special committee would not
be subject to review by the court in a shareholder derivative
suit and such suit would be dismissed. In order for the
business judgment rule to be applicable to such special com-
mittee determinations, the special committee must have actual
decision making authority and the members of the committee
must be truly disinterested.

        Other recent examples of the efficacy of the special
committee approach are Lasker v. Burks, CCH Fed. Sec. L. Rep.
¶ 95,297 (S.D.N.Y. 1975) (determination not to sue mutual
fund adviser with respect to a bad investment); Schulwolf v.
Cerro Corp., N.Y.L.J. Feb. 15, 1976 p. 6, col. 5 (Sup. Ct.,
N.Y. Co. Feb. 13, 1976) (parent-subsidiary freeze-out merger)
and Puma v. Marriott, 283 A.2d 693 (Del. Ch. 1971) (purchase
of assets from controlling shareholder).

        The special committee of disinterested directors,
advised by special outside counsel, investment bankers or
other independent experts, depending upon the issue to be
decided, has proved to be an effective means of meeting the
strike suit attack on corporate conflict transactions. It
warrants wider use.

                        Martin Lipton