

To Our Clients

Tender Offers; Raider Obtaining Shareholder
List; White Knight Denied Time Benefit of
Target Provided List

The ADDS-Milgo exchange offer contest has produced another decision by Judge Weinfeld of great importance (see our memo of January 5, 1977). After ADDS was successful in enjoining the issuance by Milgo of 15% of its stock to Racal for the purpose of blocking the ADDS exchange offer, Racal made an any and all cash tender which Milgo recommended to its shareholders and for which it gave a list to Racal. ADDS then increased its offer and demanded a list and an extension of the Racal offer so that it would be coterminous with the ADDS offer. Judge Weinfeld said:

"Management's decision to turn its shareholder list over to a 'friendly' offeror and to withhold it from a competing offeror would offend express congressional concern in adopting the Williams Act that both the offeror and management (and here a friendly offeror) have an 'equal opportunity to fairly present their case,' */ and that 'public shareholders who are confronted by a cash tender offer for their stock will not be required to respond without adequate information regarding [the offer]. '**/ In effect, the shareholders' ability to make up his own mind about competing tender offers upon a full presentation of all material facts is impaired by this sort of management action. ***/ Thus, in fairness, Milgo should be required to make its list available to ADDS without the conditions management seeks to impose, and Racal should extend the termination date of its offer until 10 a.m. on February 3, 1977 in order to afford the opportunity for Milgo shareholders to consider without undue pressure both offers before committing themselves to any course of action."

*/ S. Rep. No. 550, 90th Cong., 1st Sess. 3 (1967).

**/ Rondeau v. Mosinee Paper Corp., 422 U.S. 49, 58 (1975).

***/ Cf. Armour & Co. v. General Host Corp., 296 F. Supp. 470, 475 (S.D.N.Y. 1969) ('Indeed, [the equities of the situation] require that the stockholders not be deprived of an opportunity to accept either the cash offer of Greyhound or the exchange offer of General Host, or to reject both. The stockholders are entitled. . . . The decision whether to buy, exchange or do neither should rest with such individual stockholder.')