

To Our Clients

Tender Offers: The Piper Case

The Supreme Court has decided that a defeated raider does not have the right to sue the target or the white knight or the dealer-manager for the white knight for damages under the federal securities laws. On the grounds that the Williams Act was adopted to protect the shareholders of the target, the Court refused to imply a damage remedy in favor of the raider. The Court also refused to imply a damage remedy for a defeated raider against a white knight that violated Rule 10b-6, holding that Rule 10b-6 is designed to regulate market activities during a distribution and not to protect a tender offeror whose acquisition costs for the shares of the target were not affected by the Rule 10b-6 violations.

While the holding of the Court was expressly limited to the precise issue of raider standing to sue for damages, the rationale of the decision would support damage actions by the shareholders of the target and injunction actions by any of the parties to a takeover battle. The Court said, "in corporate control contests the stage of preliminary injunctive relief, rather than post-contest lawsuits, is the time when relief can best be given."

The Court expressed concern that the potentiality of massive damage claims against raiders or white knights could prejudice shareholders by chilling the desire of offerors to become parties to takeover battles. This philosophy would result in a very narrow interpretation of the Williams Act restrictions on raiders and supports the argument that state takeover laws designed to deter takeover bids are preempted by the Williams Act.

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