

To Our Clients

Tender Offers; Acquisitions
to Block a Takeover

The Anaconda acquisition of Walworth which created an antitrust block to Crane's tender offer for Anaconda provoked a shareholder derivative action against the management of Anaconda under the federal securities laws on Rule 10b-5 and § 14(e) theories. Holding that even if the Walworth acquisition had no valid corporate purpose and was in fact for the sole purpose of blocking the Crane tender offer, the management of Anaconda had only committed corporate waste and breached its fiduciary duties which post Santa Fe are matters left to state law and do not give rise to federal securities law causes of action, the court dismissed the complaint. Altman v. Knight, CCH ¶ 96,040 (S.D.N.Y. 1977). After Royal Industries and Milgo, it was assumed that an acquisition or the issuance of shares by a target company to block a tender offer would be enjoined in a federal court action. If Altman holds up, targets may again gamble that state courts will not enjoin defensive acquisitions or issuances of shares and there could be a resurgence of these defensive techniques. It continues to be our opinion that unless there is a reason for the takeover block acquisition -- including blocking the takeover where that in itself is a reasonable business decision under the circumstances -- it should not be attempted.

M. Lipton