

To Our Clients

### Takeovers

The Michigan Court of Appeals decision in Gerber Products Co. v. Anderson, Clayton & Co., Docket No. 77-1857 (June 10, 1977) is the first appellate court decision of significance interpreting a state takeover statute. In general, the decision reflects a favorable attitude toward tender offers and a refusal to allow the Michigan statute to be used to frustrate an offer through administrative delay. Several important issues were decided:

Open Market Purchases. The court followed the federal cases and specifically held that open market purchases within 60 days of a formal tender offer are not a "tender offer".

Questionable Payments. The court held that a summary reference to questionable payments disclosures was not sufficient, and that the full substance of questionable payments disclosures in SEC filings should be repeated in the tender offer.

Antitrust. The court held that where there is an antitrust issue disclosure of likely government inquiry and possible action is sufficient, but that particularly after a government investigation has begun, it is misleading to state that in the opinion of counsel to the offeror there is no antitrust violation.

Financing. Disclosure of sufficient bank commitments and a description thereof is all that is necessary; it is not necessary that the offer disclose facts establishing the offeror's ability to repay the loans.

Disclosure of Intention to Make a Tender Offer. The court held that such disclosure is not manipulative.

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