

October 19, 1977

To Our Clients:

Going Private; Minority Shareholder Cash Freezeouts

Yesterday, in Tanzer, v. International General Industries, Inc., the Delaware Supreme Court clarified the question left open in Singer v. Magnavox Co. and has made clear that a long-form cash merger freezeout is permitted under Delaware law. The Court held that the business purpose necessary to sustain a cash freezeout may be one of the parent not just one of the subsidiary. The Court also held that the cash freezeout is governed by the "fiduciary" standard rather than the "business judgment" rule and that it must meet the test of fairness as to price and all other aspects of the transaction. Thus our previous advice that despite Magnavox these transactions may be accomplished if done with the approval of a committee of independent directors, with fairness opinions from independent investment bankers and with the vote of a majority of the minority, has now been confirmed.

M. Lipton