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To Our Clients:

Going Private; Tender Offers by Controlling Shareholders

Completing a trilogy with Singer v. Magnavox Co. and Tanzer v. International General Industries, the Delaware Supreme Court in Lynch v. Vickers Energy Corp., held that a controlling stockholder in making a tender offer to minority stockholders owes them a fiduciary duty to disclose all information that is "germane", i.e., information which has "a significant connection, or close relationship, to the transaction at hand." As applied to the facts of Vickers Energy where the tender offer was at \$12 per share, the "germane" standard required disclosure, in addition to the disclosure that was made that management estimated net assets at not less than \$16 per share and that they "could be substantially greater", that a knowledgeable officer of the subsidiary had estimated net assets at \$20 per share and that the Board had authorized open market purchases for up to \$15 per share.

The lesson of the trilogy continues to be that any corporate transaction can be accomplished, but only if properly planned and executed.

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