

To Our Clients:

Takeovers; Delaware Takeover Statute

The Delaware Takeover Statute, Section 203 of the Delaware General Corporation Law, prescribes 20 days notice to the target before a raider may commence a tender offer. In Monogram Industries, Inc. v. Royal Industries, Inc., 372 A.2d 171 (Del. Sup. 1977) and American Medicorp., Inc. v. Humana, Inc., C.A. 5449 (Del. Ch. Dec. 12, 1977) target arguments based on technical failures to comply with Section 203 were rejected on the ground that Section 203 is intended only to give the target sufficient time and information to enable it to advise its shareholders and is not intended to protect targets against raids.

In Contran Corp. v. Danco, Inc., C.A. 5509 (Del. Ch. Feb. 8, 1978) it was held that while technical violations of Section 203 will not provide a basis for delay by postponing the start of the 20 day notice period, failure to disclose the specified information is grounds for an injunction. In Contran the raider, a corporation newly formed for the purpose of the tender offer, failed to disclose an understanding with respect to its capitalization; provided a projected balance sheet as of a date two weeks after the notice, rather than an actual balance sheet as of a specific date; and described the duration of the offer as at least 20 days, instead of a specific period. In granting the injunction on these grounds the court said:

"In summary, although § 203 is a notice statute, the nine categories of information required to be addressed in a statement of intention by § 203(a)(1) constitute an expression of the basic information considered necessary to give adequate notice to the target corporation a full 20 days prior to the effective date of the offer. While the statute is not to be construed hyper-technically for defense purposes, the other side of the coin requires reasonable compliance and candor on the part of the offeror. American Medicorp., Inc. v. Humana, Inc., supra. The fact that certain germane information has come to Contran by documents

February 13, 1978

delivered subsequent to the delivery of the statement of intention and by pre-trial discovery, and thus has cut into its statutory period for evaluation, has obviously reduced, and thus prejudiced, Contran's ability to respond. If the target company is prejudiced by the offeror's noncompliance with § 203, it violates the policy of the statute. Compare, Monogram Industries, Inc. v. Royal Industries, Inc., supra."

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