

August 11, 1978

To Our Clients:

Tender Offers; State Takeover Laws  
Are Unconstitutional

While technically only applicable to the Idaho takeover law, the decision yesterday in Great Western United Corp. v. Kidwell, \_\_\_ F.2d \_\_\_ (5th Cir. August 10, 1978) is a sweeping condemnation of all the state takeover laws. The Fifth Circuit held that the Williams Act preempts any state takeover law that is inconsistent as to time, disclosure or other aspects of a tender offer. Upon this analysis, it would appear that no state takeover law is constitutional. The Fifth Circuit also held that the Idaho takeover law violated the Commerce Clause in that it unduly burdened interstate commerce.

If the Fifth Circuit opinion stands up, the state takeover laws are dead and, except for the Hart-Scott-Rodino 15-day delay before consummation of a tender offer, the era of the Saturday Night Special has returned.

M. Lipton