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October 9, 1978

To Our Clients:

Sale of Control at a Premium;
The Equal Opportunity Doctrine

A recent decision of the Fourth Circuit Court of Appeals, Clagett v. Hutchison, No. 77-1420 (4th Cir. Sept. 14, 1978), squarely rejects the equal opportunity doctrine as not being Maryland law. The court held that insiders may sell control at a premium without securing a comparable deal for all the shareholders. Indeed the court not only rejected the equal opportunity doctrine but held that nonselling minority shareholders had no standing to claim that the insiders favored certain of the minority shareholders by including them within the selling group and not including others.

The court also held that merely selling control at a premium without other circumstances does not impose a duty on the sellers to investigate the buyers to assure against the buyers mismanaging or defrauding the corporation. The court said:

> It is true that [the sellers] arranged for the purchase of some, but not all, of the outstanding minority shares of [the corporation], and that the plaintiffs were not included in this group who were given the option to sell at the higher price received by [the sellers]. From this, plaintiffs argue that [the sellers] had some reason to believe that the future plans of the [buyers] were not in the best interests of [the corporation] and its minority stockholders. [The sellers] counter by noting that selling one's own stock and including others in such a sale, is a private act, sanctioned in law, and not alone "suspicious." We agree.

While the Clagett case is a clear rejection of the equal opportunity doctrine, it should be noted that despite a number of decisions rejecting the doctrine, it refuses to go away. The minority still sues. From a planning standpoint it must be assumed that litigation will follow sale of control at a premium and that there is a continuing, albeit slim, possibility that a court will go the other way.

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