

November 17, 1978

To Our Clients

Return of the Saturday Night Special

The Dart raid on Mallory confirms our fear (and prediction) that the Sunshine Mining case presaged the return of the Saturday Night Special. On the basis of the Fifth Circuit decision in Sunshine Mining, holding the Idaho takeover statute unconstitutional, Dart obtained a federal court temporary restraining order against the enforcement of the state takeover statutes applicable to Mallory and sprung a Saturday Night Special. This tactic could be attempted against any company.

The Dart-Mallory situation followed shortly after the Ohio federal court decision casting doubt on the constitutionality of the Ohio takeover statute noted in our memo of November 8, 1978

The long-promised SEC tender offer rules (now expected before the end of 1978) will lengthen the offer period to 15 business days (19 calendar days). This is far short of the 40 days provided by the Delaware takeover statute and the 60 to 120 days provided by most of the other state statutes.

These developments suggest an immediate reexamination of takeover response plans. While there are litigation tactics which we believe are capable of countering the Dart-Mallory strategy, they require careful advance planning and preparation. Companies that are not prepared may well make the fatal mistake that leads to a successful Saturday Night Special takeover.

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