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To Our Clients

Recent Acquisition Cases

SEC v. Blatt, CCH Fed. Sec. L. Rep. ¶ 96,610 (5th Cir. 1978) holds that the intention of an insider (attorney) of the subsidiary to exercise appraisal rights upon a second-step merger is a material disclosure.

Rodman v. The Grant Foundation, CCH Fed. Sec. L. Rep. ¶ 96,599 (S.D.N.Y. 1978) holds that the federal securities laws do not require disclosure of the subjective purpose of retaining control through a corporation purchasing its own shares, when the proxy statement disclosed the facts as to the shares held by the insiders and the shares to be purchased. (A questionable decision.)

Flynn v. Bass Bros. Enterprises, Inc., CCH Fed. Sec. L. Rep. ¶ 96,611 (E.D. Pa. 1978) holds that under § 14(e) a tender offeror must disclose all material facts known to it, not just facts it obtains from the target or through an insider relationship. However, the failure of the offeror to disclose valuations of the target prepared by a third party, which the offeror believed to be based on erroneous assumptions, was not a material omission as a matter of law -- it was a factual question. The court indicates that the method followed in Alaska Interstate Co. v. McMillian, 402 F. Supp. 532 (D. Del. 1975) of disclosing the valuation and then stating why it was believed unreliable is the preferred way of handling the problem of an offeror having target projections or appraisals that the offeror is not relying upon.

M. Lipton