To Our Clients

Investment Bankers Opinion Letters

Two recent cases, Richardson v. White, Weld & Co., CCH Fed. Sec. L. Rep. § 96,864 (S.D.N.Y. May 11, 1979) and Helfant v. Louisiana & Southern Life Ins. Co., BNA Sec. Reg. & L. Rep. No. 479, p. A-3 (E.D.N.Y. Mar. 21, 1979) illustrate our oft-repeated warning of the litigation and liability risks inherent in investment bankers' merger and acquisition opinion letters.

In the Richardson case the court held that recital in the opinion of reliance on information provided by the corporation and denial of an independent evaluation of assets does not automatically protect the investment banker against a charge of violating the federal securities laws if the banker knew that the information was fale or if the banker was reckless in providing the opinion. The court also held that a false opinion could make the investment banker a conspirator with or aider and abettor of a parent company's breach of fiduciary duty to shareholders.

In Helfant the court held that an allegation that the banker knowingly issued an opinion with a false representation as to value stated a claim under the federal securities laws.

While both of these decisions arose on pleading motions without the development of a full factual record, they serve to remind that investment bankers' opinions should be undertaken only with advice of counsel, pursuant to an engagement letter containing full indemnity and with a careful due diligence program.

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