

July 11, 1979

To Our Clients

Takeovers

Wellman v. Dickinson (Sun-Becton Dickinson), 78 Civ. 284 (RLC) (S.D.N.Y. July 9, 1979) holds that a series of purchases; at a uniform premium over the current market price; conditioned on a specific minimum number of shares being purchased; on one day; from less than 40 sellers (all of whom were major shareholders and most of whom were major institutional investors); not accompanied by any prepurchase publicity; is a tender offer. Basically the court seems to hold that any purchase program, other than "private negotiations", that results in the accumulation of a block sufficient to affect control (other than what the court refers to as open market purchases, which the court says are completely outside the Williams Act) is a tender offer. The court further holds that its private negotiations exception is to be determined by the same standards as the private placement exemption under the 1933 Act. We believe that the decision is contrary to the Second Circuit holding in the Kennecott case.

M. Lipton