

To Our Clients

Creeping Tender Offers

The holding in Dan River, Inc. v. Unitex Ltd., 624 F.2d 1216 (4th Cir. 1980) that the target of a creeping tender offer states a cause of action in claiming that the raider's denial of control purpose is false has been followed in Kaufman and Broad, Inc. v. Belzberg, CCH Fed. Sec. L. Rep. ¶ 97,893 (S.D.N.Y. March 12, 1981). Both courts held that the target was entitled to discovery to establish its cause of action. Thus, one of the few effective weapons (assuming the raider will be deterred by discovery) against the creeping tender offer appears to be preserved.

However, another current decision shows that if the raider is willing to submit to discovery the weapon is rendered impotent. Even if there has been failure to disclose a material fact, amendment of the Schedule 13-D is all that is required and, except in the most egregious cases, the courts will not enjoin further purchases. Standard Metals Corp. v. Tomlin, CCH Fed. Sec. L. Rep. ¶ 97,894 (S.D.N.Y. March 11, 1981).

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