

December 28, 1981

To Our Clients

Be Wary of Lockups

While the December 24, 1981 Sixth Circuit decision voiding the Marathon lockup options on the ground that they chill the bidding and therefore are a "manipulation" is an extreme extension of the securities laws definition of "manipulation", it does reflect the sharp judicial reaction against these devices that we warned about in previous memos. Although lockups may still be appropriate in certain special cases, they are not "boilerplate" to automatically be used in every white knight deal and negotiated acquisition. Indeed, given the litigation potential created by the Marathon decision, as a practical matter lockups may create far more risk than assurance.

M. Lipton