

September 24, 1982

To Our Clients:

Takeovers; Counter Tender Offers and Scorched Earth

Judge Young's decision in the Martin Marietta/Bendix battle contains several very significant holdings:

1. A counter tender offer defense is legal.
2. A counter tender offer defense is governed by the business judgment rule -- that the directors of the target acted in good faith and had a reasonable basis for their action. In evaluating the business judgment question the court specially noted that a large majority of the directors were independent.
3. A front-end loaded tender offer is legal.
4. If full disclosure is made, a raider has no standing under the federal securities laws to complain of the defensive tactics used by the target to defeat the raider's tender offer.
5. There is nothing inherently illegal or improper in any of the "scorched earth" (counter tender offer, liquidation, sale of crown jewel, self tender offer, etc.) responses to a tender offer. Judge Young specifically rejected Judge Pollack's decision in the Seagram/St. Joe Minerals case and said that Judge Pollack was wrong on the law.

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