

March 14, 1983

To Our Clients

Takeovers

The enclosed study of defeated takeovers shows that in a majority of cases the shareholders benefited by the defeat of the takeover bid. This study updates the study I did in 1979 to support my thesis that the business judgment rule should apply to takeovers and that the board of directors of a target should be free to reject any takeover bid and follow a policy of remaining an independent company. This study understates the case for the business judgment rule in that it adjusts for dividends and time value of money but not for the taxes that would have been incurred if the defeated takeover had taken place. I think this study is a definitive refutation of the Easterbrook-Fischel argument for a rule requiring the directors of a target to remain passive in the face of a takeover bid and supports all the court decisions that have rejected the passivity rule in favor of the business judgment rule.

M. Lipton

Enclosure

KIDDER, PEABODY & CO. INCORPORATED

Summary of Defeated Hostile Tender Offers
1973 - 1982

Number of Defeated Offers - 38
Companies Subsequently Sold - 7
Companies Still Independent - 31

COMPANIES SELLING ABOVE ORIGINAL OFFERING PRICE (a)

| | <u>#</u> | <u>%</u> |
|--|-----------------|-----------------|
| Based on current price - February 28, 1983 (b) | 21 | 55 |
| Discounted from the present to announcement of original offer | 17 | 45 |
| Based on highest price since announcement (b) | 25 | 66 |
| Discounted from date of highest price to announcement date of original offer | 21 | 55 |
| Based on current price adjusted with original premium (c) | 23 | 74 |
| Discounted from the present to announcement date | 20 | 65 |
| Based on highest price since announcement adjusted with original offering premium (c) | 30 | 97 |
| Discounted from date of highest price to announcement date | 28 | 90 |

- (a) Cash dividends have been added back from the announcement date to the present, completion date or date of highest price, as appropriate.
- (b) Includes companies subsequently sold. Final value of tender offer or merger is used as the current and highest price and is discounted from the completion date in each case.
- (c) Does not include companies subsequently sold.

Note: The various discount rates used are based on the seasonally adjusted monthly Consumer Price Index as reported in the Survey of Current Business (1974-82) published by the U.S. Department of Commerce. The annual seasonally adjusted increases in the CPI have been: 1974 - 12.2%, 1975 - 7.0%, 1976 - 4.8%, 1977 - 6.8%, 1978 - 9.0%, 1979 - 13.3%, 1980 - 12.4%, 1981 - 8.9%, 1982 - 3.9%, 1983 through February estimated at 0.4%.

This study includes all announced cash tenders with an aggregate value greater than \$15 million which were opposed by the target's management and then remained independent for at least one year following the initial offer.

KIDDER, PEABODY & CO. INCORPORATED

Summary of Defeated Hostile Tender Offers

| <u>First Announcement Date</u> | <u>Target Company</u> | <u>Initial Offering Company</u> | <u>Market Price One Month Prior to First Announcement</u> | <u>Highest Offering Price (A)</u> | <u>Premium</u> | <u>Current Price (B)</u> | <u>High Stock Price Since Termination of Offer</u> | <u>Date High Stock Price Reached</u> |
|--|---|-------------------------------------|---|---|----------------|------------------------------|--|--|
| 9/24/74 | Dictaphone Corp. (C) | Northern Electric Co. Ltd. | 7.13 | 12.00 | 1.683 | 28.00 (*) | 28.00 (*) | 5/14/79 (ee) |
| 2/13/75 | Sterndent Corp. (D) | Cable Funding Corp. | 8.75 | 14.00 | 1.600 | 22.50 (*) | 22.50 (*) | 12/21/81 (ee) |
| 2/20/75 | Inspiration Consolidated Copper (E) | Crane Co. | 28.13 | 39.20 (ff) | 1.564 | 33.00 (*) | 33.00 (*) | 12/22/78 (ee) |
| 5/5/76 | Pargas, Inc. (F) | Empire Gas Co. | 10.77 | 15.32 | 1.422 | 40.00 | 40.50 | 2/25/83 |
| 5/7/76 | Unitek Corp. (G) | Airco, Inc. | 24.00 | 30.00 | 1.250 | 59.14 (*) | 59.14 (*) | 5/9/78 (ee) |
| 5/17/76 | Foremost-McKesson Inc. (H) | Sharon Steel Corp. | 15.50 | 27.00 | 1.742 | 40.50 | 45.25 | 11/4/82 |
| 9/22/76 | Sabine Royalty Corp. (I) | Hamilton Brothers Corp. | 9.75 | 13.61 | 1.396 | 41.13 | 73.00 | 10/15/80 |
| 10/8/76 | Universal Leaf Tobacco Co., Inc. (J) | Congoleum Corp. | 12.13 | 16.25 | 1.340 | 35.63 | 36.50 | 2/24/83 |
| 1/18/77 | Viacom International, Inc. (K) | Storer Broadcasting Co. | 4.88 | 10.00 | 2.051 | 30.13 | 35.13 | 11/4/82 |
| 3/23/77 | Sunshine Mining Co. (L) | Great Western United Corp. | 5.00 | 6.30 | 1.260 | 12.50 | 26.25 | 9/23/80 |
| 5/3/77 | Detroit International Bridge (M) | Iplex Group, Inc. | 16.00 | 20.00 | 1.250 | 25.00 (*) | 25.00 (*) | 7/31/79 (ee) |
| 8/1/77 | Gerber Products Co. (N) | Anderson, Clayton & Co. | 19.83 | 24.67 | 1.244 | 25.25 | 28.25 | 10/11/82 |
| 10/20/77 | Pabst Brewing Co. (O) | APL Corp. | 25.25 | 39.20 (ff) | 1.584 | 24.00 | 31.50 | 12/22/82 |
| 12/13/77 | Marshall Field & Co. (P) | Carter Hawley Hale Stores | 20.75 | 42.00 | 2.024 | 30.00 (*) | 30.00 (*) | 6/11/82 (ee) |
| 7/3/78 | Rowan Companies, Inc. (Q) | CBI Industries | 4.44 | 6.13 | 1.381 | 10.38 | 23.50 | 11/14/80 |
| 8/11/78 | Mead Corp. (R) | Occidental Petroleum Corp. | 21.50 | 35.00 | 1.628 | 20.75 | 32.75 | 4/27/81 |
| 9/25/78 | Wurlitzer Co. | Xcor International Inc. | 11.75 | 22.00 | 1.872 | 5.25 | 12.13 | 1/25/79 |
| 11/6/78 | Levitz Furniture Corp. (S) | Pritzker Family | 23.63 | 27.00 | 1.143 | 51.50 | 53.00 | 2/25/83 |
| 1/9/79 | McGraw-Hill Inc. (T) | American Express Inc. | 24.13 | 40.00 | 1.658 | 81.25 | 81.50 | 2/28/83 |
| 1/22/79 | Chicago Rivet & Machine | Mite Holdings Inc. | 22.00 | 31.00 | 1.409 | 15.00 | 24.25 | 10/30/80 |
| 2/12/79 | Ludlow Corp. (U) | Tyco Laboratories, Inc. | 12.38 | 19.00 | 1.535 | 27.50 (*) | 27.50 (*) | 10/6/81 (ee) |
| 4/9/79 | F.W. Woolworth Co. | Brascan Ltd. | 22.00 | 35.00 | 1.591 | 28.25 | 31.38 | 10/5/79 |
| 4/9/79 | Texas International Co. (V) | Gold Crown Resources | 4.13 | 11.00 | 2.663 | 7.00 | 46.88 | 3/13/81 |

KIDDER, PEABODY & CO. INCORPORATED**Summary of Defeated Hostile Tender Offers**

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|--|----------------------------------|-------------------------------------|---|---|----------------|------------------------------|--|--|
| 5/16/79 | Hoover Co. (W) | Fuqua Industries Inc. | 10.75 | 22.00 | 2.047 | 16.13 | 18.25 | 9/15/80 |
| 6/11/79 | Harnischfeger Corp. (X) | Paccar Inc. | 11.88 | 27.50 | 2.315 | 8.63 | 23.25 | 3/27/81 |
| 7/25/79 | Morrison Inc. (Y) | K-Mart Corp. | 12.98 | 18.26 | 1.407 | 19.13 | 20.25 | 1/17/83 |
| 8/13/79 | TeleCom Corp. | Tiger International Inc. | 13.50 | 21.50 | 1.593 | 2.50 | 17.25 | 2/14/80 |
| 2/19/80 | Gulf Resources & Chemicals Corp. | Placid Oil Co. | 27.88 | 42.13 | 1.511 | 14.25 | 35.75 | 2/27/80 |
| 11/23/80 | Curtiss-Wright Corp. (Z) | Kennecott Corp. | 27.00 | 46.00 | 1.704 | 44.50 | 52.00 | 11/12/82 |
| 1/26/81 | Harsco Corp. (aa) | Crane Co. | 17.50 | 19.00 | 1.086 | 19.50 | 21.63 | 6/22/81 |
| 3/5/81 | Amax Inc. (bb) | Standard Oil California | 41.00 | 78.50 | 1.915 | 22.13 | 67.88 | 8/6/81 |
| 5/5/81 | Canal-Randolf | Picara Valley N.V. | 29.63 | 39.00 | 1.316 | 60.00 | 61.50 | 2/1/83 |
| 6/15/81 | Posi-Seal International Inc. | BTR Ltd. | 7.63 | 12.00 | 1.573 | 7.25 | 13.38 | 7/13/81 |
| 7/28/81 | Heinicke Instruments (cc) | Tyco Laboratories | 12.00 | 13.00 | 1.083 | 10.88 | 11.63 | 2/21/83 |
| 8/19/81 | Wetterau Inc. | Empire Inc. | 15.50 | 21.00 | 1.355 | 17.50 | 19.63 | 12/8/82 |
| 9/23/81 | Grumman Corp. | LTV Corp. | 24.88 | 45.00 | 1.809 | 48.75 | 54.75 | 1/17/83 |
| 10/28/81 | Simplicity Pattern Co. | Bayswater Realty | 8.88 | 11.50 | 1.295 | 9.50 | 11.13 | 12/17/81 |
| 1/25/82 | Brunswick Corp. (dd) | Whittaker Corp. | 18.13 | 30.00 | 1.655 | 27.00 | 28.50 | 2/16/83 |

FOOTNOTES

- (A) - Represents highest offer in situations where multiple bids were made.
- (B) - Market price February 28, 1983.
- (C) - Acquired by Pitney-Bowes in December 1978 for \$28 per share.
- (D) - Acquired by Cooper Laboratories in December 1981 for \$22.50 per share. Cooper acquired approximately 22% in November 1978 through open market purchases and was proposing \$28 per share for the remaining shares outstanding. Cooper revised offer in August 1979 to \$3 cash and \$25 in 10% 20-year notes.
- (E) - Original offer by Crane was for \$40.00. Offer was raised to \$44.00 (\$40.00 principal amount of an 8% debenture plus \$4.00 cash) in April 1975. Acquired by Hudson Bay Mining and Smelting, an indirect subsidiary of Anglo-American Corp. of South Africa, in July 1978 for \$33 per share.
- (F) - Adjusted for 5% stock dividend in 1977 and 15% stock dividend in 1982.
- (G) - Acquired by Bristol-Myers in November 1977 for common stock valued at \$59.14 per share of Unitek.
- (H) - Approximately 1.5 million shares owned by Victor Posner were repurchased by the Company in May 1981 for \$42.00 per share.
- (I) - Adjusted for 2-1 split in 1977, 5% stock dividend in 1978, 5% stock dividend in 1979 and 2-1 split in 1980.
- (J) - Adjusted for 2-1 split in 1978.
- (K) - Original offer by Storer, of \$7.50, raised to \$10.00 in August 1977. Adjusted for 2-1 split in 1981.
- (L) - Great Western's original offer of \$6.30 was reduced to \$5.90 in September 1977. Hunt International purchased 28% of Sunshine in October 1977 which was repurchased by Sunshine in June 1979. Adjusted for 5-2 split in 1980.
- (M) - IPEX's original bid was for \$18.50. Wesco Financial offered \$20.00 in September 1977. The Company was acquired by Central Cartage Co. in July 1979 for \$25.00 per share.
- (N) - Adjusted for 3-2 split in 1982.
- (O) - Offer by APL Corp. represents principal amount of 10% debentures offered in exchange for each Pabst share. The Company repurchased 400,054 or its shares from APL in October 1979 for \$13.00 per share.

- (P) - Original offer by Carter Hawley was for \$34.00 per share. The offer was raised to \$42.00 in February 1978. Acquired by Batus Inc. in June 1982 for \$30.00 per share.
- (Q) - Adjusted for 2-1 splits in 1980 and 1981.
- (R) - Offer represented \$35.00 per share in new Occidental preferred and cumulative preference stock.
- (S) - The Pritzker family announced they intended to acquire the Company in November 1979 for \$27.00 per share after having had discussions to acquire the Company at \$25.00. Levitz rejected Pritzker's offer in February 1980.
- (T) - Original offer by American Express was \$34.00. Offer raised to \$40.00 January 29, 1979.
- (U) - Tyco Laboratories purchased 300,000 shares (9.4%) through this offer. Acquired by Tyco in October 1981 for \$27.50 per share.
- (V) - Gold Crown Resources offered \$9.00 per share in April 1979. UNC Resources made an \$11.00 offer in December 1979. Adjusted for 2-1 split in 1981.
- (W) - Fuqua raised their offer twice in May 1979 from \$18.00 to \$20.00 and then to \$22.00.
- (X) - Paccar's offer was for \$20.00. Mannesmann A.G. offered \$27.50 per share in July 1979, but was blocked by the FTC in October 1979.
- (Y) - Adjusted for 2% stock dividend in 1979 and 1980.
- (Z) - Kennecott's original offer was \$40.00 per share. Interpace made a \$360 million common stock offer (\$42.50) in December 1980. Curtiss-Wright followed with an offer for 2.0 million of its own shares at \$44.00 in December 1980 and raised the price to \$46.00 in January 1981. Swapped its position in Kennecott for Curtiss-Wright stock and \$280 million to settle the dispute in January 1981.
- (aa) - Adjusted for 2-1 split in 1981.
- (bb) - Socal withdrew their offer in May 1981 after stiff resistance from Amax. Socal owned 20% of Amax at the time of the offer. Socal had made a previous offer to Amax's board in September 1978 for \$38 per share.
- (cc) - Tyco had acquired 39% in June before commencing its offer.
- (dd) - Whittaker originally offered \$26.50 per share later raised its bid to \$27/share on 2/10/82. American Home Products offered \$425.0 million (\$30.00 per share) for 54% of Brunswick and swapped these shares for the Sherwood Medical Products unit.
- (ee) - Completion date.
- (ff) - Estimated market value of offer based upon outstanding debt securities of issuer.
- (*) - Represents value of final offer or merger.