WACHTELL, LIPTON, ROSEN & KATZ April 18, 1986

To Our Clients

Poison Pills -- Flip-ins

The CTS case decided yesterday specifically recognizes the validity and legality of the Household (flip-over) and Revlon (cash-in) rights plans. It also specifically recognizes the validity and legality of the flip-in that is triggered by a self-dealing transaction.

The CTS case invalidates the CTS rights plan on the ground that the directors did not act reasonably in adopting it after a tender offer and proxy fight had been started. The court accepted the argument that the CTS plan was adopted for the purpose of deterring a proxy fight rather than protecting shareholders from abusive takeover techniques and that the directors did not fully evaluate and study the takeover before adopting the plan. Thus, the precedential effect of the CTS case is confined to the specific facts; but, it is a further illustration of the desirability of adopting a rights plan before a takeover situation develops.

The CTS case casts doubt on the use of a flip-in other than a flip-in triggered by a self-dealing transaction. The court said:

> The heart of this controversy revolves around the 'flip-in' provision of the CTS plan.
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> The flip-in features of the plan appear to have been set so as to deter all partial offers.

Until there is further clarification, we continue our prior recommendation against inclusion of a general flip-in in a rights plan.

M. Lipton

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