

To Our Clients

Flip-In Rights Plans

The May 28, 1986 opinion by the Seventh Circuit in Dynamics Corporation of America vs. CTS Corporation casts further doubt on the legality of the flip-in provision included in some recently adopted rights plans. These flip-in provisions generally give the shareholders the right to buy additional shares at a bargain price whenever a raider crosses a threshold that varies from plan to plan in the range of 25% to 50%. A flip-in is therefore a major deterrent to open-market accumulations, partial tender offers and tenders where the raider would purchase 50% or more and not undertake a second-step merger and thereby avoid triggering the basic flip-over provision. While including a flip-in provision would, of course, strengthen our rights plan, we have not done so out of fear that a court would find that it was illegal and that it tainted the validity of the whole rights plan. This fear has been confirmed by the CTS opinion.

M. Lipton