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To Our Clients:

Takeovers: No Requirement to Auction a Company

In a definitive and extremely significant decision, the Delaware Supreme Court in the Newmont case has held that there is no requirement that the directors of a target company auction the company to the highest bidder. The directors have the right to reject the takeover bid and determine to keep the company independent. In evaluating a takeover bid the directors may consider,

- the inadequacy of the bid,
- the nature and timing of the offer,
- questions of illegality,
- the impact on constituencies other than the shareholders,
- the risk of non-consummation, and
- the basic stockholder interests at stake, including the past actions of the bidder in other takeover contests.

The decision also makes clear that a company may have a policy of remaining independent and take reasonable action to implement that policy.

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