

March 14, 1988

To Our Clients

The Pill in Action

In the Santa Fe Southern Pacific case decided March 11 the Delaware Chancery Court denied a preliminary injunction seeking to reverse the amendment of a status flip-in from 50% to 20% for the purpose of protecting a restructuring from a possible two-tier tender offer. While the case was decided on preliminary injunction grounds and the court expressly refrained from substantive consideration of the pill, at least sub silentio it upholds a 20% status flip-in and, after the board has shopped the company, the use of a pill to favor completion of a transaction the board has determined to prefer over a threatened tender offer.

There are several pending cases in which the use of the pill to favor one transaction over another is in issue. The next few weeks may see the first significant precedent on this important issue.

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