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To Our Clients

Anti-Poison Pill Resolutions Fail

The article in today's Wall Street Journal to the contrary notwithstanding, the poison pill is continuing to receive the support of shareholders and the courts. Indeed, one court has indicated that it may be a breach of fiduciary duty for a board of directors to fail to use a poison pill to protect against abusive takeover tactics. Although the USAir vote was extremely close, so far this year the pill has been the subject of a proxy statement resolution at 12 shareholders meetings and the resolution was defeated at everyone of the meetings. It is still to be voted on at six meetings to be held later this month. To date it has failed at the meetings of these companies:

Allied Signal
Consolidated Freightways
Emery Air Freight
Great Northern Nekoosa
International Paper
Kerr-McGee
MCA
Panhandle Eastern
Pitney-Bowes
Sonat
USAir Group
United Technologies

In no case was the resolution favored by a majority of the outstanding shares. In most cases the resolution was favored by 25-35% of the shares actually voting and by about 20% of the shares outstanding. In view of the intensified anti-pill campaign by CREF, Calpers and their cohorts this year and the targeting of companies with very high institutional ownership, the conclusion is clear -- shareholders recognize that the pill is an important protection against abusive takeover tactics.

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