

To Our Clients

Two for the Defense

Our victories last week for Corporate Partners in the Polaroid case and for Universal Foods in its defense of a hostile tender offer are an indication that the pendulum may be swinging back after reaching an apogee in favor of corporate raiders in the Interco, Pillsbury, and Holly Farms cases.

Polaroid holds that a target may provide a self-tender alternative to an inadequate hostile tender offer even though the financing for the self-tender, together with a previously established ESOP, arguably make it more likely that the raider will not be successful in a proxy fight being waged by the raider for the purpose of replacing the target's board with one that will accept the tender offer.

Universal Foods endorses the "just say no" response to a hostile tender offer that the target's board determines to be inadequate; indicates that a highly leveraged bust-up bid -- even one that is cash for all the shares -- need not be accepted; affirms that a target of an inadequate hostile bid has no duty to negotiate with the raider; upholds the legality of the Second Generation Poison Pill; and upholds the constitutionality of the New York-type takeover statute.

M. Lipton