WACHTELL, LIPTON, ROSEN & KATZ

July 14, 1989

To Our Clients:

Common Stock Mergers Still Live

The decision today holding that Time did not "put itself in play" by agreeing to a common stock merger is an important reaffirmation of the right of a company to do a merger without having to auction itself to the highest bidder. As such, it keeps alive the ability to do common stock mergers in this era of hostile cash tender offers.

In its opinion the Delaware Chancery Court also reaffirmed its long-standing deference to the business judgment of a board of directors and its adherence to the principle that the board need not maximize short-term stock prices, but may manage the company to achieve the long-term goals the board sets. The Court said:

> Reasonable persons can and do disagree as to whether it is the better course from the shareholders' point of view collectively to cash out their stake in the company now at this (or a higher) premium cash price. However, there is no persuasive evidence that the board of Time has a corrupt or venal motivation in electing to continue with its long-term plan even in the face of the cost that that course will no doubt entail for the company's shareholders in the short run. In doing so, it is exercising perfectly conventional powers to cause the corporation to buy assets for use in its business. Because of the timing involved, the board has no need here to rely upon a self-created power designed to assure a veto on all changes in control.
>
> The value of a shareholder's investment, over time, rises or falls chiefly because of the skill, judgment and perhaps luck -- for it is present in all human affairs -- of the management and directors of the enterprise. When they exercise sound or brilliant judgment, shareholders are likely to profit; when they fail to do so, share values likely will fail to appreciate. In either event, the financial vitality of the corporation and the value of the company's shares is in the hands of the directors and managers of the firm.

The corporation law does not operate on the theory that directors, in exercising their powers to manage the firm, are obligated to follow the wishes of a majority of shares. In fact, directors, not shareholders, are charged with the duty to manage the firm. See Smith v. Van Gorkom, Del. Supr., 488 A.2d 858 (1985); Sealy Mattress Co. of New Jersey, Inc. v. Sealy, Inc., 532 A.2d 1324 (1987).

In the decision they have reached here, the Time board may be proven in time to have been brilliantly prescient or dismayingly wrong. In this decision, as in other decisions affecting the financial value of their investment, the shareholders will bear the effects for good or ill. That many, presumably most, shareholders would prefer the board to do otherwise than it has done does not, in the circumstances of a challenge to this type of transaction, in my opinion, afford a basis to interfere with the effectuation of the board's business judgment.

M. Lipton