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To Our Clients:

A New Threat Of Liability
For Investment Bankers

A March 13 decision by a New York intermediate appellate court opens a new potential for lawsuits against an investment banker who advises a special committee of directors with respect to a sale or buyout of a company. The court held that shareholders could bring a direct -- not derivative -- action against the investment banker on the theory that the special committee is the agent of the shareholders and the investment banker is the agent of the agent and thereby directly responsible to the shareholders for negligence in advising the committee. The practical effect of this holding is to expose investment bankers to the risk of jury trial damage suits in New York instead of suits before a judge without a jury in Delaware. The possibility of a bizarre jury verdict increases the settlement value of this type of strike suit.

To meet this threat, investment bankers will exercise even greater care in advising special committees, will want to be advised by counsel at every stage and will insist on comprehensive indemnification that protects against being left without a responsible indemnitor and being left out of a settlement by other parties to the transaction.

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