

June 20, 1994

To Our Clients

Corporate Governance

In a recent speech Chief Justice Norman Veasey of the Delaware Supreme Court said that the protection of the business judgment rule will depend on the board of directors being independent and following appropriate procedures. Chief Justice Veasey made specific reference to:

- (1) A majority of the directors being independent.
- (2) Annual evaluation of CEO performance by the outside directors.
- (3) Board members having complete access to senior management.
- (4) Regular meetings of the outside directors in executive session.
- (5) Board decisions being made on the basis of adequate information and after careful questioning and unhurried consideration.

Chief Justice Veasey indicated approval of this definition of an independent director:

one who (1) is not and has not been employed by the corporation or its subsidiaries in an executive capacity within five years; (2) is not a significant advisor or consultant; (3) is not affiliated with a significant customer or supplier; (4) does not have a significant personal services contract; (5) is not affiliated with a tax-exempt entity that receives significant contributions; (6) is not a spouse, parent, sibling or child.

Chief Justice Veasey's speech is a very important development in a long series of recent events emphasizing the importance of bringing corporate governance up to date.

M. Lipton

