

September 10, 2001

Delaware Supreme Court
Affirms Validity of Poison Pills

The Delaware Supreme Court has affirmed the rejection by the Court of Chancery of a series of technical attacks against poison pill rights plans (see our memorandum of October 12, 2000). Fittingly, the opinion was authored by Justice Walsh who, then a Vice Chancellor, rendered the first decision upholding rights plans in the Household case over 15 years ago. Leonard Loventhal Account v. Hilton Hotels Corp., Del. Supr., No. 584, 2000 (Sept. 6, 2001).

The Supreme Court affirmed on the basis of *stare decisis*, emphasizing the “need for stability and continuity in the law and respect for court precedent.” In turning back the attacks on various elements of the plan, the Court stressed that Household had addressed the fundamental question — “whether a board of directors had the power to adopt unilaterally a rights plan the effect of which was to interpose the board between the shareholders and the proponents of a tender offer” — and that it would not entertain even contentions not explicitly passed upon in Household that could not be harmonized with that basic holding. The Court’s analysis makes clear that the courts sought not to consider challenges to the validity of rights plan provisions that would undercut Household’s basic holding.

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