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P U B L I C H E A R I N G

before

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

SENATE BILL 1539

(Enacts "Shareholders Protection Act" to
discourage certain hostile takeovers)

March 24, 1986
Room 334
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Raymond Lesniak, Chairman
Senator Christopher J. Jackman, Vice Chairman
Senator Edward T. O'Connor, Jr.
Senator Donald T. DiFrancesco

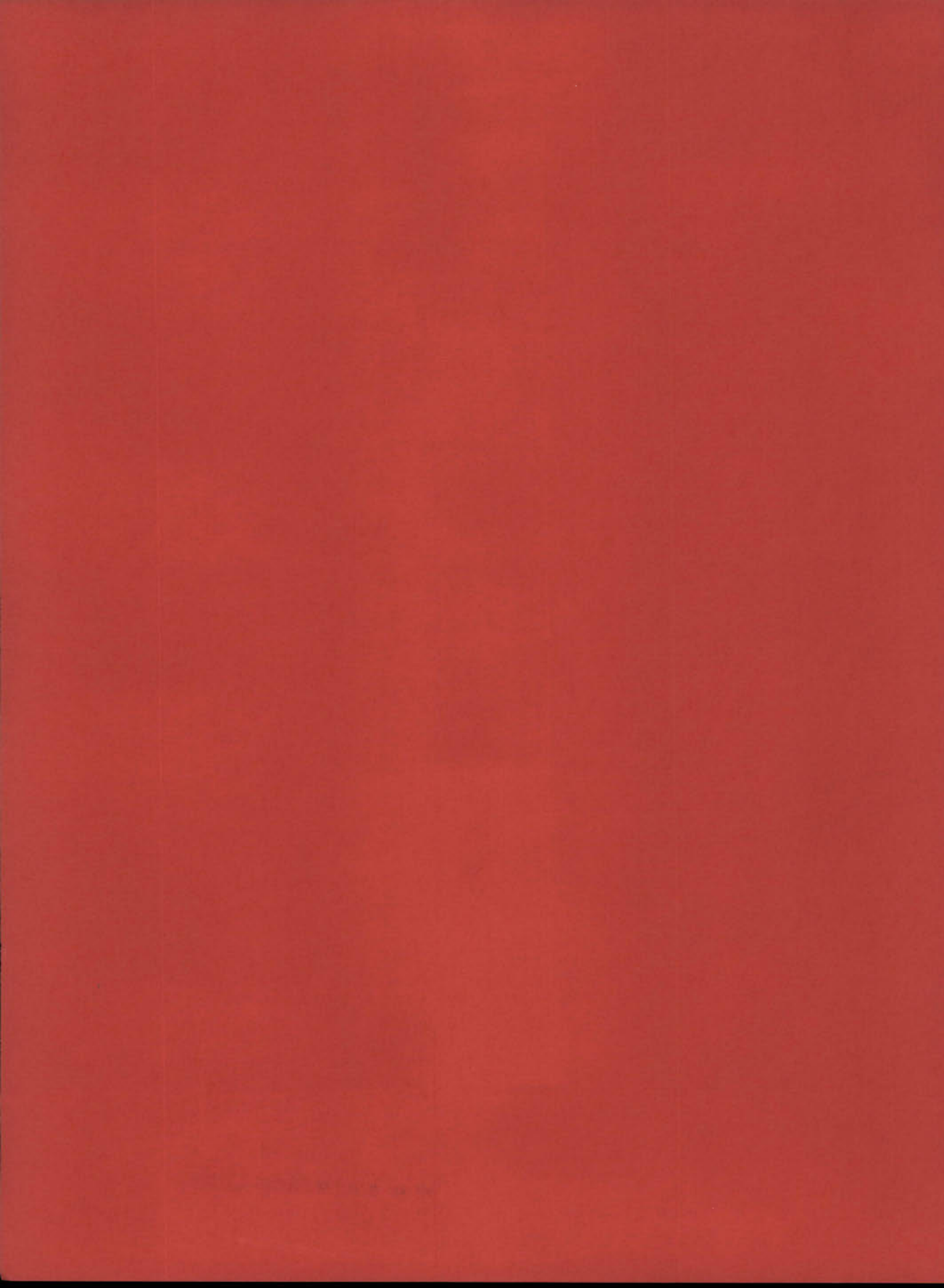
ALSO PRESENT:

Dale C. Davis, Jr.
Office of Legislative Services
Aide, Senate Labor, Industry and
Professions Committee

* * * * *

Hearing Recorded and Transcribed by
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Hearing Unit
State House Annex
CN 068
Trenton, New Jersey 08625

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State of New Jersey

**SENATE LABOR, INDUSTRY,
AND PROFESSIONS COMMITTEE**

CN-042

STATE HOUSE ANNEX, TRENTON, N.J. 08625

TELEPHONE: (609) 984-0445

Raymond Lesniak
CHAIRMAN

Christopher J. Jackman
VICE-CHAIRMAN

Edward T. O'Connor, Jr.

Gerard Cardinale

Donald T. DiFrancesco

March 11, 1986

NOTICE OF PUBLIC HEARING

The Senate Labor, Industry and Professions Committee
will hold a public hearing on Monday, March 24, 1986, at
2:00 P.M., in Room 334, State House Annex, on the following
bill:

S-1539	Enacts "Shareholders Protection Act" to
<u>Van Wagner</u>	discourage certain hostile takeovers.

Anyone wishing to testify should contact Dale Davis,
Committee Staff, at 609-984-0445.

SENATE, No. 1539

STATE OF NEW JERSEY

INTRODUCED JANUARY 27, 1986

By Senator VAN WAGNER

Referred to Committee on Labor, Industry and Professions

AN ACT concerning the protection of shareholder rights, and
supplementing Title 14A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *New Jersey:*

1 1. This act shall be known and may be cited as the "New Jersey
2 Shareholders Protection Act." The requirements of this act shall
3 be in addition to the requirements of applicable law, including
4 ***[the "New Jersey Business Corporation Act," P. L. 1968, c. 350**
5 **(C. 14A:1-1 et seq.)]** **Title 14A of the New Jersey Statutes**
6 and any additional requirements contained in the certificate of
7 incorporation or bylaws of a resident domestic corporation with
8 respect to business combinations as defined herein.

1 *2. *The Legislature hereby finds and declares it to be the public*
2 *policy of this State, the following:*

3 a. *Resident domestic corporations, as defined in this act, encom-*
4 *pass, represent and affect, through their ongoing business opera-*
5 *tions, a variety of constituencies including New Jersey shareholders,*
6 *employees, customers, suppliers and local communities and their*
7 *economics whose welfare is vital to the State's interests.*

8 b. *In order to promote such welfare, the regulation of the inter-*
9 *nal affairs of resident domestic corporations as reflected in the*
10 *laws of this State governing business corporations should allow*
11 *for the stable, long-term growth of resident domestic corporations.*

12 c. *Takeovers of public corporations financed largely through*
13 *debt to be repaid in the short-term by the sale of substantial assets*
14 *of the target corporation, in other states, have impaired local*

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Senate committee amendments adopted May 12, 1986.**

****—Senate amendments adopted May 15, 1986.**

15 *employment conditions and disrupted local commercial activity.*
 16 *These takeovers prevent shareholders from realizing the full value*
 17 *of their holdings through forced mergers and other coercive*
 18 *devices. The threat of these takeovers also deprives shareholders*
 19 *of value by forcing the adoption of short-term business strategies*
 20 *as well as defensive tactics which may not be in the public interest.**

1 ***[2.]* *3.*** As used in this act:

2 a. "Affiliate" means a person that directly, or indirectly through
 3 one or more intermediaries, controls, or is controlled by, or is
 4 under common control with, a specified person.

5 b. "Announcement date," when used in reference to any busi-
 6 ness combination, means the date of the first public announce-
 7 ment of the final, definitive proposal for that business combi-
 8 nation.

9 c. "Associate," when used to indicate a relationship with any
 10 person, means (1) any corporation or organization of which that
 11 person is an officer or partner or is, directly or indirectly, the
 12 beneficial owner of 10% or more of any class of voting stock,
 13 (2) any trust or other estate in which that person has a substan-
 14 tial beneficial interest or as to which that person serves as trustee
 15 or in a similar fiduciary capacity, or (3) any relative or spouse
 16 of that person, or any relative of that spouse, who has the same
 17 home as that person.

18 d. "Beneficial owner," when used with respect to any stock,
 19 means a person:

20 (1) that, individually or with or through any of its affiliates
 21 or associates, beneficially owns that stock, directly or indirectly;

22 (2) that, individually or with or through any of its affiliates
 23 or associates, has (a) the right to acquire that stock (whether
 24 that right is exercisable immediately or only after the passage
 25 of time), pursuant to any agreement, arrangement or understand-
 26 ing (whether or not in writing), or upon the exercise of con-
 27 version rights, exchange rights, warrants or options, or other-
 28 wise; provided, however, that a person shall not be deemed the
 29 beneficial owner of stock tendered pursuant to a tender or ex-
 30 change offer made by that person or any of that person's affiliates
 31 or associates until that tendered stock is accepted for purchase
 32 or exchange; or (b) the right to vote that stock pursuant to any
 33 agreement, arrangement or understanding (whether or not in
 34 writing); provided, however, that a person shall not be deemed
 35 the beneficial owner of any stock under this subparagraph if the
 36 agreement, arrangement or understanding to vote that stock (i)

37 arises solely from a revocable proxy or consent given in response
38 to a proxy or consent solicitation made in accordance with the
39 applicable rules and regulations under the Exchange Act, and
40 (ii) is not then reportable on a Schedule 13D under the Exchange
41 Act (or any comparable or successor report); or

42 (3) that has any agreement, arrangement or understanding
43 (whether or not in writing), for the purpose of acquiring, hold-
44 ing, voting (except voting pursuant to a revocable proxy or
45 consent as described in subparagraph (b) of paragraph (2) of
46 this subsection, or disposing of that stock with any other person
47 that beneficially owns, or whose affiliates or associates beneficially
48 own, directly or indirectly, that stock.

49 e. "Business combination," when used in reference to any resi-
50 dent domestic corporation and any interested stockholder of that
51 resident domestic corporation, means:

52 (1) any merger or consolidation of that resident domestic corpo-
53 ration or any subsidiary of that resident domestic corporation with
54 (a) that interested stockholder or (b) any other corporation
55 (whether or not it is an interested stockholder of that resident do-
56 mestic corporation) which is, or after a merger or consolidation
57 would be, an affiliate or associate of that interested stockholder;

58 (2) any sale, lease, exchange, mortgage, pledge, transfer or
59 other disposition (in one transaction or a series of transactions)
60 to or with that interested stockholder or any affiliate or associate
61 of that interested stockholder of assets of that resident domestic
62 corporation or any subsidiary of that resident domestic corpora-
63 tion (a) having an aggregate market value equal to 10% or more
64 of the aggregate market value of all the assets, determined on a
65 consolidated basis, of that resident domestic corporation, (b)
66 having an aggregate market value equal to 10% or more of the
67 aggregate market value of all the outstanding stock of that
68 resident domestic corporation, or (c) representing 10% or more
69 of the earning power or income, determined on a consolidated
70 basis, of that resident domestic corporation;

71 (3) the issuance or transfer by that resident domestic corpora-
72 tion or any subsidiary of that resident domestic corporation (in
73 one transaction or a series of transactions) of any stock of that
74 resident domestic corporation or any subsidiary of that resident
75 domestic corporation which has an aggregate market value equal
76 to 5% or more of the aggregate market value of all the outstanding
77 stock of that resident domestic corporation to that interested
78 stockholder or any affiliate or associate of that interested stock-

4

79 holder, except pursuant to the exercise of warrants or rights to
80 purchase stock offered, or a dividend or distribution paid or made,
81 pro rata to all stockholders of that resident domestic corporation;

82 (4) the adoption of any plan or proposal for the liquidation or
83 dissolution of that resident domestic corporation proposed by, on
84 behalf of or pursuant to any agreement, arrangement or under-
85 standing (whether or not in writing) with, that interested stock-
86 holder or any affiliate or associate of that interested stockholder;

87 (5) any reclassification of securities (including, without limita-
88 tion, any stock split, stock dividend, or other distribution of stock
89 in respect of stock, or any reverse stock split), or recapitalization
90 of that resident domestic corporation, or any merger or consolida-
91 tion of that resident domestic corporation with any subsidiary of
92 that resident domestic corporation, or any other transaction
93 (whether or not with, or into, or otherwise involving that in-
94 terested stockholder), proposed by, on behalf of or pursuant to
95 any agreement, arrangement or understanding (whether or not in
96 writing) with, that interested stockholder or any affiliate or
97 associate of that interested stockholder, which has the effect,
98 directly or indirectly, of increasing the proportionate share of the
99 outstanding shares of any class or series of stock or securities
100 convertible into voting stock of that resident domestic corporation
101 or any subsidiary of that resident domestic corporation which is
102 directly or indirectly owned by that interested stockholder or any
103 affiliate or associate of that interested stockholder, except as a
104 result of immaterial changes due to fractional share adjustments;
105 or

106 (6) any receipt by that interested stockholder or any affiliate or
107 associate of that interested stockholder of the benefit, directly or
108 indirectly (except proportionately as a stockholder of that resident
109 domestic corporation) of any loans, advances, guarantees, pledges
110 or other financial assistance or any tax credits or other tax
111 advantages provided by or through that corporation.

112 f. "Common stock" means any stock other than preferred stock.

113 g. "Consummation date," with respect to any business combina-
114 tion, means the date of consummation of that business combination.

115 h. "Control," including the terms "controlling" "controlled
116 by" and "under common control with," means the possession,
117 directly or indirectly, of the power to direct or cause the direction
118 of the management and policies of a person, whether through the
119 ownership of voting stock, by contract, or otherwise. A person's
120 beneficial ownership of 10% or more of the voting power of a

121 corporation's outstanding voting stock shall create a presumption
122 that that person has control of that corporation. Notwithstanding
123 the foregoing in this subsection, a person shall not be deemed to
124 have control of a corporation if that person holds voting power,
125 in good faith and not for the purpose of circumventing this section,
126 as an agent, bank, broker, nominee, custodian or trustee for one
127 or more beneficial owners who do not individually or as a group
128 have control of that corporation.

129 i. "Exchange Act" means the "Securities Exchange Act of
130 1934", 48 stat 881, (15 U. S. C. 78a et seq.) as the same has been
131 or hereafter may be amended from time to time.

132 j. "Interested stockholder," when used in reference to any
133 resident domestic corporation, means any person (other than that
134 resident domestic corporation or any subsidiary of that resident
135 domestic corporation **or a bank holding company as defined in the
135A "Bank Holding Company Act of 1956," 70 Stat. 133, (12 U. S. C.
135B § 1841 et seq.) as amended, or any subsidiary of a bank holding
135C company**) that:

136 (1) is the beneficial owner, directly or indirectly, of 10% or
137 more of the voting power of the outstanding voting stock of that
138 resident domestic corporation; or

139 (2) is an affiliate or associate of that resident domestic corpora-
140 tion and at any time within the five-year period immediately prior
141 to the date in question was the beneficial owner, directly or
142 indirectly, of 10% or more of the voting power of the then
143 outstanding stock of that resident domestic corporation. For the
144 purpose of determining whether a person is an interested stock-
145 holder pursuant to *this* subsection, the number of shares of
146 voting stock of that resident domestic corporation deemed to be
147 outstanding shall include shares deemed to be beneficially owned
148 by the person through application of subsection d. of this section
149 but shall not include any other unissued shares of voting stock of
150 that resident domestic corporation which may be issuable pursuant
151 to any agreement, arrangement or understanding, or upon exercise
152 of conversion rights, warrants or options, or otherwise.

153 k. "Market value," when used in reference to property of any
154 resident domestic corporation, means:

155 (1) in the case of stock, the highest closing sale price during the
156 30-day period immediately preceding the date in question of a
157 share of that stock on the composite tape for New York Stock
158 Exchange-listed stocks, or, if that stock is not quoted on that
159 composite tape or if that stock is not listed on that exchange, on

160 the principal United States securities exchange registered under
 161 the Exchange Act on which that stock is listed, or, if that stock is
 162 not listed on any such exchange, the highest closing bid quotation
 163 with respect to a share of that stock during the 30-day period
 164 preceding the date in question on the National Association of
 165 Securities Dealers, Inc. Automated Quotations System, or any
 166 system then in use, or if no such quotations are available, the fair
 167 market value on the date in question of a share of that resident
 168 domestic stock as determined by the board of directors of that
 169 corporation in good faith; and

170 (2) in the case of property other than cash or stock, the fair
 171 market value of that property on the date in question as deter-
 172 mined by the board of directors of that resident domestic corpora-
 173 tion in good faith.

174 l. "Preferred stock" means any class or series of stock of a
 175 resident domestic corporation which under the bylaws or certifi-
 176 cate of incorporation of that resident domestic corporation is
 177 entitled to receive payment of dividends prior to any payment of
 178 dividends on some other class or series of stock, or is entitled in
 179 the event of any voluntary liquidation, dissolution or winding up
 180 of the resident domestic corporation to receive payment or distri-
 181 bution of a preferential amount before any payments or distribu-
 182 tions are received by some other class or series of stock.

183 m. "Resident domestic corporation" means an issuer of voting
 184 stock which is organized under the laws of this State and, as of
 185 the stock acquisition date in question, has its principal executive
 186 offices and significant business operations located in this State.

187 n. "Stock" means:

188 (1) any stock or similar security, any certificate of interest, any
 189 participation in any profit sharing agreement, any voting trust
 190 certificate, or any certificate of deposit for stock; and

191 (2) any security convertible, with or without consideration, into
 192 stock, or any warrant, call or other option or privilege of buying
 193 stock without being bound to do so, or any other security carrying
 194 any right to acquire, subscribe to or purchase stock.

195 o. "Stock acquisition date," with respect to any person and any
 196 resident domestic corporation, means the date that that person
 197 first becomes an interested stockholder of that resident domestic
 198 corporation.

199 p. "Subsidiary" of any resident domestic corporation means
 200 any other corporation of which voting stock having a majority of
 201 the votes entitled to be cast is owned, directly or indirectly, by
 202 that resident domestic corporation.

203 q. "Voting stock" means shares of capital stock of a corpora-
204 tion entitled to vote generally in the election of directors.

1 ***[3.]*** *4.* Notwithstanding anything to the contrary contained
2 in this act (except section ***[5]*** *6* of this act), no resident
3 domestic corporation shall engage in any business combination
4 with any interested stockholder of that resident domestic corpora-
5 tion for a period of five years following that interested stock-
6 holder's stock acquisition date unless that business combination is
7 approved by the board of directors of that resident domestic corpo-
8 ration prior to that interested stockholder's stock acquisition date.

1 ***[4.]*** *5.* In addition to the restriction contained in section
2 ***[3]*** *4* of this act, and except as provided in section ***[5]*** *6*
3 of this act, no resident domestic corporation shall engage at any
4 time in any business combination with any interested stockholder
5 of that resident domestic corporation other than a business com-
6 bination specified in any one of subsections a., b. or c. of this
6A section;

7 a. a business combination approved by the board of directors
8 of that resident domestic corporation prior to that interested
9 stockholder's stock acquisition date.

10 b. a business combination approved by the affirmative vote of
11 the holders of two-thirds of the voting stock not beneficially owned
12 by that interested stockholder at a meeting called for such purpose.

13 c. a business combination that meets all of the following condi-
14 tions:

15 (1) the aggregate amount of the cash and the market value, as
16 of the consummation date, of consideration other than cash to be
17 received per share by holders of outstanding shares of common
18 stock of that resident domestic corporation in that business com-
19 bination is at least equal to the higher of the following:

20 (a) the highest per share price (including any brokerage com-
21 missions, transfer taxes and soliciting dealers' fees) paid by that
22 interested stockholder for any shares of common stock of the
23 same class or series acquired by it (i) within the five-year period
24 immediately prior to the announcement date with respect to that
25 business combination, or (ii) within the five-year period imme-
26 diately prior to, or in, the transaction in which that interested
27 stockholder became an interested stockholder, whichever is higher;
28 plus, in either case, interest compounded annually from the earliest
29 date on which that highest per share acquisition price was paid
30 through the consummation date at the rate for one-year United
31 States Treasury obligations from time to time in effect; less the

32 aggregate amount of any cash dividends paid, and the market
33 value of any dividends paid other than in cash, per share of
34 common stock since that earliest date, up to the amount of that
35 interest; and

36 (b) the market value per share of common stock on the an-
37 nouncement date with respect to that business combination or on
38 that interested stockholder's stock acquisition date, whichever is
39 higher; plus interest compounded annually from that date through
40 the consummation date at the rate for one-year United States
41 Treasury obligations from time to time in effect; less the aggre-
42 gate amount of any cash dividends paid, and the market value of
43 any dividends paid other than in cash, per share of common stock
44 since that date, up to the amount of that interest;

45 (2) the aggregate amount of the cash and the market value as
46 of the consummation date of consideration other than cash to be
47 received per share by holders of outstanding shares of any class
48 or series of stock, other than common stock, of that resident
49 domestic corporation is at least equal to the highest of the fol-
50 lowing (whether or not that interested stockholder has previously
51 acquired any shares of that class or series of stock):

52 (a) the highest per share price (including any brokerage com-
53 missions, transfer taxes and soliciting dealers' fees) paid by that
54 interested stockholder for any shares of that class or series of
55 stock acquired by it (i) within the five-year period immediately
56 prior to the announcement date with respect to that business
57 combination, or (ii) within the five-year period immediately prior
58 to, or in, the transaction in which that interested stockholder
59 became an interested stockholder, whichever is higher; plus, in
60 either case, interest compounded annually from the earliest date
61 on which that highest per share acquisition price was paid through
62 the consummation date at the rate for one-year United States
63 Treasury obligations from time to time in effect; less the aggre-
64 gate amount of any cash dividends paid, and the market value of
65 any dividends paid other than in cash, per share of that class or
66 series of stock since that earliest date, up to the amount of that
67 interest;

68 (b) the highest preferential amount per share to which the
69 holders of shares of that class or series of stock are entitled in
70 the event of any liquidation, dissolution or winding up of that
71 resident domestic corporation, plus the aggregate amount of any
72 dividends declared or due as to which those holders are entitled
73 prior to payment of dividends on some other class or series of

74 stock (unless the aggregate amount of those dividends is included
75 in that preferential amount); and

76 (c) the market value per share of that class or series of stock
77 on the announcement date with respect to that business combina-
78 tion or on that interested stockholder's stock acquisition date,
79 whichever is higher; plus interest compounded annually from that
80 date through the consummation date at the rate for one-year
81 United States Treasury obligations from time to time in effect;
82 less the aggregate amount of any cash dividends paid, and the
83 market value of any dividends paid other than in cash, per share
84 of that class or series of stock since that date, up to the amount of
85 that interest;

86 (3) the consideration to be received by holders of a particular
87 class or series of outstanding stock (including common stock) of
88 that resident domestic corporation in that business combination
89 is in cash or in the same form as the interested stockholder has
90 used to acquire the largest number of shares of that class or series
91 of stock previously acquired by it;

92 (4) the holders of all outstanding shares of stock of that resi-
93 dent domestic corporation not beneficially owned by that interested
94 stockholder immediately prior to the consummation of that busi-
95 ness combination are entitled to receive in that business combina-
96 tion cash or other consideration for those shares in compliance
97 with paragraphs (1), (2) and (3) of this subsection; and

98 (5) after that interested stockholder's stock acquisition date
99 and prior to the consummation date with respect to that business
100 combination, that interested stockholder has not become the bene-
101 ficial owner of any additional shares of stock of that resident
102 domestic corporation except:

103 (a) as part of the transaction which resulted in that interested
104 stockholder becoming an interested stockholder;

105 (b) by virtue of proportionate stock splits, stock dividends or
106 other distributions of stock in respect of stock not constituting a
107 business combination under paragraph (5) of subsection e. of
108 section 2 of this act;

109 (c) through a business combination meeting all of the conditions
110 of paragraph (3) and this paragraph; or

111 (d) through purchase by that interested stockholder at any
112 price which, if that price had been paid in an otherwise permis-
113 sible business combination, the announcement date and consumma-
114 tion date of which were the date of that purchase, would have
115 satisfied the requirements of paragraphs (1), (2) and (3) of this
116 subsection.

1 ***[5.]*** *6.* a. Unless the certificate of incorporation provides
 2 otherwise, the provisions of this act shall not apply to any business
 3 combination of a resident domestic corporation with an interested
 4 stockholder if the resident domestic corporation did not have a
 5 class of voting stock registered or traded on a national securities
 6 exchange or registered with the Securities and Exchange Commis-
 7 sion pursuant to section 12(g) of the Exchange Act, 48 stat. 892,
 8 (15 U. S. C. 78b.) on that interested stockholder's stock acquisition
 8A date.

9 b. Unless the certificate of incorporation provides otherwise,
 10 the provisions of this act shall not apply to any business combina-
 11 tion with an interested stockholder who was an interested stock-
 12 holder prior to the effective date of this act unless subsequent
 13 thereto that interested stockholder increased his or its interested
 14 stockholder's proportion of the voting power of the resident
 15 domestic corporation's outstanding voting stock to a proportion
 16 in excess of the proportion of voting power that interested stock-
 17 holder held prior to the effective date of this act.

18 ***[c.]** The provisions of this act shall not apply to any business
 19 combination of a resident domestic corporation the original certifi-
 20 cate of incorporation of which contains a provision, or whose
 21 board of directors adopts an amendment to the resident domestic
 22 corporation's bylaws prior to 45 days after the enactment of this
 23 act, expressly electing not to be governed by this act.*

23A *c. The provisions of this act shall not apply to any business
 23B combination of a resident domestic corporation with an interested
 23C stockholder of that corporation which became an interested stock-
 23D holder on or after January 12, 1968.*

24 d. The provisions of this act shall not apply to any business
 25 combination of a resident domestic corporation with an interested
 26 stockholder of that corporation which became an interested stock-
 27 holder inadvertently, if such interested stockholder (1) as soon as
 28 practicable divests itself or himself of a sufficient amount of the
 29 voting stock of that resident domestic corporation so that he or it
 30 no longer is the beneficial owner, directly or indirectly, of 10%
 31 or more of the voting power of the outstanding voting stock of that
 32 corporation, **or a subsidiary of that resident domestic corpora-
 33 tion** and (2) would not at any time within the five-year period
 34 preceding the announcement date with respect to that business
 35 combination have been an interested stockholder but for that in-
 35A advertent acquisition.

36 *e. The provisions of this act shall not apply to any business

37 combination of a resident domestic corporation **[subject to regu-
38 lation, in whole or in part, pursuant to]** **which is a "bank hold-
39 ing company" as defined in** the "Bank Holding Company Act of
40 1956," 70 Stat. 133, (12 U. S. C. § 1841 et seq.) **as amended, or a
41 subsidiary of the bank holding company** with an interested stock-
42 holder of that resident domestic corporation.

1 7. The Office of Economic Policy, created pursuant to P. L. 1966,
2 c. 129 (C. 52:18A-125 et seq.), shall evaluate the economic impact
3 of this act on the economy of this State, on resident domestic
4 corporations and other corporations located in this State, and on
5 individual and institutional stockholders in this State and shall
6 report its findings to the Legislature on or before September 8,
7 1987.*

1 •[6.]* *8.* a. If any clause, sentence, subparagraph, paragraph,
2 subsection, section, or other portion of this act or the application
3 thereof to any person or circumstances shall be held invalid, such
4 holding shall not affect, impair or invalidate the remainder of this
5 act or the application of that portion held invalid to any other
6 person or circumstances, but shall be confined in its operation to
7 the clause, sentence, subparagraph, paragraph, subsection, section,
8 or other portion thereof directly involved in that holding or to the
9 person or circumstances therein involved.

10 b. If any provision of this act is inconsistent with, in conflict
11 with, or contrary to any other provision of law, that provision of
12 this act shall prevail over that other provision and that other
13 provision shall be deemed to be amended, superseded or repealed
14 to the extent of that inconsistency or conflict.

1 •[7.]* *9.* This act shall take effect immediately and shall be
2 retroactive to January 23, 1986.

COMMERCE AND INDUSTRY

Enacts "Shareholders Protection Act" to discourage certain
hostile takeovers.

SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO
SENATE, No. 1539
with Senate committee amendments

STATE OF NEW JERSEY

DATED: MAY 12, 1986

This bill would encourage any person, before acquiring voting stock of a resident domestic corporation (i. e., a corporation organized under the laws of New Jersey with its principal executive offices and significant business operations in the State) which would entitle that person to cast 10% or more of the votes entitled to be cast in the election of directors of the resident domestic corporation, to seek in advance the approval of the resident domestic corporation's board of directors for any contemplated future business combination between that person and the resident domestic corporation, or for the purchase of the stock. The bill would not prohibit any acquisition of stock, but without advance approval, no person who acquires 10% or more of the voting stock of the resident domestic corporation could thereafter engage in any business combination with the resident domestic corporation for a period of five years from the date the person first acquired 10% or more of the voting stock of the resident domestic corporation.

After the expiration of such five-year period, that person could engage in a business combination with the resident domestic corporation only if it is approved by the affirmative vote of the disinterested holders of two-thirds of the voting stock or if he pays at least a formula price designed to ensure that all holders (other than that person) of stock of the resident domestic corporation receive at least the highest price per share paid by that person.

The provisions of this bill would apply to a business combination of a resident domestic corporation (the target of a takeover) which has a class of voting stock registered or traded on a national securities exchange or registered with the Securities and Exchange Commission pursuant to section 12(g) of the Securities Exchange Act of 1934". Also, the provisions of this bill would not apply to any business combination in which the person acquired 10% or more of the voting stock prior to the effective date of this bill, unless subsequent thereto that

person increased his proportion of the voting power of the resident domestic corporation's outstanding voting stock to a proportion in excess of the proportion of voting power that person held prior to the effective date of the bill, or unless the certificate of incorporation of the resident domestic corporation provides otherwise. Corporations (mainly privately-held resident domestic corporations), other than those referred to at the beginning of this paragraph, may elect to be covered by the provisions of this bill by so providing in their certificates of incorporation. Finally, the provisions of this bill would not apply to the inadvertent acquisition of 10% or more of the resident domestic corporation's voting stock provided an amount of stock necessary to decrease such inadvertent ownership to less than 10% is promptly divested.

The committee amended the bill to require that the Office of Economic Policy study the economic impact of the bill and report to the Legislature approximately 120 days before the application of the bill to hostile takeovers no longer applies (on or after January 12, 1988). The committee amended the bill to eliminate the provision which allows a resident domestic corporation to opt out of the mandatory coverage of the bill by including in the original certificate of incorporation a provision expressly electing not to be governed by this bill, or by the board of directors adopting an amendment to the corporation's bylaws within 45 days after the enactment of the bill expressly electing not to be governed by this bill. The committee also exempted bank holding companies from the provisions of the bill. Lastly, the committee adopted a public policy statement of the need for the legislation.

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SENATOR RAYMOND LESNIAK (Chairman): Will everyone take a seat, please? May I have your attention, please? This is a public hearing, so we do not need a quorum of the Committee to meet. Senator Van Wagner, who is the sponsor of Senate Bill 1539, on which this public hearing has been called, has his own Committee meeting. He will be here in a short while. Therefore, we will start with Commissioner Borden Putnam of the Department of Commerce and Economic Development. Commissioner Putnam, do you have a prepared statement for the Committee?

COMMISSIONER BORDEN R. PUTNAM: Yes, I do, Senator. It has been handed out, I think.

SENATOR LESNIAK: Okay, I have it. Thank you.

COMMISSIONER PUTNAM: Mr. Chairman, thank you for this opportunity to state the view of the Department of Commerce and Economic Development on the Shareholders Protection Act -- Senate Bill 1539.

We favor this important piece of legislation because it deals with the problem of an increasingly adverse effect on the economic development potential of New Jersey's companies, especially the smaller and medium-sized ones.

Mergers and acquisitions have become a major feature of today's business landscape, and the size and influence of this phenomenon upon the economy of the nation as a whole continue to spread rapidly. The sheer size of this activity is staggering. The financial consulting firm of W. T. Grimm regularly tracks merger and acquisition transactions and has very recently reported that the total value of such in 1985 reached an all-time high of \$180 billion, up nearly 50% over 1984.

Data which would show exactly the short- and long-term effects of this enormous volume of activity are hard to come by. It would be helpful to know in some detail how well or how poorly the acquired firms were doing before acquisition, what

happened to shareholder interests as the immediate result of the acquisition, and what the acquiring company later did with its new property, and, thus, what ongoing effect there was upon the original shareholders. Unfortunately, such analyses are not available in any comprehensive way.

A clue is offered, however, from a small sample of merger and acquisition deals examined by "Merger and Acquisition Magazine," a trade publication specializing in this field. According to raw data assembled by M & A for the year 1985, out of one particular group of 121 reported tender offers, 44, or about 36% of the deals were contested at one state or another. In other words, in more than one-third of these transactions, company management judged the proposed acquisition to be adverse to the health and future prospects of the company, and so opposed the offer -- a significant measure of concern, indeed.

These are impressive figures, and they well characterize the potential threat of an unfriendly takeover which has become a part of every manager's concern.

New Jersey is no exception to these national developments, and, in fact, is one of the leaders in the new merger and acquisition activity.

You know that New Jersey has traditionally enjoyed a strong and diversified economy. This small State -- ranking only forty-sixth, I think, among all of the states in total area -- ranks ninth in the volume of commerce done by the companies within our borders. For better or worse, we rank even higher in the number of mergers and acquisitions carried out in 1985. California had the greatest number, followed by New York, Texas, Illinois, Florida, Ohio, and then New Jersey -- seventh among all the states. Mergers and acquisitions are, indeed, a fact of life for New Jersey companies.

Against this national picture and the recent trends in New Jersey itself, a particular concern we have is that a

disproportionate number of the companies making up New Jersey's economy are vulnerable to unfriendly takeovers. New Jersey is mostly a State of small and medium-sized companies. About 97% of all of our companies hire 100 employees or less. Because of their relatively small size and modest resources, many such firms do not have the sophisticated wherewithal sufficient to anticipate and deal with an unfriendly offer.

Support from the State level, through legislation such as that proposed here, could strengthen the development and fulfillment of orderly long-range plans for company growth, thus directly contributing to the economic health of our State.

We thank you for this opportunity to speak in favor of Senate Bill 1539.

SENATOR LESNIAK: Commissioner, do you have, or has the Department conducted a detailed analysis of the mergers and acquisitions carried out in New Jersey in 1985?

COMMISSIONER PUTNAM: No, Senator, we don't really have a way to do that. The raw data are not readily available beyond what these other companies or agencies have collected.

SENATOR LESNIAK: Then may I ask you, how did you come to your conclusion that this type of legislation would "strengthen the development and fulfillment of orderly long-range plans for company growth, thus directly contributing to the economic health of our State"?

COMMISSIONER PUTNAM: I think there are two reasons to think that. One is, we have to recognize that managements, these days, knowing the trends that I have described here, are distracted -- are pulled away, to some extent -- from their ordinary business of managing and running operations.

SENATOR LESNIAK: Commissioner, I appreciate your qualitative analysis, but do you have any statistical data to back that up, vis-a-vis the nation as a whole or the State?

COMMISSIONER PUTNAM: No, we do not and, as I say, I don't believe those kinds of data are available.

SENATOR LESNIAK: Well, how long have mergers and acquisitions been going on?

COMMISSIONER PUTNAM: As a function you mean, or the magazine?

SENATOR LESNIAK: No, no, as a function.

COMMISSIONER PUTNAM: Oh, forever.

SENATOR LESNIAK: Forever?

COMMISSIONER PUTNAM: Sure.

SENATOR LESNIAK: And, you're telling me right now that we have no data whatsoever to base any conclusions on?

COMMISSIONER PUTNAM: No. I say that the only data that are available are the ones I mentioned from "Mergers and Acquisitions Magazine" and from that financial consulting firm.

SENATOR LESNIAK: Yeah, but the data you cited just deals with numbers in terms of types of acquisitions. I am talking about data vis-a-vis the effect on the economy as a whole.

COMMISSIONER PUTNAM: These are the only data that we have been able to find that bear on the question in any way.

SENATOR LESNIAK: Okay. I would submit, Commissioner, that we will develop through this hearing process a multitude of references in that regard, and we will submit the transcript to you for an analysis by the Department.

COMMISSIONER PUTNAM: Fine; we would appreciate that.

SENATOR LESNIAK: Thank you very much.

COMMISSIONER PUTNAM: Thank you.

SENATOR LESNIAK: As Senator Van Wagner isn't here yet, Robert P. Luciano, Chief Executive Officer, Schering-Plough Corporation, accompanied by John Degnan and the rest of the firm-- Is that-- That is the way it looks on the witness list.

R O B E R T P. L U C I A N O: Mr. Chairman, if he may, Marty Lipton of Wachtell, Lipton is going to join us at the witness table.

SENATOR LESNIAK: Okay. Mr. Luciano, welcome to Trenton. Do you have a prepared statement?

MR. LUCIANO: I do indeed.

SENATOR LESNIAK: Do we have it?

MR. LUCIANO: You have a copy of it, yes.

SENATOR LESNIAK: Go ahead.

MR. LUCIANO: Mr. Chairman, members of the Committee: My name is Robert P. Luciano, Chairman of the Board of Schering-Plough Corporation. Schering-Plough is a Fortune 500, research-based pharmaceutical and personal care company which is headquartered in Madison, with over 4000 employees located throughout New Jersey. Last year, our company celebrated its fiftieth year of operations in New Jersey, and we look forward -- with your help -- to an economic environment which will be conducive to our continued growth over the next 50 years and beyond.

First of all, I want to thank you for this opportunity to address this important issue today. Schering-Plough Corporation fully supports Senate Bill 1539, Senator Van Wagner's Shareholders Protection Act. We believe this will be one of the most important economic issues before the Legislature in 1986, and I urge you to favorably consider the bill.

Hostile takeover strategy has evolved so rapidly in today's volatile financial atmosphere, that the law, which ought to guarantee a "level playing field," has not been able to keep up with developments. The result has been to tip the balance in favor of raiders and against the best interest of the shareholders, employees, host communities, and the many other constituencies of New Jersey's corporations.

This bill redresses the balance, in at least one instance, by discouraging hostile bust-up takeovers. More specifically, the bill prohibits any New Jersey corporation from merging with a raider for a period of five years, unless

the combination has been previously approved by the target company's board of directors. Martin Lipton of Wachtell, Lipton, Rosen & Katz and John Degnan of Shanley & Fisher will explain in more detail the technical aspects of this legislation.

I should emphasize at the outset, however, that the bill does not prohibit mergers or acquisitions where the acquiring company seeks to continue the business it purchases, nor does it hinder proxy fights designed to replace management.

Mergers have always been an important business tool, and voluntary transactions where each side has the opportunity to take into consideration the reasonable expectations of its employees and shareholders are not interfered with in any way. Indeed, non-voluntary transactions are not interfered with, provided the acquirer does not have the need to bust up the acquired company to satisfy the debt he incurred to buy it.

The 1980s have seen a new type of hostile takeover bid emerge -- the junk bond financed bust-up takeover -- which, we believe, is destructive both economically and socially. The objective of these raids is not to operate the business of the target in a more efficient manner, or replace an inept management, but, rather, to make extraordinary short-term profits with no regard for the long-term interests of the shareholders, communities, employees, customers, or suppliers of a target corporation. The new breed of takeover entrepreneurs has made hundreds of millions of dollars in personal profits as a result. It is this activity at which this bill is specifically aimed.

The United States has recently experienced a wave of hostile bust-up takeover bids and actual takeovers which may become a threat to New Jersey's continued growth and prosperity. New Jersey has 124 publicly held companies which are incorporated in the State and whose headquarters and major operations are located here. These companies employ more than

100,000 people in 15 counties in North, Central, and South Jersey. Given the large pools of money which are being amassed, every one of these companies is a potential target for a bust-up raider. Indeed, "Fortune Magazine" has identified only two companies -- Exxon and IBM -- which, because of their size, appear to be immune to these takeover tactics, tactics which result in plant closings, layoffs, employee relocations, lost tax revenue, reduced investment, and economic instability.

Hostile, bust-up takeovers are, I submit, a serious threat to the continued growth of the New Jersey economy and the prosperity we enjoy today. New Jersey has successfully made the difficult transition from an industrial economy to a post-industrial, high-technology, and service economy very smoothly. We have one of the highest per capita incomes in the country, and one of the lowest unemployment rates.

New Jersey needs a stable economic environment to encourage continued and future economic growth. Hostile takeovers and a takeover atmosphere threaten this success. New Jersey's economic progress is based on research and development investments, long-term planning, and a commitment to the future. The hostile takeover environment forces corporations to think defensively, to minimize R&D expenditures which aren't immediately profitable, and to maximize profit today because tomorrow may never come. This environment is the antithesis of what we need in New Jersey for our continued well-being.

Legislation similar to Senator Van Wagner's bill has been recently adopted in New York and Indiana. Four other states also have some form of anti-takeover law on their books, and several others are considering such laws. Schering-Plough believes this is a critical, nonpartisan issue which benefits all segments of New Jersey society, and we urge you to favorably consider this bill.

As I said earlier, John Degnan and Martin Lipton will be happy to discuss the specifics of the bill with you, either before or after Senator Van Wagner speaks.

SENATOR LESNIAK: Thank you, Mr. Luciano. We have been joined by Senator O'Connor, and Senator Van Wagner, the sponsor of the bill. Senator Van Wagner, do you want to make a statement first?

SENATOR RICHARD VAN WAGNER: Yes, Mr. Chairman. First, I would like to express my appreciation to you and the Committee for listing this bill for a public hearing, and I think appropriately so because it is an extremely crucial measure as it relates to the economic well-being of the State of New Jersey.

The bill addresses a very specific area of merger legislation which, in effect -- and I am sure Mr. Lipton and Mr. Degnan will address this area -- really has been left to the states -- by virtue of the Williams Act and other Federal legislation -- to address. That is the area of mergers. In essence, the idea of a bust-up--

SENATOR LESNIAK: I'm sorry. Senator, is it clear that the Williams Act has totally given over to the states the right to regulate the area of mergers?

SENATOR VAN WAGNER: Not totally, I believe, but for the most part it seems to leave moot, I think, the question -- or leave silent the question -- of merger to some extent insofar as business combinations are concerned.

JOHN DEGNAN: If I may, Senator, one would have to analyze this bill in contrast to the Williams Act to determine whether there is preemption. We believe, as does Mr. Lipton from Wachtell, Lipton, after an analysis, that on the status of the law today, the bill is not preempted by the Williams Act, which is to say that New Jersey has the right to initiate legislation in this area, without violating either the spirit or the fact of the Williams Act.

SENATOR LESNIAK: That's your--

MR. DEGNAN: That is our legal opinion, yes, sir.

MARTIN LIPTON: That is also our opinion, Senator.

I might add that it is our opinion that the Williams Act does not cover mergers at all. Now, it is possible to envisage a merger statute that was designed deliberately to interfere with the Williams Act, in which case the Williams Act might preempt the operation of that merger statute. But apart from that, I think that mergers -- and I will get into that a bit in my testimony -- have always been a matter of State concern, not Federal concern. There is no Federal regulation of mergers as a corporate act, and the Williams Act does not, in any way, preempt the rather minor limitation on merger contained in the Shareholders Protection Act.

SENATOR LESNIAK: Has this bill been enacted in other states?

SENATOR VAN WAGNER: Yes, it has.

SENATOR LESNIAK: In New York and Indiana?

SENATOR VAN WAGNER: Similar legislation has been enacted in New York and Indiana.

SENATOR LESNIAK: Are there any significant differences in the two statutes enacted in those two states?

MR. LIPTON: It is almost exactly the same as the Indiana statute -- the bill that is pending before you -- almost exactly the same as the Indiana statute. The New York statute is slightly different. It has a 20% threshold, rather than a 10% threshold.

SENATOR LESNIAK: Are there any other differences in the New York statute that I ought to know of?

MR. LIPTON: Not in this aspect of it. The New York statute went on to cover other aspects of tender offer activity and include certain disclosure requirements, and it contains a basic anti-fraud provision. These are not contained in the bill before you.

SENATOR LESNIAK: Does it also apply to corporations which are incorporated in New York, and which have their principal offices in New York?

MR. LIPTON: That is correct. The same resident domestic corporation definition is present.

SENATOR LESNIAK: And, has that-- I know it was very recently that both of those were enacted. Are they subject to any litigation at this time?

MR. LIPTON: We do not know of any litigation raising that issue with respect to New York or Indiana -- the two states which have enacted the statutes.

SENATOR LESNIAK: Okay. I'm sorry, Senator.

SENATOR VAN WAGNER: Let me say, with regard to the background for this bill, I think all of us are aware that New Jersey is thriving. The benefits of the economic boom that are felt throughout the nation are being felt particularly in this State. One of the key factors has been the strong performance of our State corporations, whose investments, tax revenues, employment, and community leadership have contributed invaluablely to New Jersey's economic upswing.

What I am attempting to do by introducing a bill of this nature is not to protect corporations in this State, per se, but to protect what they stand for -- what that economic vitality stands for. It is important for us to ensure a healthy atmosphere for growth and development for our New Jersey corporations, so they can continue to provide the employment and the community activity they have provided in the past, and so that they are nurtured and maintained in a way that can continue to benefit the State and its citizens.

We have a heavily concentrated research and development component in most of our corporate community, and it is that component that is most impacted in a negative fashion by this type of takeover.

SENATOR LESNIAK: Is this bill restricted to those areas?

SENATOR VAN WAGNER: No. This bill is restricted to that type of takeover which is the bust-up, asset-stripping

type of takeover that is primarily related to the sale of an asset to, in essence, retire the bonds that are used for that takeover.

SENATOR LESNIAK: Okay. Senator, I would like to stick on that point, because I don't quite understand it. How is this bill restricted to that type of takeover -- the hostile, bust-up, junk bond financed type of takeover?

MR. DEGNAN: If I may, Mr. Chairman -- and Mr. Lipton may want to amplify on this-- Normally, a raider who will issue junk bonds -- very high risk, high interest paper -- to finance the acquisition of a target corporation, will have to pay them off after that acquisition is consummated. He will normally do that by attempting to effect a merger or a business combination with the target corporation into the entity that he had structured to sell the junk bonds, and strip the assets of the target corporation -- its most profitable divisions in many cases -- sell them for cash, and use that cash in the merged or combined business to float the junk bonds.

SENATOR LESNIAK: But this bill also applies to hostile mergers that are not financed by junk bonds, and also applies to hostile mergers that would not bust up any assets. Is that correct?

MR. DEGNAN: But the only thing this bill does, Senator, is provide a five-year freeze on the business combination. So, it would apply to a takeover, but it would be irrelevant in the base of a takeover where a business combination were not contemplated.

SENATOR LESNIAK: Five years?

MR. DEGNAN: That's right.

SENATOR LESNIAK: In other words, the corporation directors would be on notice for five years that they may be on the outside looking in.

MR. DEGNAN: Well--

SENATOR LESNIAK: No, you're right, because the directors could be removed.

MR. DEGNAN: Exactly.

SENATOR VAN WAGNER: They can be removed, as can be management.

SENATOR LESNIAK: Okay. Don't you think that five years is an awfully burdensome and abusive restriction of corporate management practices?

MR. DEGNAN: In the limited number of transactions to which this would apply, we do not think that it is necessarily onerous. It is the same time period that Indiana and New York put into their bills, but basically it is a practical, real world question: How much time does a raider need to do this, and how much time do you need to impact upon it?

SENATOR LESNIAK: We heard objections that three months was too much of an infringement on corporate management practices, to give employees who were going to lose their jobs. We heard that a lot last year, that three months was a State intrusion into corporate management prerogatives. Now we are talking about five years, as opposed to three months. We are not talking about a bill that--

Senator, if your bill could be tailored so it would be restricted just to cover the bust-up takeovers-- Forget about the bust-up, junk bond financed takeovers. I understand that is the reason for the bust-up, because of the junk bonds, but there could be other reasons. Actually, could there not be beneficial reasons for selling up any division of a corporation that a corporation may have, even without this type of legislation?

SENATOR VAN WAGNER: Yeah. In the normal world of doing that, however, there is a period of negotiation; there is a period of announcement and notification that takes place.

SENATOR LESNIAK: It didn't happen to the Kerr (phonetic spelling) Glass people.

SENATOR VAN WAGNER: That was an unusual circumstance and, interestingly enough, this bill would in no way apply to

Kerr Glass, because Kerr Glass was not domiciled in this State and was, in fact, a California-based corporation.

SENATOR LESNIAK: But this bill would apply to corporations which could voluntarily shut down tomorrow?

SENATOR VAN WAGNER: Yes.

SENATOR LESNIAK: For any reason?

SENATOR VAN WAGNER: Yes. This is not, you know, a bill such as you and I both supported, which was a plain closing bill. This is in no way that type of a bill. This deals primarily with the economic -- what I consider, at least in my own opinion -- the economic disadvantage that has taken place in the marketplace as a result of corporations employing a number of defensive mechanisms in order to ward off these types of raids, which divert the attention of management and others to those areas that are more beneficial to the community and to the workplace.

SENATOR LESNIAK: But, the corporations that this bill applies to could close down tomorrow, if they wanted to?

SENATOR VAN WAGNER: The corporations that this bill applies to could close down tomorrow. I doubt that they will, but--

SENATOR LESNIAK: There are no State restrictions in terms of how they have to treat their employees.

SENATOR VAN WAGNER: But, with or without this bill, those corporations could close down tomorrow.

SENATOR LESNIAK: Is there any way that this bill could be tailored just to affect the bust-up type of merger?

Mr. LIPTON: I'm afraid that is at least beyond those who have focused on it so far. There may well be a way, but we don't know of it, and this has been focused on for some time.

If I may take a moment--

SENATOR LESNIAK: Do you understand what I am getting at.

MR. LIPTON: Yes, I do.

SENATOR LESNIAK: How do I support this bill when I may be saying to GAF, "You can't take over Union Carbide"?

MR. LIPTON: May I address that?

SENATOR LESNIAK: --I shouldn't mention those names, but that just happens to be an example.

MR. LIPTON: I think it really should be placed in somewhat of a historical context and, indeed, New Jersey plays a very great role in the history of mergers in this country. You might note that our merger legislation on a Federal level is not called "anti-merger legislation;" it is called "antitrust legislation." The reason for that is that State corporation law, prior to 1900, did not recognize mergers between two companies. Our State corporation laws, essentially, were patterned after our property laws, and if you wanted to convey one corporation to another, or put two corporations together, you needed to have the approval of 100% of the shareholders of both corporations. It could not be done unless all of the shares were in favor of it.

New Jersey was one of the first states to enact a modern corporation law, one that permitted mergers, and, indeed, many of the early combination companies were incorporated in New Jersey. That is the reason why the Standard Oil Trust became the Standard Oil Company of New Jersey. New Jersey permitted mergers.

So, historically, the requirements--

SENATOR LESNIAK: I have a feeling we are getting a--

MR. LIPTON: No, I'll jump to the present almost immediately. I think it is important to keep in mind that historically, the conditions for approval of a merger have been solely the creature of the states -- not the Federal government, solely that of the states. The states have always specified the vote that was required. Originally, the statutes required a 75% or a 66-2/3% vote to approve a merger. The restrictions on a company being able to merge have all been state-specified.

Now, for the past decade or so -- dating back to 1974 -- we have had a constantly increasing number of takeovers in the United States, an activity that was virtually unknown before the late 1950s, early 1960s, and, as Commissioner Putnam testified, it has expanded and increased through the years to where 1985 was a record year for corporate takeovers.

One can argue whether they are good or bad. Most of them up until 1983 were of the type that involved the combination of two operating companies. The purpose of the takeover was the expansion and diversification of the acquiring company. They generally did not result in the kind of adverse impact on the employees, customers, suppliers, communities that Senator Van Wagner and Mr. Luciano mentioned in their testimony.

Starting in 1984, we experienced a wholly new type of takeover, the junk bond financed, bust-up takeover, the sole purpose of which is to achieve a financial profit at the expense of all of the constituents of the corporation. The objective--

SENATOR LESNIAK: Except the shareholders.

MR. LIPTON: No, including the shareholders. Obviously, the price has to be one that contains a substantial margin of profit for the raider. Otherwise, there would be no purpose to the transaction. Indeed, the evidence shows that those companies which have protected themselves with charter amendments or which are in states which have restrictive legislation, are able to get a much better price for their shareholders than those companies which have not taken action to protect themselves and are, in fact, required to either make a deal with the raider or find an alternative buyer within the 20-business-day period of the Williams Act.

SENATOR LESNIAK: But those shareholders make out as well.

MR. LIPTON: There is no question that the shareholders of the target company receive a substantial premium over the prior market price.

SENATOR LESNIAK: I am not saying, by the way, that that is the sole criteria under which a judgment should be rendered on this issue. But, the shareholders do make out in that situation.

MR. LIPTON: There is no question that the shareholders of the target company in every one of these takeovers receive a premium, not necessarily the full premium--

SENATOR JACKMAN: That's if they sell.

MR. LIPTON: They are forced to sell, Senator. There is really no such thing as not selling.

SENATOR VAN WAGNER: The acquirer has acquired sufficient control -- has put himself in a control situation, so that the remaining shareholders really do not have an option.

SENATOR JACKMAN: I have been reading lately -- I think it was in yesterday's paper, if memory serves me right -- where individuals got 5% of the stock. Are you going to get the other 95%?

MR. LIPTON: It is not infrequent that someone will buy 5% of the stock and then make a bid for the other 95%.

SENATOR JACKMAN: And the bid is, hypothetically -- you show the figures-- It's 40 now on the market, and he's offering 55. That means the other 95% is all going to fall in line for that 15% more of the stock. Is that it?

MR. LIPTON: That is correct.

SENATOR JACKMAN: Do they do that with imaginary figures, or what?

MR. LIPTON: No, no. They do it with money they borrow on a subordinated basis, and for which they pay very high rates of interest -- today, 14% or 15% -- and they are able to afford those rates of interest because as soon as they get in control of the target company, they then merge, eliminate the remaining shareholders, have 100% control of the assets of the company, and then liquidate the assets of the company in order to produce the cash to repay most of the financing that they arranged to--

SENATOR JACKMAN: Does anybody lose money in any of these cases?

MR. LIPTON: Yes.

SENATOR VAN WAGNER: If I might, just as a function of the market -- if I might-- What we have been talking about in terms of the premiums paid to shareholders, and who makes money and who loses money-- It is a very short-term situation. What I think you have to examine from the point of view of policy, is the long-term effect on that particular stock. I would sense that over a long term -- okay? -- by artificially increasing the price earnings ratio of that stock, at that point, in order to pay a premium to shareholders, that when that stock begins to trade again on the marketplace, after the merger has taken place, after that debt has been assumed -- am I following the right pattern? -- that that stock begins, I would sense, to diminish in value to a large extent, because now the financing of that -- the major portion of the increase in value of that stock -- is based on that \$55 tender offer. Okay? There is no substantial evidence, as far as I know, in a merger of this type -- and we're talking strictly about this type of merger -- that the long-term effect of that stock is to continue to maintain its relative price earnings ratio. There is a dilution of the stock.

SENATOR LESNIAK: I think it all depends on what you call long term.

SENATOR VAN WAGNER: Well, I am looking at it from the point of view of shareholders who buy stock over a period of time-- You know, people who buy so-called "blue chip" stocks over a long period of time. They attempt to accumulate that stock, and at some point in time, upon their retirement, they expect to live from the dividends of that stock. Okay? That is what I am talking about when I say long term.

SENATOR LESNIAK: Okay. There is no doubt, though, that the shareholders who are impacted by this bill will be adversely affected monetarily?

MR. LIPTON: No, I would--

SENATOR VAN WAGNER: No, on the short term, they are positively impacted.

MR. LIPTON: I would beg to disagree with that, Senator. There are a number of examples that one could cite. One that comes readily to mind is, some six years ago, the American Express Company made a bid for the McGraw-Hill Company. The bid -- on the basis of the shares as they now exist -- was for \$20 a share. That bid was successfully resisted, and the takeover defeated by the McGraw-Hill Company. The stock, today, is, on that basis, \$60 a share. So, the shareholders have had a threefold increase in the value of the shares in this period of time.

You can multiply that example. There are numerous--

SENATOR LESNIAK: I was going to say, is your opinion based on that one example, or is it--

MR. LIPTON: No, it's absolutely consistent with what the Senator was saying. There is a study by Kidder Peabody and Company, which they update annually-- It is based on a study I did in 1979, published in "The Business Lawyer," the publication of the American Bar Association, Corporation Section, which analyzes all of the successfully resisted takeovers, and shows that in over 90% of the cases, adjusting for taxes, price levels, and everything else, the shares today are selling at higher prices than the rejected takeover bid.

The difficulty with these takeover bids is that absent legislation of this kind, it is virtually impossible for the target company to successfully resist.

SENATOR LESNIAK: But, does it compare -- the data -- with the unsuccessfully resisted takeover bids, when the shareholders experience it in that light?

MR. LIPTON: There is no way to really compare that. The premiums that are available today, those that successfully

resisted -- in other words, the price differential -- is substantially greater than the average premium achieved in the so-called "successful takeovers."

SENATOR LESNIAK: What study shows that?

MR. LIPTON: The Kidder Peabody Study.

SENATOR LESNIAK: May we have that for our records?

MR. LIPTON: Yes, I will see that copies are provided to the Committee.

SENATOR VAN WAGNER: I would also like to point out, Mr. Chairman, that under this bill -- assuming the passage of it -- after the effective date of the bill -- corporations that wish not to be involved in it do have a period of time in which, by vote of their board of directors, they can notify the Secretary of State that they do not wish to be involved in the protection of this bill.

SENATOR LESNIAK: Let me ask you then, therefore, if this is appropriately entitled "Shareholders Protection Act," why wouldn't you give that authority and power to the shareholders?

SENATOR VAN WAGNER: That's who votes on it, by virtue-- See, shareholders are represented, for the most part, one assumes, on the basis of the board of directors.

SENATOR LESNIAK: Why wouldn't you, in this statute, give that power to the shareholders?

MR. DEGNAN: I'm not quite sure how that question is--

MR. LIPTON: The shareholders--

SENATOR LESNIAK: Why wouldn't you submit this through an amendment to the bylaws or through a corporate charter amendment -- just an amendment to the bylaws?

SENATOR VAN WAGNER: That's the way it is submitted.

SENATOR LESNIAK: To the shareholders?

SENATOR VAN WAGNER: That is the way it is called for.

MR. LIPTON: It applies unless the shareholders opt out of it. In other words, the way the statute is written--

SENATOR LESNIAK: Is it the shareholders or the board of directors?

MR. LIPTON: The board of directors would submit to the shareholders a proposal to opt out.

SENATOR LESNIAK: Oh, I'm sorry; then I misread it. What section is that?

MR. DEGNAN: I think it's a bylaw amendment.

MR. LIPTON: I don't have it with me.

SENATOR VAN WAGNER: It's a bylaw amendment, yeah.

MR. LIPTON: I think I have given you an erroneous answer.

SENATOR VAN WAGNER: It's a bylaw amendment.

MR. LIPTON: I'm sorry; I gave you an erroneous answer.

SENATOR LESNIAK: I mean, I just looked at it this morning, so I may be mistaken.

MR. LIPTON: It's page 14.

MR. DEGNAN: Sixteen.

MR. LIPTON: Sixteen.

MR. DEGNAN: We're looking at the unprinted version of the bill.

MR. DAVIS (Committee Aide): Oh, okay. What section are you in?

MR. LIPTON: Five c.

MR. DAVIS: Okay, that's page 9, section 5, subsection c. on our copy: "The provisions of this act shall not apply to any business combination of a resident domestic corporation the original certificate of incorporation of which contains a provision, or whose board of directors adopts an amendment to the resident domestic--"

SENATOR LESNIAK: So, it's the board of directors-- It would be a board of directors amendment, not a shareholders amendment.

MR. LIPTON: That is correct.

SENATOR LESNIAK: My question stands. Senator Van Wagner, you may just want to consider that. We'll talk about that as these hearings progress.

SENATOR VAN WAGNER: We can probably address that by submission to the shareholders.

SENATOR LESNIAK: What about the fact that this law applies-- How many corporations are we talking about?

SENATOR VAN WAGNER: One hundred and twenty-four.

SENATOR LESNIAK: Do we know that all 124 know about this law and these hearings? The reason I ask that is-- You know, ought not they be given the opportunity to opt in, as opposed to opting out?

MR. DEGNAN: Senator, we have approached both the New Jersey Business and Industry Association and the Chamber of Commerce, and any other business group that would hear us on the bill. It is virtually inconceivable to me that a company possibly impacted among that group of 124 would not have heard through one of the trade associations of the existence of the bill and, in fact, this public hearing today. It has been widely circulated.

SENATOR LESNIAK: But, wouldn't it be better, public policy-wise-- We are-- There is no doubt that we are making a very significant intrusion into the marketplace and, by the way, I have no problems with that. Okay? I feel we can make significant intrusions into the marketplace if it is warranted on a public policy basis.

But, we are talking about the lives and the futures of individual corporations. You know, ought they not be given that opportunity, specifically as to whether they should be covered or not?

MR. DEGNAN: Senator, I think you make a good point. We are also talking-- To address something you mentioned earlier about the lives and well-being of 100,000 or so employees that these companies in New Jersey--

SENATOR LESNIAK: That's a good point, too.

MR. DEGNAN: May I just finish my point, because I think--

SENATOR LESNIAK: Go right ahead.

MR. DEGNAN: --your objectives, as you stated them earlier -- and this was something we discussed in a meeting with the Chairman of the Board the other day-- He really came up with the answer, and I'm using his words: "We are really looking at the same kinds of objectives." We are looking, in part, to protecting the employees of corporations which are incorporated in New Jersey, have a substantial part of their assets here, and which have their principal places of business here, less their fortunes, with a company like Schering -- which has been in New Jersey, for example, for 50 years -- be determined by a raider, whose interests are very much at divergence with the interests of the community, including the employees who are benefited by the presence of that corporation in the State.

SENATOR LESNIAK: Have we seen any bust-up takeovers in the State of New Jersey?

MR. DEGNAN: I know that last year New Jersey had about 114 mergers and acquisitions. The one merger you mentioned before -- if it indeed was a bust-up merger -- had it gone forward--

SENATOR LESNIAK: But that never took place.

MR. DEGNAN: It didn't, for other reasons. Marty, I don't know whether you can point to anything specific that--

MR. LIPTON: There have been several. I am not sure I should mention names directly.

SENATOR LESNIAK: Well, I think they are public record, and I think you should mention names.

MR. LIPTON: Well, I think Arsarko (phonetic spelling) was the target of a bust-up raid.

SENATOR LESNIAK: What happened there?

MR. LIPTON: They successfully defended--

SENATOR LESNIAK: Who's they?

MR. LIPTON: Arsarko.

SENATOR LESNIAK: Oh, they successfully defended one? You don't know, therefore, whether it was a bust-up merger or not, do you?

MR. LIPTON: Well, I don't think there was any question that that was the intention. It was fairly clear.

SENATOR LESNIAK: How do you know that?

MR. LIPTON: Well, just the nature of the bid.

SENATOR LESNIAK: What was the nature of the bid?

MR. LIPTON: It was by a non-U.S. group that seemed, essentially, to be interested in acquiring the Australian operations.

SENATOR LESNIAK: Seemed essentially?

MR. LIPTON: Yeah.

SENATOR LESNIAK: That is not enough for me to--

MR. DEGNAN: Well, let me point out--

SENATOR LESNIAK: Have we seen any bust-up takeovers in the State of New Jersey as of this date?

MR. LIPTON: Well, I think that is something that can be readily determined and submitted. But, let me point out that it, in no way-- The statute, in no way, impacts on the ability of the board of directors of a company to engage in a merger. It has absolutely no impact on that. If the board of directors -- the management of a company -- wants to merge the company, this statute does not apply. This statute does not apply if the board of directors of a company desires to enter into a merger.

SENATOR LESNIAK: Is that correct?

MR. DEGNAN: Yes.

SENATOR LESNIAK: Even after someone has attained the 10%--

MR. LIPTON: If a company wishes to engage in a merger, or sell all the assets of a company -- any sort of business combination -- this statute has no impact whatsoever.

MR. DEGNAN: That's true even after a 10% or greater stockholder interest is secured by a raider, so long as the result of that merger, or the sale of assets, is not to effect a business combination with the raider or an entity related to him.

SENATOR VAN WAGNER: That's applicable before and after.

SENATOR LESNIAK: What if it's a good merger? What if they want to form a business--

MR. DEGNAN: That's a good question, Senator. If the raider comes in and acquires a 10% interest, and he wants to effect a merger which is in the best interest of the corporation-- I sit -- and I suspect you do -- on enough boards to know that I am increasingly--

SENATOR LESNIAK: I don't sit on any.

MR. DEGNAN: Well, you will; not too soon, I hope.

SENATOR LESNIAK: That's the next point I was going--

SENATOR VAN WAGNER: He's considering offers now. He hasn't arrived at any conclusion yet.

SENATOR LESNIAK: I have 147 (indiscernible).

MR. DEGNAN: I hope you will be too politically involved in office holding for too long to do that in the near future, but boards are increasingly concerned about their liability for making decisions that are not truly in the best interest of the shareholders, because of the increasing liability attaching to those boards.

If, in fact, the suitor or the raider proposes a merger which is in the best interest of the target corporation, that board had darned well better vote for it, or face the danger that under the business judgment rule which governs the standard of their decision-making, they could be held personally liable for failing to do it.

SENATOR LESNIAK: I must be misreading the statute again. Are they not precluded absolutely by this statute from merging with someone who has attained a 10% or more interest, if they have not approved it prior to them attaining the 10% interest?

MR. DEGNAN: Yes.

MR. LUCIANO: Senator, if I may-- It's our fault, we really haven't answered your question very clearly. You asked earlier whether this statute could be restricted solely to the bust-up takeover.

SENATOR LESNIAK: No. That is another question.

MR. LUCIANO: Okay, but as a practical--

SENATOR LESNIAK: You're right, you haven't answered that question.

MR. LUCIANO: Let me try, and maybe we can get to this one also. As a practical matter, I think the statute does affect that. First of all, as we were saying here, the statute does not affect a voluntary merger. Voluntary mergers can take place with absolutely no problem. It does not affect the proxy fight designed to replace management. It can take place with no problem whatsoever. It does not affect a hostile takeover of a company, provided that you don't have to get at the assets to bust it up. If you don't like the way I am running Schering-Plough, you can come in, tender for the stock, take over the company, and run the company. What you can't do is sell the assets to pay off, presumably, the debt you have incurred to acquire the company.

That is really, I think, the only area in which the statute is operative.

SENATOR LESNIAK: Do you want to go through that again?

MR. LUCIANO: Okay. You don't affect a voluntary merger. You don't affect a--

SENATOR LESNIAK: No, no, not from the beginning, just the last--

MR. LUCIANO: You can come in and tender for the shares of Schering-Plough Corporation, assume control of Schering-Plough Corporation, replace the board, replace the management--

SENATOR LESNIAK: But I can't merge.

MR. LUCIANO: --and you can operate the company. But, you cannot merge it. Merger is simply a way of operating a company. If you want to operate Schering-Plough, there is no real need for you to merge it into another company. You can operate it, or any other company.

SENATOR LESNIAK: Maybe Schering-Plough has a division that ought to be sold off.

MR. LUCIANO: That would be an inhibition.

MR. LIPTON: You could sell it.

MR. LUCIANO: I'm sorry.

MR. LIPTON: You could sell that division. There is no prohibition--

SENATOR LESNIAK: But not through a merger.

MR. LIPTON: Not through a merger. You could take control of the board of directors; you could sell the division; you could sell all of the assets. There is no prohibition on taking control and liquidating the entire company. What you would have to do is treat all of the shareholders equally. In other words, you couldn't grab the assets for your benefit, to the detriment of those shareholders who did not tender their stock.

What that does, as a practical matter, is impact only these junk bond, bust-up takeovers, because anyone who is interested in acquiring the company for the purpose of expansion or diversification, or is willing to treat all the shareholders equally, is able to go forward and acquire the company, and really take any action they want to take with respect to the company, without in any way being restricted by this statute.

SENATOR LESNIAK: But, in effect, you are also preventing beneficial hostile takeovers.

MR. LIPTON: There is no question that the purpose of the statute is aimed at restricting hostile takeovers. The question whether they are beneficial or not is how you view it in terms of the constituencies that are being either served or disserved by the takeover.

SENATOR VAN WAGNER: But, as Mr. Degnan pointed out, if, in fact, it is a beneficial takeover, then the board of directors, under the business judgment rule--

SENATOR LESNIAK: Not after the fact, Rich; that's the problem. Not after the 10% interest has been attained.

SENATOR VAN WAGNER: Only if the effect of the merger is predicated -- as Mr. Luciano said -- on the necessity of stripping the most valuable of those assets to accomplish that purpose.

SENATOR LESNIAK: Rich, you can't--

MR. LIPTON: I would just like to supplement that. If this statute were in effect, no one would attempt to acquire a New Jersey corporation without presenting the proposal to the board of directors of the company first. There is no board of directors that would reject that proposal -- in other words, stand behind the statute -- without obtaining the opinion of an independent investment banker that the offer was not a fair one, or was an inadequate one. No board of directors today would reject an offer unless they had the backup of an independent expert supporting them with respect to the value of what they were rejecting.

So, I think you can feel quite comfortable that the ordinary application of the business judgment rule -- as it applies in New Jersey -- would prevent a board from hiding behind this statute and arbitrarily rejecting a so-called "good merger."

SENATOR LESNIAK: Isn't it not as simple as that? Isn't the business judgment rule kind of pretty difficult to overcome?

MR. LIPTON: I think it's pretty difficult to overcome if the board of directors has acted properly. The whole purpose of the business judgment rule is to protect the directors of a corporation if they have acted properly on proper advice and with proper information.

SENATOR LESNIAK: Isn't there, in effect, a presumption that they did act in the best interest of the corporation?

MR. LIPTON: That presumption has been eroded rather substantially in the takeover cases. Most of the recent cases say that in the takeover context, the presumption is not as strong as in the other context, and that the directors really have the burden of going forward and showing that they relied on appropriate information -- generally an investment banker's opinion -- in reaching their determination.

SENATOR LESNIAK: Mr. Luciano, if you really wanted to protect employees, couldn't you protect them by just making sure that they own all the stock?

MR. LUCIANO: Sure.

SENATOR LESNIAK: That is a rhetorical question.
(laughter)

MR. LUCIANO: That would be one way of doing it. But, we at Schering-Plough do think it is important to protect all of the employees. One of the things we have done voluntarily to protect every employee in the company, from the newest hired janitor to chairman of the board, is adopt a special severance policy, which is to be effective only in the case of a hostile takeover. We have doubled our severance policy, so that every employee would receive some protection.

We have also taken some steps to insulate the pension funds from the clutches of a hostile raider, so that he can't

use the pension funds to partially pay off his debt by vesting everybody's pension -- the entire company -- everybody's pension, at an earlier date. We think there is a responsibility to act on behalf of the employees, and we think we have done quite a bit voluntarily. We think that this bill would go a long way toward supplementing our efforts.

SENATOR LESNIAK: By the way, I think Schering-Plough has acted very responsibly toward its employees in the past. That is the history I know.

MR. LUCIANO: Thank you.

SENATOR LESNIAK: Senator Jackman, any questions?

SENATOR JACKMAN: I had too many bad experiences with takeovers. I am not in favor too much of takeovers, I can tell you that. Crown Zellerbach is one that stands out in my mind because I represent it around the country.

SENATOR LESNIAK: Who's that?

SENATOR JACKMAN: Crown Zellerbach. It's a paper product company.

SENATOR LESNIAK: Where is it?

SENATOR JACKMAN: All over the United States and Canada.

MR. LIPTON: They have been involved in a number of takeovers.

SENATOR LESNIAK: You said you had some bad experiences?

SENATOR JACKMAN: Yeah, because membership-wise, they come in, they take over, and they shut down paper mills.

SENATOR LESNIAK: Where did that happen?

SENATOR JACKMAN: In Canada, and on the West Coast. We have had some bad experiences.

SENATOR LESNIAK: Any move into New Jersey after that?

SENATOR JACKMAN: Well, I've got some small plants operating in New Jersey. I've got 57,000 members in New York and New Jersey -- I. P. Paper Company, Crown Zellerbach,

Owens-Illinois, and the rest of them. But, Crown Zellerbach stands out in my mind for the bad experience. These are takeovers. When you talk in terms of takeovers, you know, you are talking high finance. You are talking about people with money. The situations that I get imbued with are the people working in the factories. On a given day, they were told that the plant had shut down because it wasn't producing to Crown Zellerbach's criteria.

SENATOR LESNIAK: That has happened without takeovers, isn't that true?

SENATOR JACKMAN: In some cases, yeah; in some cases.

SENATOR LESNIAK: We've seen it happen in New Jersey.

SENATOR JACKMAN: Oh, yeah, sure; of course you have. Productivity becomes a factor, yes, and antiquated machinery. You know, changes in technology are taking place, and machinery outputs, etc.

SENATOR LESNIAK: But, none of those have been the result of takeover, I guess, in New Jersey.

SENATOR JACKMAN: No, not in New Jersey, but in my instance -- with some of my experience--

SENATOR DiFRANCESCO: Are you the next witness on the list?

SENATOR LESNIAK: What's that, I'm sorry?

SENATOR DiFRANCESCO: Is this a piece of paper I don't have between the two of you? (laughter)

SENATOR LESNIAK: I'm sorry.

SENATOR JACKMAN: That's okay. Go ahead; no big deal.

SENATOR LESNIAK: Senator O'Connor?

SENATOR O'CONNOR: No questions.

SENATOR LESNIAK: Senator DiFrancesco?

SENATOR DiFRANCESCO: I have no questions.

SENATOR LESNIAK: Okay. Thank you very much, Senator Van Wagner, John Degnan, Mr. Luciano, and Mr. Lipton. I would hope that you would continue these proceedings, and I think we will be working together to--

SENATOR JACKMAN: To move the bill out of Committee.

SENATOR LESNIAK: I didn't say quite that, but we will be working together to arrive at an equitable solution.

SENATOR VAN WAGNER: I think, if I might, Mr. Chairman, just in closing-- I, personally, cannot point to any instance in New Jersey where the issues you have raised have, in fact, become a reality. But I do think it is important to consider the fact that New Jersey has, perhaps, one of the most vital and thriving corporate communities in the United States. And, although--

SENATOR LESNIAK: Then, why are we worried about protecting it? If it is so vital and thriving, why will it not be vital and thriving without this?

SENATOR VAN WAGNER: Because I think it becomes-- At some point in time, it could become a target for this type of operation. Although it may not have happened yet, I think that when one considers how quickly these events take place, almost as quickly as someone has decided to make that move, that, in effect, we could be sitting here talking about a bill like this while such a takeover is going on.

I think part of airing out this issue, and discussing it, and creating the dialogue which you have so kindly allowed us to do today, is to try to reach some kind of an appropriate position on an issue that I think is more and more going to have an effect on the economy of this State and, in fact, on the economy of the nation.

SENATOR LESNIAK: Senator, I share your concern, and I want to thank you for bringing this up to the Legislature. My concern is that we keep that vital and thriving economy in the State of New Jersey, and that we not impact adversely on things that make it vital and thriving while we take protectional measures as well. I think we have to look at both issues, and ensure that those areas that you are concerned with are addressed. We have to do that, and make sure that the overflow

impact that we don't want to happen does not occur as well. That is what we will be working toward with you.

SENATOR VAN WAGNER: Thank you, Mr. Chairman.

SENATOR LESNIAK: Thank you.

SENATOR DiFRANCESCO: I have another question of the sponsor.

SENATOR LESNIAK: Oh, I'm sorry. Senator DiFrancesco.

SENATOR DiFRANCESCO: Richard, I'm sorry, I had another committee meeting, and you may have discussed -- probably have discussed this. But, one question, why 10%? You are the sponsor of the legislation.

SENATOR LESNIAK: Bargaining purposes.

SENATOR VAN WAGNER: Yeah. It is a bargaining tool, really, primarily.

SENATOR DiFRANCESCO: All right. No other questions.

SENATOR JACKMAN: It was between 5 and 15, and it became 10.

SENATOR VAN WAGNER: Effectively, once you have acquired that much, the movement toward the rest is fairly inevitable.

SENATOR LESNIAK: Anything else, Senator DiFrancesco?

SENATOR DiFRANCESCO: No, thank you.

SENATOR VAN WAGNER: You did lower it to 5%.

SENATOR LESNIAK: Thank you very much.

William Campbell, Adjunct Professor at Seton Hall. Mr. Campbell, I presume you are speaking as an attorney from your experience, not on behalf of Seton Hall Law School. Right? W I L L I A M F. C A M P B E L L, III: Absolutely. In fact, I am principally a private practitioner. I am merely an Adjunct Professor at Seton Hall Law School.

Mr. Chairman, first of all, I would like to thank you for allowing me to testify today.

SENATOR LESNIAK: Do you have written testimony?

MR. CAMPBELL: I do not, but I will be providing it to the Committee in about a week's time.

SENATOR LESNIAK: Fine.

MR. CAMPBELL: I would like to first thank Martin Lipton for testifying here today. I know he is one of the leading experts in this country on takeovers, and I can't help but think that he could help this Committee's deliberations.

Mr. Chairman, I am not speaking either specifically in favor or specifically against this bill. I think it has some very good features; I think it has some very bad features. Getting to the heart of it, a few minutes ago we talked about five years being a long time.

SENATOR LESNIAK: Excuse me. I hate to ask you this, but it's really to bolster what you have to say, rather than take away from it. Will you briefly give us your background?

MR. CAMPBELL: Sure. Mr. Chairman, I am a graduate of the NYU L.L.M. Program at NYU, where I received a L.L.M. in Corporation Law. That is an advanced degree over a corporate degree. I am a consultant to the State Corporation Law Revision Commission, which is about to submit to this Committee some extensive revision to the New Jersey corporation laws, not dealing with this subject. I emphasize that.

SENATOR LESNIAK: It is my understanding that they will be at our next public hearing to testify.

MR. CAMPBELL: That is correct. I understand the Chairman -- John MacKay -- will be testifying.

I have been practicing in Morristown for more than 10 years in the area of corporate and securities law, and for the last five years I have been teaching at Seton Hall Law School, teaching securities law and teaching corporate law in the last year.

Getting to what I think is the heart of the problem with this bill, I think it is really a management protection act as it is presently drafted. We said before that this is a five-year bill. In fact, it is five years where you can't do a merger. After five years, you can only do a merger if you can

get two-thirds of the other shareholders to agree to the merger, or if you meet some very severe fair price provisions, which are extensive and, frankly, confusing. In short, this is a forever bill, not a five-year bill.

If I had my druthers and could draft the legislation I would like the best, I would like to see section 3, which is the provision which says thou may not do a business combination for five years, integrated with section 4, which says that after five years you can't do a business combination unless two-thirds of the shareholders approve, or unless the shareholders receive a fair price.

It seems to me that if you had a bill which simply said that after you--

SENATOR LESNIAK: Why any standstill?

MR. CAMPBELL: Only until such time as they give the outside shareholders either a merger they really like -- two-thirds liking it -- or a fair price, that based upon objective standards they are going to get a fair price.

SENATOR LESNIAK: But their answer would be, "Well, we have already adopted those amendments in our bylaws or amended our corporate charter, so you are not giving us anything we haven't done already."

MR. CAMPBELL: Some corporations have; most corporations have not. Moreover, I am not--

SENATOR LESNIAK: I think Schering-Plough has.

MR. CAMPBELL: I think Schering-Plough has done that. They have done it through a poison pill mechanism of some sort. That is a typical mechanism for achieving it, and there are some--

SENATOR LESNIAK: But they say that is not enough.

MR. CAMPBELL: Yes, because I know there is a District Court opinion here in New Jersey which suggests that those poison pills may be invalid, coming out of the Arsarko case.

SENATOR LESNIAK: Invalid for what reason?

MR. CAMPBELL: That under New Jersey law, those poison pills may not be permitted.

SENATOR LESNIAK: Well, can't we simply just make that valid?

MR. CAMPBELL: That is one way of going about it.

SENATOR LESNIAK: And that is what you are suggesting we do?

MR. CAMPBELL: That is what I am suggesting. I am suggesting we create a bill which has fair price, or a vast majority of disinterested shareholder approval, to assure that in a two-tiered tender offer -- which I think a lot of people have considerable criticism of -- and in partial tender offers where the minority is locked in for a long time, that if there is going to be any use of corporate assets, the minority gets a fair price for those shares.

That, I think, is the thrust of my testimony. It seems to me that that is the direction which is going to be constitutional. I might support the bill in its present form, because I do have some problems with takeovers generally. If I really thought that this bill would survive constitutional scrutiny-- With all due respect to Martin Lipton, whose opinion I value enormously, I have to say that the thrust of this bill is to make a tender offer impossible for a New Jersey corporation.

SENATOR LESNIAK: Wouldn't the mere enactment of this bill, though, probably relieve anyone of the worry about a tender offer for at least a year or two or three, while it makes its way through the court system?

MR. CAMPBELL: If they thought it were constitutional. They may be the first one tendered against, and that may be the case in which a Federal District judge finds it unconstitutional.

SENATOR LESNIAK: But, isn't that delayed, in effect? I mean, don't people just throw up their hands, and say,

"Listen, we have other spots where we can go"? Isn't that, in effect, doing it even if it is unconstitutional?

MR. CAMPBELL: The history, of course, as you know, Mr. Lesniak, is that 10 years ago we were here and we adopted an anti-takeover bill. It did nothing. It did nothing except cause the New Jersey Bureau of Securities to waste some time adopting some regulations. A few corporations may have received some protection for a very brief period. I do not think it advanced the interests of New Jersey corporations, even for the two- or three-year period it was in effect before it was declared unconstitutional for the first time.

The truth of the matter is, everybody thought it was unconstitutional and it was passed. I would think that if this bill were passed in its present form-- I would think it to be unconstitutional, because I think it would frustrate the central purpose of the Williams Act; that is, to permit tender offers to go forward. Maybe it is a judgment which reasonable people could disagree about -- whether we ought to have tender offers -- but I think the Congress of the United States has already made that judgment, that tender offers do serve some purposes. As the State adopts legislation which virtually prohibits a tender offer, it seems to me that that conflicts with the Williams Act and is invalid under the supremacy clause. I would like this State to pass the strongest anti-takeover bill it can that is constitutional.

SENATOR LESNIAK: If the Constitution of the United States were amended, or the Williams Act were amended-- Are you saying it is good public policy to prevent takeovers -- absolutely, period?

MR. CAMPBELL: I'm saying that the history of takeovers leaves one with a considerable amount of pause that more good has been accomplished than bad, and that maybe, on balance, it would be better to eliminate tender offers entirely -- maybe, maybe. But I don't think that is a judgment that a particular state can make given the Williams Act.

SENATOR LESNIAK: That is not before our Senate, in any event. I probably should have asked this question of Mr. Lipton and Mr. Degnan. Could a corporation opt out of the statute, after all is said and done, by just incorporating in another state? In other words, can the hostile takeover, take over the board of directors and then just decide to move the corporation out of the State and avoid the statute?

MR. CAMPBELL: That's a good question. I haven't studied the bill in detail enough to answer it. I suspect that perhaps you could sell assets to some unrelated corporation, and then merge with that unrelated corporation.

SENATOR LESNIAK: Just move the state of incorporation?

MR. CAMPBELL: Yes, there is an argument that you could do that, although I suspect--

SENATOR JACKMAN: Delaware.

SENATOR LESNIAK: Yeah, we'll move to Delaware.

MR. CAMPBELL: I suspect that if this bill were to pass, Delaware might pass similar legislation.

SENATOR JACKMAN: But then it would be unconstitutional down there.

SENATOR LESNIAK: So, Pennsylvania.

SENATOR JACKMAN: Maybe we ought to pass it in 50 states, and let the Supreme Court take the whole thing.

SENATOR LESNIAK: We are going to have another hearing and, Dale, I would ask that we research the issue as to whether you can just avoid the whole statute by moving where you incorporate.

Are there any questions from the Committee?

SENATOR JACKMAN: No.

MR. CAMPBELL: Mr. Lesniak, I just have a couple more things I would like to address very quickly. One is, presently we are limiting this to 125 corporations. There are 11,000 publicly held corporations. There must be several thousand at least -- New Jersey corporations.

SENATOR LESNIAK: Well, I mean, aren't we limiting it to avoid the interstate commerce clause? Isn't that the reason? I presume--

MR. CAMPBELL: Well, the answer is, maybe yes and maybe no. I would recommend-- I think the most constitutional piece of legislation we could pass would be one restricted to New Jersey corporations -- period -- that is to say, not New Jersey domestic corporations. It seems to me that by limiting it to domestic corporations, you are waving a red flag that we are not adopting corporate law; rather, we are adopting State corporation protection, rather than amending corporate law to adopt reasonable corporate principles. Pennsylvania is--

SENATOR JACKMAN: There are more than 125 corporations, aren't there?

SENATOR LESNIAK: I just don't follow that.

MR. CAMPBELL: It has been a long tradition for corporate laws -- state laws -- to adopt corporation codes and to regulate the so-called "internal affairs" of corporations. That argument was rejected -- Mite (phonetic spelling) (referring to a specific case) -- because it was incredible that Illinois, in passing its takeover act, was concerned about establishing just principles for regulating the internal affairs of corporations.

With the suggestion I have just made, I think what you are adopting is a statute designed to regulate the just affairs -- the internal affairs of a corporation. It seems to me that is a better peg upon which to hang your hat, than that we want to protect domestic New Jersey corporations. It seems to me that if you say domestic New Jersey corporations-- Why don't you just say domestic corporations? The other reason is because you are going to violate the commerce clause, perhaps -- perhaps -- and I don't think that regulating resident New Jersey corporations is any more unconstitutional than domestic resident New Jersey corporations. It seems to me it is the exact same argument, and I don't see-- It is a difference without a distinction.

I would rather see us go just directly for all New Jersey corporations, and I do mean all. I don't see any reason why this legislation has to be limited--

SENATOR LESNIAK: Do you mean all corporations incorporated in the State of New Jersey?

MR. CAMPBELL: In the State of New Jersey. I have personally been involved in at least two battles for the control of non-publicly held corporations, corporations which were not closely held in any sense, but, nevertheless, did not meet the requirements for listing on an exchange or which were, under the Williams Act, reporting corporations. One of the difficulties in that situation was that there was no law upon which you could seek to assure fairness in the whole transaction.

The last thing--

SENATOR LESNIAK: I thought the marketplace was supposed to take care of that, not the law?

MR. CAMPBELL: In a privately held corporation, there is no marketplace.

SENATOR LESNIAK: Well--

MR. CAMPBELL: It seems to me the problem is more intense there, not less.

SENATOR LESNIAK: They define the marketplace for themselves.

MR. CAMPBELL: They don't have enough shareholders; they're too small.

SENATOR LESNIAK: Yeah, but they define that marketplace. I just delve into economics every now and then.

SENATOR DiFRANCESCO: I don't understand what he is driving at. I confess my ignorance, but I don't understand what he is talking about.

SENATOR LESNIAK: I think what Mr. Campbell is saying is that the law ought to be-- I don't quite understand it either, but the law ought to be more broadly applied. If it

is, it will more likely withstand constitutional challenge. There is the Mite case, which came out of Illinois, which was found to be unconstitutional. I haven't read it, and don't quite understand it fully.

SENATOR DiFRANCESCO: How does this bill apply?

SENATOR LESNIAK: The point is being made that because this bill applies to New Jersey resident domestic corporations, it will be conceived as a anti-tender bill, as opposed to a bill to regulate New Jersey corporations.

MR. CAMPBELL: That is correct.

SENATOR JACKMAN: Corporations? There are some corporations that just have two or three stockholders. Who the hell is going to take them over -- a husband, a wife, and a son?

MR. CAMPBELL: Mr. Jackman?

SENATOR JACKMAN: Yes?

MR. CAMPBELL: Let's say you and your wife get divorced, and your wife and your son decide to take over the company, freeze you out, and sell their two-thirds of the business to someone else.

SENATOR JACKMAN: I would deserve it if I left them.
(laughter)

SENATOR LESNIAK: His lawyer would deserve to be sued for malpractice because he didn't advise him to make sure that it was a unanimous vote. Knowing his wife and his daughter--

SENATOR JACKMAN: I'll tell you, that is what scares me with you lawyers. That's the part that bothers me -- worries me -- God bless you.

SENATOR LESNIAK: That is an interesting point, Mr. Campbell.

SENATOR JACKMAN: It is.

MR. CAMPBELL: Just one last thing, and then I will let the list move on, and that's "greenmail." If this is a Shareholders Protection Act, it ought to include an anti-greenmail provision. Even the New York act, which was

passed very hurriedly, contains an anti-greenmail provision. It seems to me that one of the worst--

SENATOR JACKMAN: Anti what?

MR. CAMPBELL: G-r-e-e-n-m-a-i-l -- Greenmail.

SENATOR JACKMAN: You had me scared. I thought you said, "anti-free mail." Greenmail -- what the hell's greenmail?

MR. CAMPBELL: As in blackmail. It's usually one word these days; it's not in the dictionary, though. It is a derivative of blackmail. It is not illegal, but it--

SENATOR LESNIAK: Could you explain because, you're right, that slipped my mind. I guess I asked what was different, and didn't really ask what was not in there.

SENATOR JACKMAN: What was that again?

MR. CAMPBELL: It's called greenmail.

SENATOR JACKMAN: Will you tell a layman what that means?

SENATOR LESNIAK: I was getting at that.

SENATOR DiFRANCESCO: You know what that means.

SENATOR JACKMAN: No. Is that blackmail?

MR. CAMPBELL: Yes, that is exactly what it is.

SENATOR JACKMAN: Okay.

MR. CAMPBELL: I buy up 5%--

SENATOR LESNIAK: Wait, wait, I'm sure the reporter is going crazy right now at this point in time.

SENATOR JACKMAN: I'm talking-- You know, he's a lawyer, and you're a lawyer. I'm a layman. I'm asking you a simple question. You mentioned that the word "blackmail" is almost synonymous with that word, didn't you?

MR. CAMPBELL: Senator Jackman, a greenmailer will go out and buy up, say, 4-1/2%, or maybe 10% of a corporation, and will go to management and say, "If you buy my shares, which I bought at \$5, at \$15, I will walk away and never bother you again."

SENATOR JACKMAN: That's blackmail. (laughter)

MR. CAMPBELL: That's blackmail, and that is what Firestone paid.

SENATOR JACKMAN: Am I right?

MR. CAMPBELL: It's blackmail, but it's legal.

SENATOR JACKMAN: Yeah, I know, sure. My wife tells me how much a dress costs, and when I say, "It's too much," she says, "You buy it or else," and I buy it. That's blackmail, too. Go ahead.

MR. CAMPBELL: Those were really the only points I wished to make orally. Thank you.

SENATOR LESNIAK: Any questions from the Committee?
(no response)

SENATOR JACKMAN: God bless you.

SENATOR LESNIAK: Okay. Thank you very much.

SENATOR JACKMAN: Are we finished?

SENATOR LESNIAK: No, Chris, we have a long while to go.

SENATOR JACKMAN: You are going to lose me in 15 minutes.

SENATOR LESNIAK: I'm sure you will get a copy of the transcript to read.

SENATOR JACKMAN: I will.

SENATOR LESNIAK: Bruce Coe, President, New Jersey Business and Industry Association.

SENATOR JACKMAN: Hi, Bruce.

B R U C E G. C O E: Hi, Senator. Please don't leave, because I am not a lawyer either, and I need your help.

SENATOR JACKMAN: Okay. I'll stick around for you.

MR. COE: I have a prepared statement; however, I would rather not speak to that, but simply address the issue of, why should the New Jersey Legislature be addressing something that, hopefully, free market economies take care of by themselves?

First of all, let me point out that it is not only the New Jersey Legislature, but as you pointed out, Senator Lesniak, New York and Indiana-- Both, this year, passed legislation very, very similar to this legislation. I anticipate from my associates, and something called COSMA -- which is a national affiliation of state associations -- that the legislation will be working its way through a number of state Legislatures this year.

The reason the states are addressing it is, to date, the Federal government hasn't. I can't tell you all of the reasons the Federal Reserve Board has for attempting to disallow interest as it relates to junk bonds. In drafting a law, the principal problem, as I understand it from Mr. Lipton and other exemplary lawyers, is passing a state law to withhold (sic) Federal challenges.

SENATOR LESNIAK: Has the Federal government not addressed the issue, or has it addressed it but not adequately as far as you are concerned?

MR. COE: Not adequately as far as the business community is concerned. I would like to point out--

SENATOR LESNIAK: When you talk about the business community, whom are you talking about? This bill only applies to 127 New Jersey corporations. Is that what we're talking about?

MR. COE: Well, I don't know the limitation on the 127.

SENATOR LESNIAK: Trust me.

MR. COE: I'll accept that. I brought in a recent Alexander Grant Study -- which I will leave with you -- of 112 publicly owned companies in eight northern New Jersey counties, which have revenues of \$5 million to \$200 million. That was the definition for middle-market publicly owned companies in northern New Jersey. I have a hunch-- By the way, they discovered the needy five. There were 112; they only found 87 of them in their '84 study. So, there may well be many more companies than 127 in the overall limit.

But, to date, companies have been using every technique possible -- shark repellents, etc. I know of four companies, which we all know of in New Jersey, that have taken actions within the last year. They range from South Jersey Industries to Central Jersey Bank and Trust, to -- most recently -- Supermarkets General. The problem with these efforts, as Delaware court history bears out in Delaware, is that companies are never quite sure how far to go.

SENATOR LESNIAK: Why is that?

MR. COE: Because they don't know what is going to be upheld by the law and what is going to be overturned in the court.

SENATOR LESNIAK: Can't we address that issue by just saying, "As public policy goes, we can define this as good public policy," and then not worry about the immunity problem -- actually create immunity?

MR. COE: I would agree with that. I understand that the law, as drafted, is intended to withstand any challenge, even of the Federal Securities law.

SENATOR LESNIAK: No, no, no, no, what I am trying to say is, can't we address the problem as to the fact that we don't know whether these protection acts taken will be upheld, by just passing the law and saying, "It is the public policy of the State of New Jersey, and will, therefore, have to be upheld"? This is good public policy; therefore, it wouldn't be violative of the fiduciary relationship. Or, there are a lot of ways.

MR. COE: Right.

SENATOR LESNIAK: We could say, "This is not a breach of the fiduciary relationship."

MR. COE: Well, I am not trying to duck your question, but we should really be sure what we are talking about. I like things that are simple, Senator.

SENATOR LESNIAK: So do I.

MR. COE: An example would be, if Senator Jackman and I formed a shell corporation and made a run on Schering-Plough-- Now, most of you know that Senator Jackman and I really don't have enough money and/or assets to swing that deal. Therefore, we would have to issue something called "junk bonds," which are basically secured by the assets and earning power of Schering-Plough. The reason that Senator Jackman and I are doing this-- It is for one reason, and for one reason only. We have strong reason to believe that the bust-up value of that company exceeds the current market price. We have not the professional capability and/or interest in managing Schering-Plough thereafter. It is not dissimilar to Senator Jackman and I stealing a Cadillac in Bayonne and taking it to a chop house where you can sell it for more -- where the parts are worth more than the whole.

SENATOR LESNIAK: Of course, that has nothing to do with reality, because this bill doesn't even deal with junk bonds, except indirectly. Is that correct?

MR. COE: But, very indirectly. I understand it was Felix Rohatyn -- Attorney Lipton might correct me -- who was the counsel and consultant in this. He is with Lazard Freres in New York. He is one of the great investment banking corporate merger specialists. The question was, how can we draft something that prevents the jump on breakup acquisition? It doesn't prevent unfriendly acquisitions. It doesn't prevent anybody from acquiring a company--

SENATOR LESNIAK: But it prevents hostile acquisitions.

MR. COE: No, no. You and I can make a hostile acquisition any time we want to. Senator Jackman and I could. We simply can't merge their assets into our assets to retire our junk bonds with their assets.

SENATOR LESNIAK: Well, if that is the purpose. What if GAF wanted to acquire Union Carbide and wanted to merge, and had a good reason for that?

MR. COE: It's really important to understand that. They have assets and earning power. Senator Jackman and I don't. We can--

SENATOR LESNIAK: I am more-- Really, quite frankly, I am not interested in Senator Jackman and you.

MR. COE: Okay.

SENATOR LESNIAK: I am interested in--

SENATOR JACKMAN: You better be, I vote. (laughter)

SENATOR LESNIAK: I don't think, though, that you are going to take over Schering-Plough.

MR. COE: But, we can. In other words, we can issue our common stock; we can issue convertible preferreds; we can issue a variety of securities. We can acquire 51%, 75%, 95%, replace the board, and sell three divisions of Union Carbide, except those assets stay with Union Carbide.

The only thing we can't do is get their assets to retire our junk bond debt. That is the only thing we cannot do.

SENATOR JACKMAN: Bruce, how do you find this bill, as presented by Senator Van Wagner to this Committee?

MR. COE: I spent 20 years in Wall Street in investment banking, and we kind of like mergers and acquisitions because they kind of lead to nice fees, and there are lots of cases where publicly held companies are not being run as well as they should be. That is the nature of the beast. There are also well-managed Wall Street companies that-- Just like State surpluses, stock markets go way up and they go way down. If you're smart, you can look at windows of opportunity, and say, "Hey, that stock is signed for \$20, and I can bust that company up and get \$60 a share."

The question is, how do you draw a line that doesn't prevent hostile takeovers? They can be a very healthy thing. That is what this is an attempt to do.

SENATOR LESNIAK: It is your position that this bill does not prevent hostile takeovers?

MR. COE: Absolutely, it is my position-- In fact, there are hostile takeovers we have all read about in the paper. I think Tom Stanton's bank acquired Broad Street Bank, and there was a lot of furor and fussing. I think eventually they worked it out in a compatible manner.

SENATOR LESNIAK: What does that have to do with this bill?

MR. COE: I believe banks are covered -- utilities and corporations.

SENATOR LESNIAK: Yeah, but, I mean, this bill is not-- In fact, I don't understand--

MR. COE: Oh, well, the point is, if the bill were in effect, he still could have done it. They simply could not have merged the two banks legally together, the one--

SENATOR LESNIAK: Right. Yeah, I'm sorry. Are they merged together now?

MR. COE: I believe so, yes. I believe the shareholders have voted in both cases.

SENATOR LESNIAK: That's right, and they couldn't do that with this bill. Is that correct?

MR. COE: Yes, you cannot merge and combine the assets for a five-year period.

SENATOR LESNIAK: Okay, fine.

MR. COE: But that is not critical, Senator, for a corporation to merge and combine the assets, unless you've got to get your hands on that money to pay off the junk bonds. That is the timing factor, which is why five years are critical. If I were--

SENATOR LESNIAK: Or, unless I have an inefficiently run division and I want to get rid of it, and it could be run more efficiently by the corporation down the road.

MR. COE: I'm not sure-- You can clearly get rid of any-- If someone is acquiring me on an unfriendly basis, and they succeed, they can get rid of any divisions I have that

they want. In other words, if control can be obtained, eliminating management or selling assets can all be done. The reason for the five years is, if you are going to hold me to three months or six months or one year, as a gunslinger, I can do that. I can afford those 22% interest rates for one year.

SENATOR LESNIAK: But I may have had to finance my tender offer, not through junk bonds -- or maybe through 50% junk bonds -- and it still may be beneficial to both businesses to operate in that manner, without any bust up, or with just getting rid of an inefficient operation.

MR. COE: You asked if there were examples in New Jersey of where there have been bust ups.

SENATOR LESNIAK: Yes.

MR. COE: I personally don't know of any. In fact, we have seen within New Jersey lots of attempted hostile takeovers, some accomplished, some not accomplished. None depended on the junk bond. In other words, the bill does not prevent hostile takeovers. It does prevent -- what are the legendary names? -- Carl Icahn-- It does prevent an individual who cannot-- Most companies -- most publicly owned companies, including all of the ones in the Alexander Grant Study and all the Fortune 500 headquartered in New Jersey-- They can all make, I mean--

SENATOR LESNIAK: It prevents a hostile takeover that has to be financed by incurring debt, where the payoff of that debt can be made, or should be made by a part of the assets of the acquiree. That is what it does.

MR. COE: Exactly.

SENATOR LESNIAK: In some instances, that could be the right thing to do; in other instances that you addressed, it is the absolutely wrong thing to do.

MR. COE: I don't know of any hostile merger in New Jersey that has been accomplished where anybody issued debt that was paid off through the assets of the acquired company.

SENATOR LESNIAK: Nor do you know the contrary, either.

MR. COE: I know that the subject is of enormous concern to the business community. You asked earlier, you know--

SENATOR LESNIAK: I share that concern. I think there may be ways to get at it, and this may be one of them. That is why we are here today.

SENATOR JACKMAN: May I ask you something? Bruce, I know your background, and I respect your advice. Your opinion on this bill is that it is a good bill?

MR. COE: I think it is an excellent bill, Senator.

SENATOR JACKMAN: Excellent -- that makes a lot of sense with me.

SENATOR LESNIAK: Senator DiFrancesco?

SENATOR DiFRANCESCO: I have no questions.

SENATOR JACKMAN: That's it. That's all I want to know.

SENATOR LESNIAK: Thank you, Bruce. Gene Trumble, Coalition Coordinator, Stakeholders in America.

SENATOR JACKMAN: Takeovers of what?

SENATOR LESNIAK: No, no, no, no, Stakeholders in America.

SENATOR JACKMAN: I thought you said "takeovers."

SENATOR LESNIAK: Is that porterhouse, or--

EUGENE F. TRUMBLE: Stakeholders is intended to be representative of the broad constituencies that are affected by hostile takeovers. There are stakeholders who are affected beyond simply shareholders.

SENATOR LESNIAK: Wait, let me get a few things down. First of all, do you have written testimony?

MR. TRUMBLE: I have a position statement of the organization, which I will be glad to leave with you.

SENATOR LESNIAK: Okay. You don't have extra copies now?

MR. TRUMBLE: I do not, no.

SENATOR LESNIAK: Okay. Will you please define for me who makes up Stakeholders in America?

MR. TRUMBLE: Yes. Stakeholders in America is a coalition of corporate executives and representatives of other constituencies which are affected by the abuses of hostile corporate takeovers. Now, those other constituencies include bondholders and small businesses, as well as major corporations -- small businesses which might be suppliers to major corporations which have been acquired and dismantled.

SENATOR LESNIAK: Do you have some kind of organization-- I only ask this because, quite frankly, I have never seen this organization. It has never testified before this Committee. Do you have some kind of a list of your membership so I can know who we are dealing with?

MR. TRUMBLE: Yes, I do.

SENATOR LESNIAK: And you will submit that to Mr. Davis?

MR. TRUMBLE: Yes, I will. I will recite it to you here to give you some flavor of what the representation is.

SENATOR LESNIAK: Fine. Okay, thank you.

MR. TRUMBLE: The organization was founded just six months ago.

SENATOR LESNIAK: Oh -- good reason why-- (laughter)

MR. TRUMBLE: It was formed as a result of the concern of a number of corporate executives who saw that hostile corporate takeovers carried in their wake many negatives which were not being fully understood.

The hostile takeovers are done in the name of ousting entrenched management and protecting the interest of the shareholders, both of which could be measured on an immediate short-term basis. But it was the concern of our founders that there was no consideration given to what the impact was on the other constituents, such as the employees of an organization which had been dismantled and jobs lost.

SENATOR LESNIAK: Would your organization be willing to support this bill if the bill applied to any corporation, and they would also be required to give minimum notice to employees before they shut down?

MR. TRUMBLE: May I answer that this way, with a little further elaboration, if I might, on who we are and what it is that we are doing?

The who we are: Control Data Corporation, Bill Norris, and Ray Plant, Chairman of Apache Corporation, were the two cochairmen of this organization. That is the reason we have a Midwestern base at the moment. In addition to those two companies, and those two people, we have in our membership: Avon Products of New York, Household International of Chicago, Universal Foods of Milwaukee--

SENATOR LESNIAK: When you get to a New Jersey corporation, let me know.

MR. TRUMBLE: The Hubert Corporation of Rumson, New Jersey, is a new member, and Unocal -- Union Oil of California -- is another member.

SENATOR LESNIAK: Those names are very familiar. I have been reading about them.

MR. TRUMBLE: I mention these names in particular, and there are only about 14 at this point that are actively involved in the support of the effort. We are broadening our effort to attract small businesses as well, because they are directly affected. We are hoping to attract the interest and the support of organized labor, because they have a stake in dismantled companies and the effect it has on jobs. We are hoping to get representation from communities, because they have a great deal at stake in terms of the involvement of established organizations in those communities.

Now, as I mentioned, I will leave this statement. In effect, what it does is say what we believe in. We believe in mergers and acquisitions. We are not -- on a wholesale basis

-- opposed to mergers and acquisitions. It is a legitimate, important function of American business. We do, however, object to the abuses, the most notable and the most evident of those abuses of hostile corporate takeovers, of course, in greenmail, and that has been discussed.

In the testimony that I--

SENATOR LESNIAK: Well, it has been discussed, but, in fact, it is not in this bill.

MR. TRUMBLE: I realize it is not. But, the point I am trying to make is, we have done -- in this past six months -- some perfunctory research. On the basis of a 17-case study, we have attempted to track what has happened to companies which have been under threat of hostile corporate takeover. In some cases, the threat materialized; in other cases, it did not, it was fended off.

But, two points have risen to the top in these case studies. One is that the very threat itself -- whether that threat materializes in a hostile corporate takeover or not -- is nearly as damaging as the fact itself. Secondly, State legislation can be an important deterrent--

SENATOR LESNIAK: I really don't want to discuss perfunctory research, quite frankly, because I could ask a million questions in terms of, you know, how the sample was selected, and what you define as being damaging. So, I wish you would just stick to your testimony regarding specific facts that you want to raise.

MR. TRUMBLE: All right. I would like to give you some specific facts. In the case of greenmail-- These are probably figures that you have heard before, but I would like to just highlight a few. Disney paid greenmail twice. The amount of the greenmail--

SENATOR LESNIAK: This bill doesn't apply to greenmail. We may just make it apply to it, though.

MR. TRUMBLE: My point earlier was that State legislation, in effect, can be a deterrent to the threat of a takeover. Greenmail is--

SENATOR LESNIAK: Actually, it does indirectly apply to greenmail, is what you're saying.

SENATOR JACKMAN: May I ask you something? The bottom line with me is, this bill-- Are you in favor of this bill?

MR. TRUMBLE: I am in favor of State legislation.

SENATOR JACKMAN: No, this particular bill. Are you in favor of this bill?

MR. TRUMBLE: As a non-New Jersey resident, I don't feel that I should comment on that. I am in favor of State legislation, by all means, which serves as a deterrent to hostile corporate takeovers.

SENATOR LESNIAK: Okay. Let's clear up the record. The bill, obviously, I guess, does apply to greenmail, to the extent that it discourages takeovers. What are you going to greenmail? I mean, what is going to be the value of it?

SENATOR JACKMAN: I didn't mean to be facetious when I asked the gentleman-- He doesn't live in New Jersey, number one. He represents one company down in Rumson. Are they in favor of this bill?

SENATOR LESNIAK: Is Bruce Springsteen in favor of the bill? He lives in Rumson.

UNIDENTIFIED MEMBER OF COMMITTEE: They are just a member of the organization.

MR. TRUMBLE: I am speaking for the organization, Senator, and we have not taken a position on this particular legislation.

SENATOR JACKMAN: Oh, okay, because I've got three so far. That's why I am wondering, you know.

SENATOR LESNIAK: Are you a CEO yourself, or a former--

MR. TRUMBLE: I am the Coordinator of the Stakeholders in America Coalition.

SENATOR LESNIAK: Well, you came from somewhere.

MR. TRUMBLE: I am from Minneapolis. I am the President of a public relations agency in Minneapolis representing this organization.

SENATOR JACKMAN: That's all right; that's good.

SENATOR LESNIAK: That's fine.

SENATOR JACKMAN: That's nice.

SENATOR LESNIAK: Are there any questions from the Committee members? (no response) You do have written testimony which you will submit?

MR. TRUMBLE: Yes, I do.

SENATOR LESNIAK: And you will submit your membership list to our Committee, as well?

MR. TRUMBLE: Yes, I will.

SENATOR LESNIAK: Thank you very much, Mr. Trumble.

Steve Blumenthal, Vice President, Securities Industry Association. I ought to hear from somebody from the other side.
S T E P H E N B L U M E N T H A L: Senator, I do have a written statement, which I would like to give you copies of.

Mr. Chairman, I am Steve Blumenthal. I am Vice President and Director of Regulatory Relations for the Securities Industry Association, the trade association that represents 550 of the largest stockbrokerage houses in the nation. I appreciate the opportunity to testify here today.

Brokers represent both sides -- or actually, all sides in these takeovers. We represent the offerers and help them with financing and strategy. We help the target companies, where there are investment banking clients. We help them with defensive measures, their own counterfinancing. And, brokers, themselves, are participants in this game of arbitrage, speculating on the outcome of takeovers.

The fact that we are on all sides of this issues has led us to have some concerns about the publicity that has surrounded this bill, in that it seems -- at least in the written press -- to be mostly one-sided. We have come here

today to say, it is not an apple-pie-and-mom type of issue. There is a second side, and we would like to touch on it.

S-1539 is incorrectly named the "Shareholders Protection Act." In fact, it has very little to do with shareholder protection, and would be better named the "Board of Directors Protection Act."

SENATOR LESNIAK: Well, if we change the name, would you support the bill?

MR. BLUMENTHAL: I think the bill is well-drafted to accomplish its goal, and it will bring what has been referred to as hostile tender offer activity to a complete standstill. I am in complete agreement, at least on that point, with my Rutgers Law School classmate, Bill Campbell, that this is not a five-year bill. It is a forever bill.

The issue I would like to address is one that has come up in some of the questioning; that is, the policy. I will leave the legal analyses, the constitutionality, and what have you to others. The policy changes-- It has the effect, in tender offer matters, of removing the corporate franchise -- the voting power -- from the shareholders, and putting it almost exclusively in the hands of the boards of directors. That is a practical effect.

SENATOR LESNIAK: Well, let me ask you this: If we-- I hate to interrupt your testimony, but I am going to. I did it to everybody else. If the bill were amended to require that the shareholders approve the protections under the statute, rather than the boards of directors, how would you feel then?

MR. BLUMENTHAL: I don't think it is necessary to pass legislation to do that. That was the point I was going to come to, that the protections of this bill -- if you believe the things it does are valuable and good things to do -- can already be done--

SENATOR LESNIAK: Not the five-year standstill. You couldn't adopt--

MR. BLUMENTHAL: The shareholders could amend the articles of incorporation to the effect that in a hostile situation, where the board of directors did not approve of the merger, that the corporation would be prohibited from merging with another for five years.

SENATOR LESNIAK: All right, let me think about that for a second.

MR. BLUMENTHAL: Okay. I have done that analysis on my own and, of course, somebody will probably shoot a hole in it somehow, but I don't see anything in this bill that couldn't be adopted by articles of incorporation. It was noteworthy in the testimony of the gentleman from Schering-Plough that Schering didn't feel the need of any legislation in New Jersey to adopt anti-takeover procedures in their firm.

SENATOR LESNIAK: Well, let me ask you this: If we change this bill to say if these provisions were adopted by the boards of directors, that that would not be a breach of fiduciary relationship that they had to the shareholders, how would you feel about that?

MR. BLUMENTHAL: I think that would be a better way of going than adopting this bill, yes. Of course, all of those amendments--

SENATOR LESNIAK: Wait a second. I don't know what I just said. I said something that didn't make any sense at all.

MR. BLUMENTHAL: Well, what I thought-- What I agreed with-- (laughter) What I agreed with was that if--

SENATOR LESNIAK: Sorry, it's getting late.

SENATOR JACKMAN: I'll say one thing, you must be very convincing.

SENATOR LESNIAK: And you are in total agreement with me. (laughter)

MR. BLUMENTHAL: Absolutely. I am so tired I understood it. I have been standing up.

SENATOR LESNIAK: All right, go ahead with your testimony. I'm sorry. I won't interrupt any more.

MR. BLUMENTHAL: If the bill were amended, or another bill introduced to expand the New Jersey corporation law to allow a great breadth in the shareholder-approved corporative defensive tactics, we would not be testifying against it. That is what I thought you were asking.

One of the significant points about moving the corporate franchise -- the voting power away from the shareholders -- is, who are the shareholders we are protecting in the Shareholders Protection Act? Between 60% and 70% of the New York Stock Exchange volume today is institutional. What that means is, it's pension funds, employee benefit plans, bank trusts, and what have you-- They are the large buyers and sellers of stock. When you have a takeover situation which results in shareholders getting a premium over the market price -- stocks trading at 40; somebody comes in and can't offer 40 to take the stock, he's got to offer some significantly higher price -- that is money that goes into those pension plans and into those employee profit-sharing plans. If you pass a bill which has such a detrimentally chilling effect on the making of offers -- which is what we submit S-1539 would do -- that money-- They never get a shot at that.

That is really what most of this bill comes down to, at least for us; that is, why not leave it to the investor to decide if an offer is fair? This changes the traditional way of approaching these problems. Historically, an offer was made; the board either could, or was under an obligation to advise the shareholders as to whether the board felt it was fair, but ultimately, the decision is made by the person who put his money up and bought the stock. This won't change that around.

SENATOR LESNIAK: I think I would agree with you, if our only interest was the shareholder. But, as a legislative body, we have more concerns than just the shareholder. We have public policy concerns, the community, the employees. I think the directors can fend for themselves. They will do all

right. But, we do have other concerns that are not really addressed if you just look at the issue of the shareholder getting the top price, or are they addressed?

MR. BLUMENTHAL: Certainly, there are other interests, but I submit to you that when you approach this whole subject--

SENATOR DiFRANCESCO: Well, the title is the "Shareholders Protection Act." Do you want to change the title?

SENATOR LESNIAK: Well, that is down the road.

MR. BLUMENTHAL: Ultimately, the issue you are addressing deals with corporate governance, and that takes you into other areas. I understand that, and I do hope to touch on some of those. I'll try to bring together the last of the comments I have about shareholders. You know, these hostile-- We have heard them referred to today as raiders, breakup artists, and what have you. The example that comes to mind immediately, for me, is Eastern Airlines in Florida. The group that was considering making the hostile tender offer in Eastern Airlines was the principal union that represented Eastern employees. The threat was sufficient that Frank Borman and his people felt the need to sell Eastern Airlines to a white knight.

I think it is very important when you are looking at this--

SENATOR LESNIAK: A white knight that is not too friendly to the employees.

MR. BLUMENTHAL: Well, you know, that is called "scorching the earth." That was suggested before, too. The point I was making was, you just can't look at this and say, "Well, shareholders are the only people who buy these stocks." Shareholders are pension funds; shareholders are unions; shareholders are--

SENATOR JACKMAN: But, Eastern is not a New Jersey company, so we're not worrying too much about an Eastern takeover, are we?

SENATOR LESNIAK: Well, we are concerned about that situation occurring.

MR. BLUMENTHAL: If this bill had been enacted -- okay? -- in Florida, as presumably you consider doing--

SENATOR JACKMAN: In Florida?

MR. BLUMENTHAL: Yes. If this type of legislation was in place -- okay? -- and you had a situation like--

SENATOR LESNIAK: If Eastern Airlines were incorporated in New Jersey--

SENATOR JACKMAN: But, it isn't.

SENATOR LESNIAK: Well, that's true.

SENATOR JACKMAN: I don't know. The sum total, you know, when you get down to the bottom line, is, we're talking-- We are not talking about Florida, California, or anyplace else. We are talking strictly New Jersey, right?

SENATOR LESNIAK: Okay. Hyatt--

SENATOR JACKMAN: Huh?

SENATOR LESNIAK: Hyatt Roller Bearing--

SENATOR JACKMAN: Yeah?

SENATOR LESNIAK: Their employees want to take over control of that corporation. They--

SENATOR JACKMAN: With the company's approval, I assume?

SENATOR LESNIAK: No, without the company's approval.

SENATOR DiFRANCESCO: Well, in that case they had company approval. Is that what you mean?

SENATOR LESNIAK: In that case-- That is correct.

SENATOR JACKMAN: Huh? Wait a minute.

SENATOR DiFRANCESCO: He's giving you an example -- a hypothetical--

SENATOR LESNIAK: What I am trying to say is, if they had not--

SENATOR JACKMAN: Oh. You're giving me hypothetical; I'm talking actual.

SENATOR LESNIAK: Well, we don't have a hypothetical of a bust-up takeover here in New Jersey either. I mean, we

don't have one actual case of a bust-up takeover. So, we really have to deal with hypotheticals when dealing with what type of an effect this bill is going to have in New Jersey.

SENATOR JACKMAN: But, for Hyatt employees to take over an operating company, number one, they have to come up with capital. Right?

SENATOR LESNIAK: Junk bonds.

SENATOR JACKMAN: Well, somebody's got to buy the bonds--

SENATOR LESNIAK: Right.

SENATOR JACKMAN: --in order to come up with the cash. Right? And then they have to operate that company in order to make it profitable. Right? So, I don't know too many who are operating like that.

SENATOR LESNIAK: Not too many.

SENATOR JACKMAN: No. I don't know of too many. Go ahead.

MR. BLUMENTHAL: Well, to get back, just briefly, to the shareholders, in New York State-- It has been cited a number of times that this bill, or a similar bill was passed in New York. I would like to give the Committee copies of a memorandum that was sent from the State Comptroller of New York -- Edward Regan -- to Governor Cuomo, with regard to that bill. In this statement, while he recognizes that there are undoubtedly major public policy arguments dealing with all sides of the issue, he says, and I will quote: "We believe the Common Retirement Fund" -- that is the New York State employees' retirement fund -- "has benefited from many of the activities that this bill attempts to restrict," and he includes a list of the hostile takeovers -- Conoco, Getty, Gulf Oil, Unocal, and what have you -- which were--

SENATOR LESNIAK: So, basically, he said the New York State employees' pension fund lost money, or gained money?

MR. BLUMENTHAL: Gained money.

SENATOR LESNIAK: Because of hostile takeovers that that bill was intended to prevent.

MR. BLUMENTHAL: Exactly.

SENATOR LESNIAK: The same thing could occur in New Jersey. Is that what you're saying?

MR. BLUMENTHAL: Presumably.

SENATOR LESNIAK: But, of course, New Jersey is divesting itself of most of the corporations that--

UNIDENTIFIED MEMBER OF COMMITTEE: You just mentioned.

SENATOR VAN WAGNER: Mr. Chairman, was that a long-term analysis of the effect of the purchase of those securities by Mr. Blumenthal?

SENATOR LESNIAK: Well, we'll see right now.

MR. BLUMENTHAL: The comments that were made in earlier testimony about how six years ago companies successfully fought off takeover battles and today they are trading at higher prices-- I don't know where the Dow was six years ago. I know four years ago -- in 1982 -- it was at 770; today it is kicking around 1800. I am afraid I would want to see a lot more data if I was going to accept the fact that something that is trading higher today than it was four or six years ago is proof that we took the right action.

The long-term analysis -- the idea, "Tell that shareholder who paid \$10 for his stock that this--"

SENATOR LESNIAK: You may not have the stock in the long term.

MR. BLUMENTHAL: I'm sorry?

SENATOR LESNIAK: You may not have the stock in the long term.

MR. BLUMENTHAL: You may not have--

SENATOR VAN WAGNER: Yeah, those funds trade in and out.

SENATOR LESNIAK: That's right. Well, what is the point?

MR. BLUMENTHAL: Well, the point is, he is being offered a premium, presumably, over what he paid. Now, you are going to say to him, "Don't take that now, because this company is going to be worth more in the future." That is presumably what the board will tell him. Okay? I submit to you that that is the ultimate issue here. Do you want, as the State, to step in the middle between a willing buyer and a willing seller? When the fellow says, "I don't care about the long term. In the long term, we are all dead. I want to take that money now--" You are giving the board of directors a tool that will effectively stop that offer from being made. I don't think that is an appropriate policy. That is really what it comes down to.

With regard to some of the -- not the testimony, but the points about asset stripping and research and development-- Research and development is interesting. I have the privilege of going around the country to state legislatures on these bills, and this is the first time anybody has ever made a serious issue out of research and development.

SENATOR LESNIAK: Well, it is very serious here in the State of New Jersey, because it is a major part of our economy.

MR. BLUMENTHAL: Absolutely, and I think I would like to speak to it, if I might.

SENATOR LESNIAK: They also happen to be the targets, at this particular time, of many hostile takeover attempts.

MR. BLUMENTHAL: Well, I wonder about what kind of data we have on that. A recent study by the United States Securities and Exchange Commission looked at 217 firms that were subject to takeover between 1981 and 1984. They found characteristically that these firms had very low R&D expenditures. That makes sense. What you are looking at in a takeover is a situation in which the book value of the company -- essentially, its assets, minus its liabilities -- is higher

than the trading price of the stock. So you go out and you buy-- If the stock is trading at half a dollar, you buy a dollar's worth of assets. That is what takeovers are all about.

Now, people say, "Then what happens is, that fellow comes in, and now he sells off 50% of the assets" -- or 50 cents' worth -- "and now he's got a half a dollar company that didn't cost him anything." It is a nice analysis, but it doesn't really work that way. But one thing it does clearly show you is that you are going to look for a company that has real assets, real plans, and real machinery, not research and development types of skills.

SENATOR VAN WAGNER: So he can sell those off.

MR. BLUMENTHAL: Pardon?

SENATOR VAN WAGNER: So he can sell those off.

SENATOR LESNIAK: The real assets.

MR. BLUMENTHAL: If they are not being-- Real assets, if they are not being used efficiently, or if they are not turning a profit, then you are strengthening the company by selling them off.

SENATOR VAN WAGNER: Isn't the process you describe really done by arbitrageurs -- right? -- in order to trade out the value of that company? Isn't that basically what you look at if the book value is lower? That is why it is a target, because the--

MR. BLUMENTHAL: That's why it is a target, yes.

SENATOR VAN WAGNER: Yeah.

MR. BLUMENTHAL: Yes, that is correct.

SENATOR VAN WAGNER: And the purpose of that being a target is the fact that you have something to sell, generally, to get rid of the debt that you accumulated in taking over that target.

MR. BLUMENTHAL: No. You are assuming debt financing. That is one of the-- If nothing else comes out of my testimony, let it be this: The junk bond financing issue is a moot point at this point. The Federal Reserve Board--

SENATOR VAN WAGNER: Because of the 50% margin requirement?

MR. BLUMENTHAL: Have you seen any takeovers in the last four months using junk bond financing? It has stopped it cold. It's dead; it's a moot issue. The whole point of the junk bond financing is extreme leverage, and when you say now that people are going to buy those bonds -- those savings and loans and what have you -- you've got to come up with 50% of the cost. They're not interested.

SENATOR LESNIAK: Are you saying we haven't seen any junk bond financed takeover since the Feds changed their rules?

MR. BLUMENTHAL: That is correct. That is correct. I think that is a moot issue.

SENATOR LESNIAK: Therefore, if this bill is aimed at the hostile junk bond financed type of takeover, the bill is moot.

MR. BLUMENTHAL: Well, it's unnecessary.

SENATOR LESNIAK: At least for the last four months.

MR. BLUMENTHAL: Yes. The economic incentives for junk bond financing appear to be gone.

SENATOR VAN WAGNER: Until they figure out another game.

MR. BLUMENTHAL: Until they can figure out another game. That is what markets are about.

SENATOR VAN WAGNER: He's in the game.

SENATOR LESNIAK: Yeah, but so are you.

SENATOR VAN WAGNER: That's why it's so much fun.

MR. BLUMENTHAL: There is simply no way to stop the merger game. Without going into the historical analysis, the reason you see mergers now when you didn't see them 10 years ago-- Part of that is inflation, where the value of real assets went up, and the price of the stock market was pushed down, so it created this situation.

SENATOR VAN WAGNER: It's a question of whether it is a figment of inflation or deflation. You know, you can argue on either side of that coin as far as the stock market goes.

SENATOR LESNIAK: Haven't we also just seen a decrease in the number of tender offers?

MR. BLUMENTHAL: Well, that, in part, is because stock prices are so high that, once again--

SENATOR LESNIAK: So, do we know whether it is because of the increase in the stock prices, or is it because of the change in the Feds' rules? Do you really know?

MR. BLUMENTHAL: The answer to that is "no." I know that when you talk to investment bankers and what have you, they don't seem to be doing it. If they thought they could sell it, they would sell it.

SENATOR LESNIAK: So, when the stock prices go down-- They may never go down.

MR. BLUMENTHAL: Then will we see it again? I don't know. That's the--

SENATOR LESNIAK: Then we may see junk bond financing despite the Feds' rules.

MR. BLUMENTHAL: Well, okay. You will certainly-- Presumably, when stock prices come down, you will see--

SENATOR LESNIAK: Wait, wait, wait. There is too much noise in here. (audience becomes quiet) Thank you.

MR. BLUMENTHAL: When stock prices come down, we could extrapolate and say, "Presumably there will be an increase in merger activity."

SENATOR LESNIAK: Well, we don't care about merger activity. We're talking about--

MR. BLUMENTHAL: Okay, but you don't know whether you--

SENATOR LESNIAK: --hostile junk bond financing mergers -- bust-up junk bond financing mergers.

MR. BLUMENTHAL: Well, what you are asking me to do is look into the future. That is why I can't answer it -- that I

know it will be more expensive in the future to do junk bond financing.

SENATOR LESNIAK: Because of (indiscernible).

MR. BLUMENTHAL: Exactly. If prices come down enough that the economics work out that it is liable, then it is conceivable. But there is nothing-- The final point on that is that this term "junk bond financing--" Do you mean high yield bonds? There is only something like--

SENATOR LESNIAK: High yield, high risk.

MR. BLUMENTHAL: Well, high risk--

SENATOR LESNIAK: Well, they go together, don't they?

MR. BLUMENTHAL: There is no history of default of high yield bonds any greater than the other bonds and corporate investment grade debt. Most companies in this country cannot offer investment grade fiduciary quality debt. Most companies issue what you would be characterizing as "junk bonds."

SENATOR LESNIAK: Did you say "no defaults"?

MR. BLUMENTHAL: No, that there is no history of greater defaults with high yield bonds than with corporate quality.

SENATOR LESNIAK: Do you have any comparative data regarding that?

MR. BLUMENTHAL: We can produce it for you.

SENATOR LESNIAK: Could you, please? I would be interested in seeing it.

MR. BLUMENTHAL: Absolutely. One last point about research and development-- Because in New Jersey you have companies that are world renown as research and developers-- That is what they do; that is their product. If you were -- for the sake of argument -- to make a tender offer of Johnson and Johnson, their great strength is their research and development arm. You are not going to kill the goose that lays the golden egg. So, to the extent that New Jersey is different from other states because of its concentration of research and

development resources, those are the assets people want to get, and the likelihood that those are the ones they are going to sell off is-- I submit to you that it is less likely.

Finally, New Jersey -- the last time I was in this very room -- enacted-- This body enacted -- and ultimately the law was passed -- a new securities act, in which you created a blue-ribbon panel to examine New Jersey securities laws. It seems to me this is an ideal subject for that board to review, in-depth, and, as useful as legislative hearings are, you are pressed for time, and we are pressed in our statements. I submit to you that a lot of this requires a careful and detailed analysis of economic data, antitrust implications, and the laws of other states. I wonder if this bill is not somewhat premature, in that it should be submitted to that blue-ribbon panel for its review and ultimate recommendations.

SENATOR LESNIAK: It has always been my position that the laws start and stop over here, so then we make the final determination.

MR. BLUMENTHAL: Of course.

SENATOR LESNIAK: If that commission wants to offer testimony on this bill -- just as I expect the New Jersey Corporate Law Revision Commission to offer testimony at our next public hearing -- it certainly may. It probably hasn't even been constituted yet.

MR. BLUMENTHAL: I don't believe anybody has been appointed, but it wouldn't be the first time I was wrong in that.

That is the completion of my prepared statement. If you have any questions, I would be happy to answer them.

SENATOR LESNIAK: Senator DiFrancesco?

SENATOR DiFRANCESCO: No questions.

SENATOR LESNIAK: Okay. Thank you very much. I think we ought to ask the Director of the State Pension Fund to appear at our next hearing, with regard to what type of impact,

if any, has been seen on the pension fund of the State of New Jersey based on hostile takeover or tender offers in the past.

SENATOR DiFRANCESCO: When you make that request, would you try-- I mean, I don't even know if the question is a dumb question or not, but could he separate the normal market fluctuations from the hostile part of it, you know, because everything has gone up dramatically?

SENATOR LESNIAK: Yeah, you're right. I certainly think that can be done.

SENATOR DiFRANCESCO: We can assess it that way; then we will go-- For all I know, this \$12 million is--

SENATOR LESNIAK: You know, a tender offer has a date of announcement, and you can tell--

SENATOR DiFRANCESCO: What happened.

SENATOR LESNIAK: --what happened after that.

SENATOR DiFRANCESCO: If those numbers are correct, that's pretty substantial.

SENATOR LESNIAK: It would be interesting to know. We all know that that wouldn't be the only reason for being in favor or against this bill, but it is just a fact to be considered.

Archer Cole, New Jersey Industrial Union Council?

A R C H E R C O L E: Senator Lesniak, I am not here as an expert on junk bonds or hostile takeovers or corporate finance. I am here representing a couple a hundred thousand industrial workers, who are very much concerned about the future of their jobs, especially in this environment we are facing today, where industry is leaving New Jersey. We hear so much about job creation, but there is very little said about job retention. We are losing our manufacturing base, as is the United States. The figures bear that out, where we have lost 350,000 manufacturing jobs in New Jersey in the past 10 years. In the United States, we have lost 11,500,000 since 1979.

Our concern in this question of takeovers is that in the experience of labor, with corporations getting bigger and mergers taking place, we are creating a monopoly here of corporate power that exceeds far beyond the public good. Our concern addresses that.

As I understand this bill, it will slow up, somehow, the takeover of a corporation by minority groups, the ones which seize a company for whatever profit motives they have. In classic cases, they get somebody to float bonds; they raise the money; they pay off at very high rates; and, to justify the payment of those high rates, they have to divest much of the corporate structure. In doing so, whole communities, and tens of thousands of workers are victimized by this trend.

SENATOR LESNIAK: Have we seen that happen in the State of New Jersey?

MR. COLE: Well, we see it; it's like Chris Jackman said. Did it take place in New Jersey? It hasn't taken place, but--

SENATOR LESNIAK: Have we seen plant closings in the State of New Jersey, and job losses in the State of New Jersey?

MR. COLE: My God, I have spent the last four years describing that to anybody who would listen.

SENATOR LESNIAK: Were they the result of hostile takeovers?

MR. COLE: They were the result, oftentimes, of mergers. Okay? So, when I address--

SENATOR LESNIAK: Voluntary mergers?

MR. COLE: Voluntary or otherwise. How the heat is put on is another story. Now, the gentleman who preceded me talked about Eastern Airlines. If Chris were here, I would tell him, because we just filed a petition to represent 11,000 Eastern employees, with IUE being the collective bargaining agency. It would affect almost 2000 Jersey employees -- a takeover -- because we have 1200 people working in Woodbridge.

SENATOR LESNIAK: This bill doesn't apply to Eastern Airlines.

MR. COLE: No, I'm saying if Eastern Airlines were in New Jersey -- as Chris said. Well, other corporations can follow suit.

SENATOR LESNIAK: Let's talk about Eastern Airlines if they had been in New Jersey. If the employees wanted to take it over, they would equally have been prohibited by this bill. If the employees wanted to do it by using that financing--

MR. COLE: It's a misconception. The employees were not interested in taking it over. It was only after the company said, "We may go bankrupt, because the banks are going to foreclose on us unless we get a \$350 million wage cut from the people." Only then did one of the unions say, "Well, let's look into us buying it out, because it couldn't be worse than it is."

So, when the merger took place with Frank Lorenzo of Texas Air, it came under the pressure of a near strike. Once they heard about having a strike, the people didn't want it. Finally, when one of the unions refused absolutely to have its wages cut -- and it had a two-year contract -- they said, "Okay, then we will sell to Lorenzo," who is supposed to be a union buster. That is how it took place, at three o'clock in the morning, four Sundays ago, February 28. That is the story of Eastern Airlines. There was no real attempt on the part of the union or the people to take it over.

SENATOR LESNIAK: That was a voluntary merger.

MR. COLE: We don't know yet. We don't know yet. It was done under such peculiar circumstances, with the union about to go on strike, and with the union asking Frank Borman to resign and maybe they would consider further concessions. Frank Borman said, at four o'clock in the morning, "Rather than submit to you, we are going to sell to Frank Lorenzo of Texas Air. We will accept that."

SENATOR LESNIAK: Better that Eastern Airlines had been subject to a hostile takeover by American Airlines.

MR. COLE: Well, I am not going to comment about any takeovers.

SENATOR LESNIAK: The point I am trying to make is that the situation you are describing applied to a voluntary merger, something that this bill does not address.

MR. COLE: I know. The point I am making is, voluntary or involuntary, people and communities are losing out as you put monopoly power into fewer and fewer corporations. So, if this bill addresses that problem even partially, we should be for it. But, as you asked before, "How does it differ from the New York bill?"

Let me show you how significantly it does, and why, if we are to support this type of legislation, we need the type of bill and disclosure that was required in the New York bill. This hasn't come out yet. First of all, AFL-CIO policy, issued on May 8, 1985: "No matter which side wins control in a takeover battle, workers, customers, and the community in which the company is located are the likely ultimate losers. The company normally winds up saddled with added debt, or otherwise weakened. Workers too often finance the cost of the raid by job losses or pay cuts." Now, that is the other side of the coin. People come along, they take over, and they say, "Well, if we are going to survive, we have to cut your wages." Eastern was 20%, plus a whole lot of fringe benefits and work rule changes. And, consumers end up paying higher prices for the company's product.

"If the costs cannot be passed off to others, productive assets are liquidated; again, to the detriment of workers and their communities. Indeed, such bust-up financing is common in hostile takeovers." So, the AFL-CIO position nationally, after studying this, is opposition to these types of takeovers.

Now, the bill in New York passed. The bill restricts such damaging financial maneuvers by requiring more detailed information to be disclosed in the offerer's registration statement. So, there is a portion of the law in New York which requires a registration statement of intent--

SENATOR LESNIAK: My guess as to the reason why that wasn't included is because that probably, in no way, is going to withstand constitutional preemption arguments. But, I don't want to--

MR. COLE: Let me finish.

SENATOR LESNIAK: Okay.

MR. COLE: (continuing his previous statement) --including the expected effects of the takeover upon the target company's employees, customers, suppliers, and communities. It requires the disclosure of plans for any plant or facility relocation. Will they pick up and move elsewhere? Will they consolidate in other states, the way Corrugated is doing, the way Western Electric did when it moved? It consolidated outside of New Jersey. It also requires the disclosure of provisions for pension, profit sharing, or savings plans. Moreover, the offerer would need to disclose any violations of the Federal National Labor Relations Act, the Occupation, Safety, and Health Act, the Fair Labor Standards Act, or the Employee Retirement and Income Security Acts. Finally, it requires adjudication or settlement within five years of the commencement of the takeover bid.

So, the burden here -- in any of these takeovers -- is for the company which is taking over to disclose its intention of what is going to happen to the people who work there, what is going to happen to the community involved, and what is going to happen to the consumer in the process. These are-- I was glad to hear you say it before. This shouldn't only be the Shareholders Protection Act; this should be the "Shareholders, Workers, and Communities Protection Act."

If we are going to erect some control over hostile takeovers, we should see the whole picture. I feel that as we get into these hostile takeovers-- The fact that we can't show any in New Jersey doesn't mean that they won't be around the corner tomorrow. We don't know. We had a takeover of Westinghouse plants by North American Philips, which is indirectly owned by a multi-national corporation in Holland. We immediately lost 400 jobs. Now, that wasn't a hostile takeover, but what is the difference? The effect is the same. You're bringing two different powers together, and their interest is not necessarily the continuation of the corporation, but the profitability of those who undertake the venture.

SENATOR LESNIAK: There are also instances of takeovers, both hostile and voluntary, where the corporation is strengthened, where business is expanded.

MR. COLE: I would like someone to tell me where there has been such a takeover where we have seen additional people employed, where we have seen that--

SENATOR LESNIAK: I think GAF is probably an example of that. That wasn't a hostile situation.

MR. COLE: Very bad shape-- It has been in very bad shape. I remember GAF--

SENATOR LESNIAK: They were in worse.

MR. COLE: Yeah, all right. When I was a kid in Linden -- growing up in Linden -- one of the large employers there slowly deteriorated. Now it wants to take over another larger corporation, which is another phenomenon of the hostile takeover, that a small company, by--

SENATOR LESNIAK: Isn't that great, though?

MR. COLE: No, it's not great.

SENATOR LESNIAK: It's not great?

MR. COLE: It's not great, because-- See, the operation of the corporation is not the intent necessarily. it

is to make a killing. When you are making a killing, you are not interested in people, communities, and so on. But, I would like somebody -- maybe you, Ray -- to tell me where a company took over, merged with another one, where employment and plant facility was expanded, in New Jersey or any other manufacturing state.

SENATOR LESNIAK: I will.

MR. COLE: I wish you would, because history shows otherwise. I have seen a continuing shutdown of manufacturing enterprises. We need all kinds of protection in this law. There should be true disclosure of what the intention of that corporation -- that takeover bid -- will mean for people, for jobs, for the community, for the State. We just can't afford to lose any more corporations, employers, or employment opportunities.

SENATOR LESNIAK: Hasn't General Motors grown to a great extent by takeovers in the past? I mean, I'm talking about a way long time ago.

MR. COLE: Well, if you want to look at GM, I think they have about 50,000 to 60,000 less people making cars today, as they buy interest in Japanese corporations and all these different companies. I don't know that GM is particularly anxious to stay in the automobile manufacturing business on the scale that they once had. Maybe the sale of cars. You saw the Singer Company, you know, the negotiations I was involved with there to save that company. When we came into the negotiations to try to save the corporation, the company had a table as long as that (indicating length) and another one here, and they had 10 sewing machines, the same models. They said to the people who worked those machines -- people from Elizabeth -- "Identify those that were made in Elizabeth and those that were made in Taiwan." These craftsmen couldn't do it. They said the one made in Taiwan cost them \$160, and the one made in Elizabeth cost them \$250 to produce. That company is now going out of the sewing machine business completely.

These corporations-- Because they have a name that is identified with a product doesn't mean that they are anxious to make it here. Sell it here, yes, but they are willing to have it manufactured anyplace in the world, rather than in the United States. This is part of that. These are huge corporations. They have multi-national facilities to produce anywhere. We think that by effecting these takeovers -- mergers and hostile takeovers -- that we are grandizing this whole procedure -- you know, monopolizing. If they ever control, God knows what prices will be like.

SENATOR LESNIAK: So, you think this bill should be amended to also include voluntary takeovers?

MR. COLE: I'm saying, while you are looking at it, you should look at the effects of all mergers. If you start here, fine; hostile takeovers are a real threat now. But, there should be disclosure of the company's intention as to its continuing operation in our State, the employment of people, the effect on the community, and the various other laws it should be adhering to in merging.

SENATOR LESNIAK: We will do that. You are also against voluntary takeovers -- voluntary mergers -- non-hostile mergers?

MR. COLE: Well, my union deals with General Electric and RCA. Two months ago, we were all startled. We had just signed a collective bargaining agreement with GE and RCA. The companies never whispered that they were getting together -- these two huge corporations. We were asked by the press to react to the merger. We said, "Our concern is that in taking over RCA, GE does not shut down facilities, because now it is one ownership. And, if you are making a similar product, one of the places has to go." I think you will find that RCA is the largest manufacturing enterprise in the State of New Jersey. It employs more people than any other single corporation -- manufacturing corporation. Okay? We are

terribly concerned about what that merger-- Now, it hasn't been approved yet. There may be monopoly problems with it as the Department of Justice looks at it.

We are very much concerned, because the bottom line to us is, does it do good for the people involved, or does it just help the financial future of the corporation, which is not identical with the future of its employees? That is our problem.

I would like to say a word with regard to what the previous speaker said about the Federal Reserve -- the 50% requirement. That is being fought now by the Reagan Administration. Okay? That doesn't mean this is forever. Volker may go. Reagan appointees may outvote the people who installed this. So, we are not on firm ground yet. I wouldn't take that as gospel, you know, that this is going to stop all hostile takeovers. We may very well need this bill, and other protections that your Committee ought to look at.

SENATOR LESNIAK: Any questions? (no response) Thank you, Archer.

Robert McCaffrey, Chairman and CEO of Bard?

R O B E R T H. M c C A F F R E Y: Mr. Chairman, we are a New Jersey corporation located in Murray Hill.

SENATOR DiFRANCESCO: That is part of my district, in case you don't know where Murray Hill is.

SENATOR LESNIAK: Is that why he's here?

SENATOR DiFRANCESCO: No.

SENATOR LESNIAK: Is that in Union County?

SENATOR DiFRANCESCO: You don't know where Murray Hill is?

SENATOR LESNIAK: Murray Hill is not a municipality, per se. Is that correct?

SENATOR DiFRANCESCO: It borders more than one municipality. It's like--

MR. McCAFFREY: We are in New Providence. Bell Labs, I think, is in Berkeley Heights.

SENATOR DiFRANCESCO: New Providence, Berkeley Heights-- It depends on the mailing address, right?

SENATOR LESNIAK: It is impossible to get there from Elizabeth.

SENATOR DiFRANCESCO: Especially now with Route 78.

MR. McCAFFREY: I am not going to take very much time. I don't have a prepared statement. I have a copy of a letter I have written, which I will submit for the record. I just want to say that we very much support this bill. It seems to me that all of the details have been covered on the legal side. We think it is good for New Jersey corporations, and it is very good for the overall business atmosphere in New Jersey.

So, unless there are questions, I will just submit my letter.

SENATOR LESNIAK: Are there any questions? (no response) Okay, thank you very much.

MR. McCAFFREY: Thank you.

SENATOR LESNIAK: Roy Weber, Becton Dickinson and Company?

R O Y W E B E R: Thank you for the opportunity to present my views, and the views of my corporation to you.

My name is Roy Weber, Associate General Counsel of Becton Dickinson and Company. I am accompanied here today by James R. Tobin, Director of Public Affairs of Becton Dickinson.

I appear in support of the bill known as the New Jersey "Shareholders Protection Act," Senate Bill 1539, on behalf of my company. Becton Dickinson has been incorporated and headquartered in New Jersey since 1906, and employs over 2200 people in six locations in the State.

Becton Dickinson, like most other public companies in America, is concerned with the rash of abusive bust-up takeovers that have been occurring. We are concerned that these bust-up takeover attempts are not directed, as some editorial writers have suggested, against poorly managed

companies that have only their own management to blame for their demise, but rather against companies that have been well-managed and have real value, even if that value is not then recognized by the stock market. The fear of being raided increases pressure on management in publicly traded companies to manage for the short run, something all of us agree is not good for the companies involved or for the American economy.

Becton Dickinson management has decided to risk managing for the long-term best interests of its shareholders, and hopes that the stock market recognizes this. Fortunately, this has been the case and our stock has been at its historic high. Other companies, though having similar intrinsic values, are less fortunate and their stock is significantly undervalued. They are the prey of a few financial manipulators, who, though they wrap themselves in the banner of champions of the free market, are really out to put their quite visible hands on enormous wealth without regard for what is best for the country, our State, or the employees and others who depend on our businesses. In New Jersey, home of so many pharmaceutical and health care companies, it would be especially unfortunate to have these companies fall into the hands of people whose main goal is to acquire companies through junk bond financing and make a quick profit by dismembering them.

Becton Dickinson also comes here as a good and long-term citizen of the State of New Jersey who is concerned about its economic well-being. We do not believe it is in the State's interest to have outsiders come in and buy New Jersey's strongest companies and bust them up, oftentimes transferring tax revenues and jobs to the Sunbelt. I daresay that no one would argue that the economy in New Jersey would be better if such companies as Becton Dickinson, Johnson and Johnson, Schering-Plough, Merck, and others were purchased by bust-up artists solely interested in making a quick and often

exorbitant profit through selling the various parts of these companies. These companies have had a long-time commitment to the State of New Jersey and the communities in which they are located. Removing them would make New Jersey a poorer place to live.

As a representative of a company that has a long history of contributing to the welfare of the communities in which it is located in New Jersey, and to other State activities, we ask that the Legislature give its corporations the protection that would help them to continue to repay New Jersey for the hospitality it has extended.

Thank you.

SENATOR LESNIAK: How long are you going to guarantee that Becton Dickinson stays in New Jersey and continues to employ the number of employees that it employs right now?

MR. WEBER: Well, I know that we have just moved into a new large corporate headquarters in Franklin Lakes, New Jersey, which will employ 640 people presently located in the State. We have approval and plans to triple that facility. When I started with the company 13 years ago, they told me they were looking for a corporate headquarters that could be located anywhere in the Western Hemisphere, as long as they could commute to it from northern Bergen County. (laughter) And I think that is still true. We are a New Jersey company. I have never heard any idea of moving outside the State. We have made enormous financial commitments in this State.

SENATOR DiFRANCESCO: Do you still live in northern Bergen County?

MR. WEBER: Yes.

SENATOR LESNIAK: Your corporation couldn't make any guarantees to the State of New Jersey to that effect, could it?

J A M E S R. T O B I N: When you consider, Senator, the commitment that we have made financially-- That is as strong as any commitment that you could make to a legislative body.

SENATOR LESNIAK: The point I am trying to make is, I don't see any specific facts relating to corporations -- outsiders -- coming into New Jersey, busting them up, and moving to the Sunbelt. That seemed to be the sum total of your testimony.

MR. WEBER: Well, I think, Senator, and Becton Dickinson has been headquartered here for 80 years-- We have most of our management headquartered here.

SENATOR LESNIAK: That was a very unfair question; a very unfair question. However, I don't see any factual basis for your testimony with reference to outsiders coming into New Jersey, busting up New Jersey corporations, and moving to the Sunbelt. That is the only point I was trying to make.

MR. TOBIN: I think, Senator, we have had repeated testimony that hostile, bust-up takeovers do not exist here today, but I think that the threat that is posed by that, is a threat to take companies -- take the pieces of them that now have synergistic benefits, separate them out, and have them done wherever the parent company which does that bust-up chooses to have them done, whether it be selling them off or not. That is the point of it.

SENATOR LESNIAK: Would you object to an amendment to the bill that would give the authority to the shareholders as to opting into the protection of this act?

MR. WEBER: With all due respect, Senator, that is like saying, would you object to the voters having referendum on details that normally only you and the Senate--

SENATOR LESNIAK: I am asked that question, and I voted on it last session. I voted in the affirmative. Now, you can answer my question. (laughter)

MR. WEBER: Okay. I think that these issues are best--

SENATOR LESNIAK: That is not to say that I might not have changed my mind.

MR. WEBER: Right. I think these issues are best resolved by people who are expert. Becton Dickinson, like most other companies, has outside directors. I think there are only two members of management on our Board of Directors. The other nine members are outsiders. I think those people would be best suited to vote on what is incredibly complex legislation -- a complex bill. I don't see how you can ask shareholders to understand this bill.

SENATOR LESNIAK: We ask them to understand fair price amendments. Do you have fair price protection in your bylaws?

MR. WEBER: Yes.

SENATOR LESNIAK: Your corporate charter?

MR. WEBER: Yes.

SENATOR LESNIAK: You asked them to understand that, did you not?

MR. WEBER: Yes.

SENATOR LESNIAK: They understood it. Did they vote for it or against it? If they voted for it, they understood it; if they voted against it, they didn't.

MR. WEBER: They voted for it.

SENATOR LESNIAK: I don't think that is impossible to do. If they can understand that, they can understand something like this -- maybe even better than this Committee.

MR. WEBER: Well, I would have to defer to a corporate lawyer as to whether or not this would even be an appropriate subject for a charter amendment, as we suggested earlier.

SENATOR LESNIAK: Would you do that, because the Committee is certainly looking at that?

MR. WEBER: Surely.

SENATOR LESNIAK: Are there any questions? (no response) Thank you very much.

Is there anyone else here to testify? (negative response) We will have one other hearing in April. The bill will be listed in May for a vote, in one form or another.

(HEARING CONCLUDED)

APPENDIX

DILLON, BITAR & LUTHER
COUNSELLORS AT LAW

53 MAPLE AVENUE
P. O. BOX 398
MORRISTOWN, N. J. 07960

(201) 539-3100

SIDNEY G. DILLON
THOMAS J. BITAR
HENRY N. LUTHER, III
RICHARD KAHN
BARRY M. JOHNSTON
GARTH F. WEBER
WILLIAM C. DODD
THOMAS C.C. HUMICK
WILLIAM F. CAMPBELL, III
MYLES C. MORRISON, III
KENNETH C. SCHNEIER
MARY A. POWERS
MARYANN L. NERGAARD
MICHAEL L. RICH
LAUREN V. KESSLER

LONG VALLEY OFFICE
P. O. BOX 407
LONG VALLEY, N. J. 07853
(201) 876-4408

TELECOPIER (201) 292-2960

WORRALL F. MOUNTAIN
WILLIAM E. BARDUSCH, JR.
OF COUNSEL

April 24, 1986

Raymond Lesniak, Chairman
of Senate, Labor, Industry &
Professions Committee
State House
Trenton, NJ 08625

Re: Senate Bill No. 1539 -
The N.J. Shareholders Protection Act

Dear Senator Lesniak:

I am writing to summarize and expand upon the oral testimony which I gave at a hearing before your committee on March 24, 1986.

You had asked at the hearing for a summary of my background:

A graduate of Rutgers Law School, Newark (where I was an officer of Law Review), I also hold an M.B.A. from Rutgers Graduate School of Management and an L.L.M. (in Corporation Law) from New York University. For the last five years I have taught Securities Regulation and most recently Business Associations at Seton Hall Law School where I am an Adjunct Professor. For the past eleven years I have been engaged in the private practice of law in Morristown in the area of Corporate and Securities Law, principally representing small issuers. I had the honor to serve as the law secretary for Judge Mountain of the New Jersey Supreme Court in 1974-75. For the last several years I have served as Consultant to the State Corporate Law Revision Commission which

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has issued a report which will soon be considered by your Committee. This report proposes a substantial revision to the New Jersey Business Corporations Act (although this proposed revision does not deal with the subject matter of Senate Bill 1539). I am also one of the original members of the Securities Committee of the Corporate and Business Section of the State Bar Association.

I admit to having a "hostile" attitude toward takeovers. Takeovers have succeeded, in a few instances, in removing inefficient management and permitted business reorganizations to proceed over the objection of entrenched management. And the current round of so-called "bust-up" takeover bids at least does have an economic basis. Nevertheless, on balance, the social costs of takeovers exceed their benefits. Takeover bids create an enormous waste of social resources both in the battle process as well as in the process of the preparation for battle. Indeed, that the Chairman of Schering Plough should be diverted from his business responsibilities is an example of these concerns. One feels that there should be a reexamination at the national level of public policy towards takeover bids, but the present administration appears to have no such inclination. One must take national policy as one finds it.

The enactment of legislation which will almost inevitably be found to be preempted by the Williams Act or in violation of the Commerce Clause does not constitute effective legislation. The Commerce Clause of the United States Constitution prohibits the "direct" regulation of interstate commerce and also the placing of any "undue burden" upon interstate commerce. The Supremacy Clause of the United States Constitution invalidates state laws which "conflict with" or "frustrate the purposes of" a federal enactment, here, the Williams Act.

Senate Bill No. 1539 is limited in scope. It applies only to "reporting companies" as defined by the Securities and Exchange Act of 1934. The reporting companies must be incorporated under New Jersey law (i.e., "domestic") and have (a)

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executive headquarters and (b) "significant business operations"¹ located in New Jersey (i.e., "resident")². Anyone directly or indirectly acquiring 10% or more of the voting power of such an entity is defined as an "interested stockholder." An "interested stockholder" is prohibited from entering into a "business combination" with the resident, domestic reporting company for five years. A "business combination" is broadly defined to include mergers, sales of substantial assets, issuances of substantial stock, liquidations, reclassifications, and the receipt of disproportionate benefits including loans, guarantees, pledges, or utilization of tax credits. After five (5) years, and forever after, an interested stockholder business combination is prohibited unless two-thirds of the disinterested stockholders approve the transaction or an unduly complex "fair price" formula is complied with. The bill contains an "opt-out" provision which would allow the Board of Directors, within 45 days of enactment, to adopt a by-law provision providing that the company is not to be subject to this rule. The rule would not apply to transactions without persons who are already interested stockholders.

This legislative pattern does not, on its face, out-law tender offers. Indeed, one can conceive of a case where a business was being so terribly mismanaged that the transaction costs of a tender offer would be justified merely by the replacement of incompetent management. But, the usual purpose of a tender offer is to reorganize the target. This is almost always achieved after a second step, interested party merger in which

¹"Significant business operations" is an unfortunate usage. Neither target nor tender offerer will know in advance whether any particular amount of business operations would be "significant", e.g. number of employees, percentage of employees, dollar amount of assets, percentage of assets. Even if the test were more precisely defined, tender offerers, would not likely have access to the information necessary to apply the test.

²The term "resident domestic corporation" omits a further limitation contained in the New York law that 10% of the shareholders be based in the State, a fact not easily determinable by either tender offerers or the target.

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the unacquired interests of the target are cashed out. The second step merger is such a usual incident of a tender offer that the SEC deems it not to be a "going private" transaction (provided the second step price is equal to the tender offer price). The present bill absolutely forbids any second step merger even if at a fair price and even if there is no "bust-up" intention. Thus, except for a raider is interested in nothing more than taking control, replacing management, sitting back as an investor, and putting up with all the problems associated with having a hostile minority interest in a subsidiary corporation, no one is likely to initiate a tender offer after this bill is passed (were it constitutional).

Both the purpose and effect of this legislation is to prohibit hostile takeover bids to thereby to protect management. While this may be a worthy object of legislation, it does, in my judgment, "frustrate the purpose" of the Williams Act which was enacted to regulate tender offers in an "evenhanded" manner for the benefit of the shareholders. Moreover, as it has the effect of regulating the purchase and sale of securities in other states and is justified only by the purpose of protecting New Jersey management, it is, in my judgment, an "undue burden" on interstate commerce. Thus, the present bill would be found unconstitutional in short order and be no more effective than New Jersey's existing, but unconstitutional, state takeover statute.

This is not to say that there are not some constitutionally permissible regulation which would have the effect the reduction of takeover activity. With minor amendments to the present bill, your Committee could refashion it such that its principal object would be directed at the prohibition of so-called "two-tier" tender offers and "partial tender offers." The "two-tier" tender offer is particularly obnoxious as in the first "tier" in an offer made of a large amount of cash per share in order to acquire control. In the second "tier", a merger is carried out at a lower per share price which is typically paid with debentures and preferred stock. Such an offer is quite coercive as failure to tender in the first tier results in a stockholder only receiving the lower, second tier payment; i.e., receiving no part of the "control premium." The "partial tender offer" presents some of the same problems as control is acquired without the control premium being distributed over all of the

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stock (as would occur, for example, a current traditional merger).

A second step or "second tier" merger, after a takeover bid, is one example of an "interested party transaction." There is, at present, a serious problem in corporate law concerning interested party transactions, whether or not arising from tender offers. The situation in Delaware is particularly troublesome. As the result of a series of Delaware decisions, if an interested party gives full disclosure, the only remedy available to a stockholder an unfair price in an interested party cashout merger at an unfair price, is appraisal. As most corporate attorneys are aware, procedural obstacles to and the cost of the appraisal remedy makes it nearly useless. What remedies exist in New Jersey at the present time is unclear. A good rule of corporate law would be created by merging Sections 3 and 4 of the present Bill such that a business combination would be prohibited unless it is approved, after full disclosure, by a majority of the disinterested shareholders or unless the transaction is at a fair price.³

There is no particular reason why this suggested rule should be limited to publicly held companies or why such a rule should be prospective in operation only (as is the present Bill). Indeed, interested party transactions may have the greatest adverse effect upon a shareholder in the context of a closely held corporation.

Moreover, it is a strategic mistake to limit the operation of the Bill to "resident" domestic corporations. The "resident" limitation is a red flag signaling a legislative purpose to protect a certain class of New Jersey corporations from the operation of an otherwise controlling national policy. Indeed, if the object of the Bill is to protect corporations

³ The "fair price" provisions contained in the Bill are inordinately complex. It would be enough to say "fair price" with a further statement that the highest price paid by interested party within a 2 year period for the stock would be presumptively fair.

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based in New Jersey, the limitation to "domestic", that is to say, corporations incorporated under New Jersey law, is an arbitrary one which is not particularly related to the legislative object.

It is my judgment that under the Commerce Clause this legislation is more likely to be held constitutional if it were to apply to all "domestic" corporations, regardless of "residence." It is a long-standing and quite well established principal that states have the right and power to determine rules for the governance of the internal affairs of corporations incorporated under their laws. Thus, rather than appearing (and being) parochial legal, the Bill, as revised, would be a traditional exercise of state power. Moreover, as it is a well regarded and oft expressed policy of this state to encourage the incorporation in New Jersey of multi-state businesses, thus, this "expansion" in the bill's coverage could hardly be said to be against New Jersey policy. The Pennsylvania Shareholder Protection Act, for example, covers all Pennsylvania corporations, "resident" or not.

The one thought I would like to leave with the Committee is this--that the extent to which legislation develops sound rules for corporate governance generally applicable to public and privately held corporations and not specifically tailored to defeat takeover bids, the greater the likelihood that legislation will be held constitutional under federal law either as an undue burden on interstate commerce or as a frustration of the purposes of the Williams Act. To the extent to which the legislation is perceived as parochial protection of state interests at the expense of the interests other states or the national legislative policy it is more likely to be held unconstitutional.

One final comment, there is no provision in the Bill to outlaw "greenmail." Greenmail is the process by which a person acquires a percentage of a company's common stock, a "stake", and then offers to resell the stake to the company at a premium. The "Greenmailer" implies (or states) that failure to repurchase will result in a takeover bid. Management is often agreeable as it is corporate assets which are being used to reacquire the stock and the only parties adversely effected are shareholders. The New York statute now has anti-greenmail provisions. Our law should prohibit any repurchases by a corporation of its stock except at

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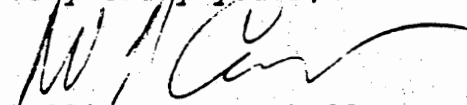
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a fair market price except as approved by a vote of the disinterested majority of shareholders.

In my judgment, the suggested reformulation of the bill would result in legislation which would prohibit greenmail, prohibit two-tier tender offers and substantially discourage partial tender offers. The net effect would be to reduce tender offers for New Jersey corporations by the development of sound and generally applicable corporate principles which are likely to be sustained as regulations of the internal affairs of New Jersey corporations. This, in my judgment, is the most that can be accomplished to discourage tender offer activity.

If I can be of any assistance to you, other members of your committee or your staff, please feel free to call upon me.

Very truly yours,



William F. Campbell, III

WFC/gk

cc: John J. Degnan, Esq.
Mr. Steven A. Blumenthal



New Jersey
Business & Industry
Association

P.O. Box 230
102 West State Street
Trenton, New Jersey 08602
609-393-7707

STATEMENT
OF THE
NEW JERSEY BUSINESS AND INDUSTRY ASSOCIATION
BEFORE THE
SENATE LABOR, INDUSTRY & PROFESSIONS COMMITTEE
ON
S-1539
THE NEW JERSEY SHAREHOLDERS PROTECTION ACT

March 24, 1986

Shareholder Protection Act

Good afternoon Mr. Chairman and members of the Committee. My name is Bruce Coe, and I am president of the New Jersey Business and Industry Association. The Association has about 11,000 members statewide. The overwhelming majority of our members consists of small, privately held corporations, but a significant number of our members are large publicly traded corporations with both corporate headquarters and major production facilities located in New Jersey. It is on behalf of these members that I appear before you to urge the Committee to take favorable action on S-1539, The New Jersey Shareholder Protection Act.

I would like to compliment Senator Van Wagner on his concern about the effects of hostile "bust-up" mergers on both New Jersey's communities, workers, and shareholders. He has pursued this interest through two legislative sessions, most recently offering a very much improved bill that I would now like to turn my attention to.

Volume and Types of Mergers

The New York Times reports that, in 1984, there were 2,543 mergers completed. The total volume of money in these deals was in excess of \$122 billion. 1984 was the record year for mergers -- but that record was smashed when the 1985 statistics became available. Mergers exceeded 3,000 in 1985 with just about \$180 billion changing hands. Mergers represent significant economic activity and affect the lives of the shareholders, workers, and even the communities involved.

There are a wide variety of financial techniques used to bring about a merger but there are really only two types of mergers: friendly and hostile. Since friendly mergers are not affected by this bill they won't be considered further. Hostile mergers can be further subdivided into two classes. The first class encompasses hostile mergers that are well financed, where the object is to acquire a company and run it profitably. The bill before you really does not affect this type of merger because the five year limitation on business combinations won't bother an acquirer who wants to run, rather than break up and sell off, the company.

The other class of hostile takeovers is referred to as the "bust-up takeover." This class is distinguished by the raider's use of the acquired company's assets to provide some or all the debt service on the bonds used to acquire the company. This is the only class of takeover that this bill addresses and makes difficult. This is the only class of takeover that has negative effects for stockholders, workers and communities. A hostile bust-up takeover offers little to anyone except quick profits for the raider.

Requirements of the Bill

This bill requires, by implication rather than by specific provision, a raider with a 10% ownership to negotiate with the target's board of directors and come to some agreement. If no agreement can be reached the raider has two choices. First, he can wait five years and seek 2/3 shareholder approval. Or he can continue to purchase shares under a specified fair pricing formula with the provision that no matter what proportion of shares are acquired, the target company cannot be merged with any company affiliated with the raider for a five year period.

In any event, the sole function of the 5 year wait is to ensure that the raider has adequate finance independent of the assets of the target company. Without independent finance, the raider will "bust-up" the target to cover his debt service!

Narrow Focus and Options

In addition to affecting only hostile bust-up takeovers this bill has very narrow coverage. To trigger its provisions the target has to have all three specified characteristics. First, it has to be incorporated in New Jersey. Second, it also has to have its corporate headquarters in New Jersey. Third, it also has to have a significant production facility in New Jersey. An additional limitation of this bill is that any new corporation can opt out of the provisions of this bill and any existing corporation can opt out within 45 days of the effective date of this act. Any company remains free to place even harsher provisions in its bylaws or amended certificate of incorporation.

The coverage of this act is limited to a specific set of New Jersey companies and to circumstances that are particularly harmful to New Jersey institutions.

Other Advantages

This is a good bill because it simultaneously allows for changes in corporate ownership and/or management without subjecting the employees or the community to disruptive change that has negative implications. By providing a "fair pricing" formula for share purchases, after a 10% equity position has been achieved, this bill would end the unfair effects of two-tier tender offers. Under a two-tier tender offer, shareholders rush to tender their shares rather than have to tender them at the end of the offer. This does not lead to a

thoughtful analysis by shareholders. This bill, by providing for "fair" pricing, allows shareholders to consider the sale fully and without undue pressure.

It is for these reasons that the New Jersey Business and Industry Association urges this Committee to take positive action on this bill.



SECURITIES INDUSTRY ASSOCIATION

1111 Nineteenth Street, N. W., Washington, D. C. 20036 • (202) 296-9410

TESTIMONY OF THE SECURITIES INDUSTRY ASSOCIATION ON NEW JERSEY SENATE BILL S-1539 MARCH 24, 1986

Good afternoon. I am Stephen Blumenthal, Vice President and Director of Regulatory Relations for the Security Industry Association (SIA) in Washington D.C. We appreciate the opportunity to testify in opposition to S-1539.

The SIA is the trade association representing 550 of the largest securities brokers in the nation. Unlike many issues, the securities industry has no industry-wide position on tender offer regulation. Brokers are on all sides of the issue.

Brokers represent the offerers and provide financing and strategy in takeovers. Brokers represent management of the corporations and provide analysis of the fairness of the offer as well as advice on structural defensive tactics. Brokers also represent, and are themselves, arbitrageurs who speculate on the outcome of tender offer contests.

The fact that we are on both sides leads us to have some concern about the one-sided view of this bill that we have seen in the press. There are, in fact, two sides --- this is not apple pie and Mom --- and we believe that adoption of this bill will seriously injure the rights of investors in New Jersey.

S-1539 is incorrectly named the "Shareholder Protection Act." In fact, it has little to do with shareholder protection and would be better named the "Board of Directors Protection Act." The bill has been well drafted to accomplish its goal: it will bring tender offer activity to a complete standstill unless the takeover is approved by the board of directors. This is not desirable.

The real effect of S-1539 will be moving the corporate franchise, voting control, from the shareholders to the directors. Its effect will be to prohibit shareholders from receiving and accepting an offer they might wish to accept, unless the board of directors permits it. It will bring an end to an important element of corporate democracy, and protect management forever --- regardless of the inadequacy of its performance --- from fear of being bought out and fired. Shareholders will be left with one less control over the already largely uncontrollable board of directors. Limiting the choice of remedies provides less, not more, shareholder protection.

An example which comes to mind is Eastern Airlines. In that case, the group considering making the hostile tender offer was the principal union representing Eastern employees. The fear that management would be thrown out if the union was successful in a takeover bid was so great that Eastern management sold the company to a white knight. Had this proposed bill been law in that state, management would not have had to worry: they would have just opposed the union and the state would do most of the work of busting the takeover attempt to secure better wages and benefits for its workers by enforcing a law supposedly designed to protect jobs.

S-1539 is philosophically the brother of merit review. Once again it is being suggested that the state should step between a willing buyer and seller and prohibit the transaction from occurring on the grounds of fairness. In merit review the state says to a willing buyer of stock that you cannot buy unless the terms of the offering meet a state prescribed form. As in the merit review case, why not trust investors to know what they want to do with their own money? If I am offered 20 for my stock, and another is offered 30 for his, I will decide for myself if 20 is a good return. I certainly do not want the state to tell me I cannot take the 20 even if I want to because someone else got 30.

We submit that the most serious downside to this bill is the fact that it restructures the very basis for corporate governance when the issue is tender offers. Traditionally the ultimate decision maker of "Is the offer fair?" is the shareholder. The board of directors is free, indeed it is required, to advise the shareholder of its opinion of the fairness of the offer in light of the future prospects of the company. But it is always the investor who ultimately decided if a bird in the hand was what he wanted. History is not without examples of management being wrong and companies that became less successful as time went on. Shareholders know this.

Under this bill, the role of the board changes. If the board opposes the offer for any reason --- something they will do in 100 percent of the cases in which they will lose their jobs or board seats and directors fees --- that offer has been effectively stopped. While it is true that the proposed bill will not prohibit the offer from being made, the mandated form of the offer leaves little or no flexibility and does nothing more than create roadblocks and hurdles designed to raise expense and create management defenses.

Takeovers are not bad things for shareholders. They are not something shareholders need protection from. Some economic studies have estimated that the average gain to shareholders in a takeover ranges from 16 to 34 percent. Furthermore, with employee benefit plans, pension plans, profit sharing plans and trusts owning stock in their own companies, management vetoing an offer will result in substantial sums of cash not going into the pension or benefit fund. The November 22, 1985 New York Times noted that hundreds of thousands of state employees across the nation were benefiting from the leveraged buyouts. What, then, is the real issue here?

Fear is the issue --- fears without much basis in reality but gleefully spread by the managements of domestic corporations and their lawyers; the fear that takeovers will mean plants and divisions being shut down.

If a plant is shut down might it be because the existing management allowed a plant to become obsolete or allowed some division of the company to be ineffectively run so that it is being shut down for good business reasons? The assets and divisions that are sometimes sold off after a takeover are frequently the less profitable and less efficient subsidiaries or operations and the process could just as easily be described as "streamlining", that will make the surviving company more profitable and secure, as it can be described as "asset stripping." Decisions concerning plant closing and reductions or relocation of work forces are made on the basis of a thousand variables. To suggest that they are a function only of takeovers does a disservice to the quality of the discussion of the issue.

Another fear is that research and development efforts, frequently only profitable in the long term, will be retarded because they believe they are the first of the corporate baggage to be jettisoned. Proponents of restrictive takeover proposals often claim that fear of a takeover so preoccupies corporate management today that long range growth is stunted because of a need to show short term earnings as a way of warding off potential bidders. As a result, research and development is allegedly abandoned or ignored. In a recent study by the SEC in which 217 firms that were subject to takeover bids between 1981 and 1984 were examined, the SEC found that characteristically these firms had very low R&D expenditures. That makes sense if we remember what an offerer is looking for is a company whose book value exceeds its stock trading price. You would concentrate efforts on companies with goods, not R&D services. Assuming R&D was an important and integral part of a business in New Jersey, why would someone taking over a company kill the goose that lays the golden eggs?

In many ways, S-1539 responds to a problem that existed a year ago. The use of junk bonds to finance hostile takeovers has come to a halt by action of the Federal Reserve Board. By requiring margin to be posted in takeover situations, using a shell corporation in which the collateral for bonds are the assets of the to be acquired corporation, the economic attraction of junk bond financing disappeared. In recent months you have not heard of junk bond financed takeovers. It is no longer an issue or something you need fear.

Protecting management from the possibility of takeover provides a security to which they are not entitled. It removes an incentive to them to insure that their firm remains competitive; that timely decisions are made; that adequate planning is undertaken to insure that their plants do not become obsolete; that their companies are run efficiently; and that their products can compete with those manufactured anywhere in the world. It is the failure to do this that leads to Chapter 11 reorganizations, massive layoffs and plant closings --- not the fear of a takeover.

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This bill will not protect the jobs of wage earners; it protects the jobs of management. If you want to pass a job protection bill, do so. If you want to give management tenure, do so. But do not suggest that corporate managements are supporting this bill to help secure the jobs of their bargaining unit employees.

We say that this bill is unnecessary even if the alleged protections it gives are desirable. Each of the provisions with regard to offers having to be made in a certain form could be incorporated into the articles of incorporation or the bylaws of the corporation, if they were approved by the shareholders. It is interesting to speculate on the possibility that corporations are seeking legislative action rather than amendments to their corporate charters --- because they are afraid shareholders would not approve them?

Finally, in the last months of 1985 this body enacted a bill which ultimately created a blue ribbon board to examine and suggest improvements in New Jersey's securities law and regulations. State tender offer regulation is an appropriate subject for that board to review. We urge the Legislature not to take action at this time but to await the input and counsel of that board before proceeding. As in all matters, the Security Industry Association will be pleased to be of service to you in your efforts.

Thank you.



EDWARD V. REGAN
STATE COMPTROLLER

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
ALBANY
12236

July 25, 1985

REPORT TO THE GOVERNOR ON LEGISLATION

TO: The Honorable Mario M. Cuomo, Governor

RE: A. 6971-A

INTRODUCED BY: Assemblyman Koppell et al.

TITLE: AN ACT to amend the business corporation law in relation to the registration of corporate takeover offers, requirements for disclosure regarding corporate takeover offers and control share acquisitions and shareholder approval of control share acquisitions and business combinations.

EFFECTIVE DATE: Immediately

RECOMMENDATION: Disapproval

DISCUSSION:

This bill would make three major changes in the Business Corporation Law. It would amend the Security Takeover Disclosure Act (Article XVI of the Business Corporation Law) to meet various constitutional requirements, as discussed in recent Federal court (including the U.S. Supreme Court) decisions. The bill would also add two entirely new sections to the Business Corporation Law (BCL) which would govern "business combinations" and "control share acquisitions".

There are undoubtedly major public policy arguments dealing with all sides of the issues in this bill which will be urged on you by its opponents and proponents. However, this memorandum is intended to convey our recommendation based on the Comptroller's unique role as Trustee of the New York State Common Retirement Fund. As we will show, the bill's attempt to expand New York regulation of corporate takeovers is, we believe, in the main, inconsistent with the experience of the New York Common Retirement Fund.

It is the responsibility of the Trustee of the Common Retirement Fund to protect the assets of the Retirement Systems' members and, thus, to represent them as shareholders in the companies in which investments are made. In that role we have had to take a position regarding numerous proposals dealing with the subject of takeovers that were submitted by both management and shareholders. Addressing these issues is a matter of high staff priority in which we are aided by the advice of outside experts.

In voting those shares over the past 4 years and in approximately 2,000 board meetings, we have consistently voted "For" Anti-Greenmail Proposals; "For" Classified or Staggered Boards and "Against" Blank Check Preferred Stock, and, with rare exception, "Against" Fair Price Proposals with Supermajorities. It is clear that at least two major provisions of the bill currently before the Governor are contrary to these carefully developed policies.

There are requirements in the bill for supermajority shareholder votes for various transactions by or relating to many New York corporations (unless a majority of "disinterested" directors approves the transactions). These provisions do not only include a supermajority (or fair price) requirement for the second tier of a two-tier tender offer; they also require a supermajority vote before a control share acquisition, including most tender offers, can be consummated. The fact that the two-thirds shareholder vote must be supplemented by a majority of the votes of "disinterested" shares only compounds the problem by creating the possibility that the required overall vote total will have to be even higher than the two-thirds minimum. Shareholders must have the ability to challenge management in an effort to make it accountable. Supermajorities would serve as an impediment to that ability. As we have said, we consistently vote against such provisions.

We believe the Common Retirement Fund has benefited from many of the activities that this bill attempts to restrict. The table below lists several fairly recent "hostile" takeover situations. It does not purport to be a complete listing of all hostile takeover situations but is, to the best of our knowledge, an accurate accounting of those hostile takeover situations that relate to the holdings of the Common Retirement Fund. The stock market has improved during this period accounting for some of the stock price increases of these companies. But because of takeovers or takeover attempts these companies outperformed the market. They are:

Shares Held by CRF	Company	Time of Takeover Action	Gain to CRF
185,000	Conoco	8/8-9/30/81	\$10,221,500.40
669,550	Cities Service	12/3/82	13,082,091.40
312,400	Getty Oil	1/9-2/21/84	18,219,065.62
877,000	Gulf Oil	3/6-6/25/84	29,946,288.70
627,000	Phillips Petroleum	12/84	8,311,343.51
795,000	Superior Oil	3/12-10/1/84	8,009,860.12
	*(Mobil Corp. Bond)		13,488,750.00
316,915	Unocal	4/85-5/20/85	16,310,288.88
179,999	*Disney	1/84 - 2/84	7,702,480.14
123,000	*Crown Zellerbach	7/85	399,750.00
300,000	*TWA	6/85 - 7/85	2,703,562.15

While not every hostile takeover attempt has benefited the Common Retirement Fund, generally, as a shareholder, the Fund's assets have increased as a result of this activity. The total gain to the CRF as a result of the hostile takeovers listed above is \$128,394,981. These increased dollars of improved investment performance flow directly to State taxpayers in the form of reduced contributions to the Retirement Fund, and to the active and retired members of the Fund, in the form of more secure pensions.

This result is apparently not unusual: While acknowledging that many controversial issues regarding the corporate takeover market have yet to be resolved, Professors Michael Jensen and Richard Ruback note that detailed studies have been done. They conclude that "the evidence seems to indicate that corporate takeovers generate positive gains, that target firm shareholders benefit, and that bidding firm shareholders do not lose." Moreover, the gains created by corporate takeovers do not appear to come from the creation of market power. Finally, it is difficult to find managerial actions related to corporate control that harm stockholders; the exceptions are those actions that eliminate an actual or potential bidder, for example, through the use of targeted large block repurchases or standstill agreements" (Jensen and Ruback, "The Market for Corporate Control, The Scientific Evidence," 11 Journal of Financial Economics 1, 47 [April, 1983]).

* CRF still holds this stock.

C. R. Bard, Inc.
731 Central Avenue
Murray Hill, NJ 07974

Robert H. McCaffrey
Chairman &
Chief Executive Officer

BARD

March 14, 1986

The Honorable Gerald Cardinale
350 Madison Avenue
Creskill, New Jersey 07626

Dear Senator Cardinale:

This letter is to ask your support for the shareholder protection legislation presently pending. I believe it is identified as Senate Bill 1539.

We are a New Jersey corporation engaged in the development, manufacture and marketing of medical products which are sold on a worldwide basis. We are one of the oldest companies in the field having been founded in 1907 in New York City and have been in New Jersey since 1948. We presently employ about 750 people in New Jersey. New developments by one of our New Jersey divisions could easily increase this number in the future. We have many shareholders in New Jersey because of our presence here for almost forty years.

As you know the shareholder protection legislation is designed to prevent the kind of "raider" takeover which usually results in the liquidation of corporate businesses. It in no way prevents a Board of Directors from entertaining a legitimate acquisition offer for a corporation. Not only is this a reasonable and practical benefit for individual shareholders, but we also believe the legislation would benefit the State of New Jersey in making it an even more desirable state in which to incorporate and locate corporate headquarters. New York State has already enacted a law similar to this, as you know, and I for one would not like to see New York State get ahead of New Jersey anywhere on the business front. I am sure you feel the same way.

Therefore, on behalf of Bard's corporate, divisional, and manufacturing employees in New Jersey; on behalf of Bard's shareholders in New Jersey; and on behalf of all the businesses in New Jersey which depend upon a favorable business climate, I earnestly solicit your support in this legislation. If anyone on your staff would like to get more information about our company or about our position on this matter, I hope they will call me in Murray Hill. Thank you very much for your attention and help.

Sincerely,

Robert H. McCaffrey

Drexel Burnham Lambert

James Balog
Vice Chairman

March 21, 1986

The Honorable Raymond J. Lesniak
117 Westfield Avenue
Elizabeth, New Jersey 07208

Re: Senate Bill No. 1539

Dear Senator Lesniak:

We have only recently become aware of the introduction of Senate Bill No. 1539 and the scheduling of committee hearings regarding it. Although we have not had an opportunity to study the bill in appropriate detail, we are reasonably familiar with the approach being taken in this proposed legislation as a result of our involvement in the recent consideration of similar provisions in New York.

We would like to participate in your committee's examination of the bill and to offer our comments on it in whatever form will be most helpful to your evaluation of this legislation.

It is our general view that state statutes designed to prevent corporate takeovers are unwise as a matter of policy and constitutionally suspect as a matter of law. Like many commentators who have considered the matter, we are deeply concerned by the proliferation of different and frequently inconsistent state law restrictions on tender offers for public companies which threaten to balkanize the Nation on this issue to the ultimate disadvantage of all shareholders -- who are the true owners of these companies. Anti-takeover legislation can not only have serious adverse effects on the rights and interests of shareholders, but can also undermine the economic well-being of corporations and the communities in which they operate, employ workers and pay taxes. Ineffective corporate management can cost a state jobs, tax revenues and countless intangible community benefits -- important considerations often overlooked in the debate on what is effectively protectionist legislation.

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Legislation such as Senate Bill No. 1539 would not ultimately protect the interests of New Jersey corporations or their shareholders. By flatly prohibiting a broad range of transactions between "interested stockholders" and "resident domestic corporations," the bill would freeze corporations and large shareholders in their respective positions for at least five years, rendering them incapable of acting in the best interests of the company. The bill would thus (i) discourage large investment in New Jersey corporations; (ii) encourage large investors to seek control of corporations through means other than stock acquisition, such as costly proxy battles; (iii) encourage re-incorporation outside New Jersey by large investors who succeed in obtaining control; (iv) create an unhealthy atmosphere in the boardrooms of New Jersey corporations in which a "frozen" interested stockholder has board representation; and (v) reduce the market value of shares of New Jersey corporations by making them unattractive to large investors and, in many respects, takeover-proof. None of the above is conducive to long-term corporate growth or shareholders' interests.

As you are undoubtedly aware, state anti-takeover legislation, such as Senate Bill No. 1539, is of very questionable constitutionality. The comprehensive scheme of federal regulation of tender offers embodied in the Williams Act and the SEC rules promulgated thereunder mandates a policy of neutrality between incumbent management and potential acquirors. Senate Bill No. 1539, if enacted, would severely disrupt that federally-mandated balance by providing a corporation's board of directors with the power to veto in effect any unwanted offeror's acquisition of 10% or more of the corporation's stock. Additionally, it would enable incumbent management to favor one potential offeror over another in a contested takeover, regardless of the relative merits of their proposals from the point of view of the shareholders. Federal law requires a level playing field in the area of corporate takeovers; the bill would tip the balance decidedly in favor of incumbent management. Under the Supremacy Clause of the U.S. Constitution, a state statute that contravenes federal law in this manner would be invalid.

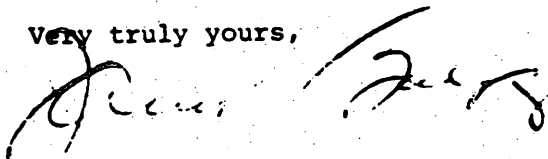
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The provisions of Senate Bill No. 1539 are highly complex and their ramifications could be of striking significance. We believe that we can provide your committee with helpful insight with respect to this proposed legislation, and we would welcome the opportunity to participate in your ongoing consideration of the bill.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John F. ...", is written over the typed name "John F. ...". The signature is fluid and cursive.

**SUPPORT MEMORANDUM**

Edward J. Cleary, President
Paul F. Cole, Secretary-Treasurer

Richard D. Winston
Legislative Director
Richard Terrey
Associate Director
William McSpedon
Assistant Director

1985 Extraordinary Session

A.2 - Committee on Rules

This bill protects employees and shareholders of corporations which are incorporated in New York State or which have their principal offices and significant business operations in the State from the harmful effects of hostile corporate takeovers.

The New York State Security Takeover Disclosure Act of 1976 requires the registration of all takeover bids for 5% or more of a company's stock. A "registration statement" must be filed with the specified information about the offeror, the offeror's share ownership, the amount and source of consideration to be paid and the offeror's plans for the target company. The Attorney General may prohibit the takeover bid from going forward for a maximum of 55 days in order to determine whether the offeror has complied with the law and disclosed the required information. Upon completion of the investigation, the Attorney General may issue a permanent prohibition against the proposed takeover.

This bill amends the law to meet constitutional requirements established by a decision of the U.S. Supreme Court [*Edgar v MITE Corp.*, 457 U.S. 624 (1982)]. The provisions of the bill apply only to in-state shareholders and corporations, and require that the Attorney General or the target company seek a state court injunction against a takeover bid, for 5% or more of a target company's stock, which fails to meet all legal requirements.

The bill also provides needed protections for those most seriously affected by hostile corporate takeovers. A policy statement issued May 8, 1985 by the AFL-CIO Executive Council states:

"No matter which side wins control in a takeover battle, workers, customers, and the community in which the company is located are the likely ultimate losers. The company normally winds up saddled with added debt or otherwise weakened. Workers too often finance the costs of the raid by job losses or pay cuts. And consumers end up paying higher prices for the company's products. If the costs cannot be passed off to others, productive assets are liquidated - again to the detriment of workers and their communities. Indeed such 'bust-up' financing is common in hostile takeovers."

This bill restricts such damaging financial maneuvers by requiring more detailed information to be disclosed in the offeror's registration statement, including the expected effects of a takeover upon the target company's employees, customers, suppliers, and community. It requires the disclosure of plans for any plant or facility relocation, closure or substantial reduction in workforce. Also required would be disclosure of provisions for pension, profit sharing, or savings plans. Moreover, the offeror would need to disclose any violations of the Federal National Labor Relations Act, Occupational Safety and Health Act of 1970, Fair Labor Standards Act, or Employee Retirement and Income Security Act, finally adjudicated or settled within five years of the commencement of the takeover bid.

These disclosure requirements will provide workers and communities with the information they need to decide whether to join efforts to resist takeovers that threaten the stability of the target company and the community. This would apply in particular to workers who own stock in the target company.

The bill also protects the shareholders of the target company. In addition to prohibiting the payment of "greenmail" to a raider, it would encourage raiders to seek the approval of the target company's board of directors before acquiring 20% or more of the company's voting stock. Without the directors' approval, the acquiring company would be prohibited from engaging in any business combination with the target company for a period of five years from the date that the 20% interest was acquired. After the expiration of the five-year period, the bill provides that any proposed business combination would require either the approval of a majority of the company's disinterested shareholders or the payment of a specified formula price designed to ensure that no shareholder's stock will be devalued by the intended business combination. Any New York corporation may opt not to be governed by these restrictions upon business combinations if an amendment to that effect is made to its bylaws by March 31, 1986.

This legislation modifies existing takeover disclosure laws to meet constitutional requirements and to protect workers, consumers and communities from the harmful effects of irresponsible corporate raiding. It encourages long-range research and development and capital investment and deters the wasted time, effort and economic resources of short-term corporate warfare.

The New York State AFL-CIO urges your support for this bill.

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opeiu-153

12/10/85



Federal Trade Commission

Office of the Regional Director

26 Federal Plaza, 22nd Fl.
New York, New York 10276
(212) 264-1200

April 29, 1986

The Honorable Raymond Lesniak, Chairman
Senate Labor, Industry and Professions Committee
New Jersey State Legislature
State House Annex CN-068
Trenton, New Jersey 08625

Re: Senate Bill No. 1539

Dear Senator Lesniak:

Thank you for your request of March 11, 1986, inviting our comments on Senate Bill No. 1539, "AN ACT concerning the protection of shareholder rights" We appreciate the opportunity to comment on this bill, and hope that our remarks will be of assistance.¹

The Federal Trade Commission is charged by Congress with preserving competition and protecting consumers from deceptive and unfair business practices.² Accordingly, the Commission and its staff provide comments to federal, state, and local legislative and administrative bodies to assist decision-makers in analyzing legislative and regulatory proposals that may affect competition and consumer welfare.³

Senate Bill No. 1539 (hereinafter referred to as "S. 1539") is intended to "discourage hostile, bust-up takeovers financed by junk bonds in New Jersey."⁴ Specifically, S. 1539 would prohibit

¹ This letter presents the comments of the Bureaus of Competition, Economics, and Consumer Protection, and of the New York Regional Office of the Federal Trade Commission. The views expressed are not necessarily those of the Federal Trade Commission or of any individual Commissioner, although the Commission has authorized their presentation.

² See 15 U.S.C. § 41 et seq.

³ For example, by letter of July 22, 1985, we provided Governor Mario Cuomo with our comments concerning New York State Assembly Bill No. 6971--A, a bill designed to restrict corporate takeover activity in New York.

⁴ "Statement" accompanying S. 1539.

any New Jersey resident corporation⁵ from combining⁶ with an acquirer of ten percent or more of its voting stock,⁷ within five years of the "stock acquisition date,"⁸ unless the combination had been approved by the target company's board of directors prior to that date.⁹ After the expiration of the five-year moratorium, a business combination could be effected only if (1) it is approved by the holders of two-thirds of disinterested voting shares,¹⁰ or (2) all shareholders are compensated for their stock in accordance with various statutory criteria.¹¹

We do not believe that there is any demonstrated need for this additional regulation of corporate takeovers. The Williams Act, a federal statute designed to protect shareholder interests

5 "Resident domestic corporation" means a company incorporated in New Jersey with its principal executive offices and "significant business operations" located in that state. S. 1539 § 2m.

6 "Business combination" is broadly defined to include, among other things: (a) any merger or consolidation of a resident corporation with an interested stockholder; (b) any sale, lease, exchange, mortgage, pledge, transfer or other disposition, whether in one or more transactions, to or with an interested stockholder of assets of a resident corporation (i) having an aggregate market value equal to ten percent or more of the aggregate market value of all the assets or outstanding stock of that resident corporation, or (ii) representing ten percent or more of the earning power or income of that resident corporation; (c) the issuance or transfer to an interested stockholder by a resident corporation of any stock of that resident corporation that has an aggregate market value equal to five percent or more of the aggregate market value of all the outstanding stock of that resident corporation; and (d) the adoption of any plan for the liquidation or dissolution of a resident corporation proposed by or on behalf of an interested stockholder. S. 1539 § 2e.

7 The beneficial owner of ten percent or more of the voting power of the outstanding voting stock of the resident corporation is deemed an "interested stockholder." S. 1539 § 2j.

8 "Stock acquisition date" means the date on which a person first becomes an interested stockholder. S. 1539 § 2o.

9 S. 1539 § 3.

10 S. 1539 § 4b.

11 S. 1539 § 4c.

in the takeover process, already provides stockholders with time and information to evaluate cash and non-cash tender offers, including so-called "junk bond" financings.¹² Absent some well-defined, specific public harm that would be addressed by the proposed legislation, we do not believe further regulation of the takeover process is justified.

Investors in high yield takeover bonds are in most cases highly sophisticated financiers who hold these securities as part of a well-diversified portfolio and who are fully able to negotiate for a compensatory interest rate and whatever other guarantees are necessary and appropriate to protect them against the risk of default associated with the debt of a highly leveraged firm. Takeover bond financing of acquisitions does substitute debt for equity. But we are aware of no evidence that this increase in debt is contrary to the interests of the shareholders of the issuing firm or to the firm's long- or short-term prospects.¹³

¹² 15 U.S.C. §§ 781(i), 78m(d) and (e), and 78n(d) through (f) (1982). The Williams Act requires purchasers of more than five percent of a corporation's shares to make specified public disclosures and provides that a tender offer must remain open for not fewer than 20 business days. Some economists and legal scholars have criticized these provisions of the Williams Act on the ground that they provide too much time for stockholder evaluation of tender offers, thereby making takeovers unnecessarily expensive and favoring incumbent managements in takeover contests. See Fischel, "Efficient Capital Market Theory, the Market for Corporate Control, and the Regulation of Cash Tender Offers," 47 Texas Law Review 1 (1978); Grossman & Hart, "Takeover Bids, the Free-Rider Problem and the Theory of the Corporation," 11 Bell Journal of Economics 42 (1980); Jarrell & Bradley, "The Economic Effects of Federal and State Regulations of Cash Tender Offers," 23 Journal of Law and Economics 317 (1980); and Smiley, "The Effect of the Williams Amendment and Other Factors on Transaction Costs in Tender Offers," 3 Industrial Organization Review 138 (1975).

The Williams Act also mandates that tendered shares be purchased on a pro rata (rather than first shares tendered) basis and grants target management and stockholders standing to sue pursuant to its antifraud provisions.

¹³ Moreover, the Federal Reserve Board has issued an interpretation of its margin rule -- Regulation G -- that would, in effect, prohibit a corporation set up to facilitate a tender offer from issuing takeover bonds to finance more than 50 percent of the cost of an acquisition.

Moreover, this bill goes far beyond its stated goal of discouraging "hostile, bust-up takeovers financed by junk bonds." Instead, the bill will make any hostile tender offer -- regardless of how it is financed -- prohibitively more difficult. If enacted, S. 1539 would have the probable effect of discouraging all tender offers that had not already met with the approval of the target company's board of directors. This could impede the operation of the market for corporate control that generally serves to benefit New Jersey shareholders, improve the management performance of New Jersey corporations, and ensure that economic resources under the control of New Jersey corporations be transferred to their highest valued use.

If shareholders desire increased protection from so-called "corporate raiders," they can arrange it themselves. For example, shareholders can discourage unwanted suitors by adopting by-laws that stagger the terms of directors or that condition the consummation of a tender offer upon its acceptance by a super-majority of shareholders.¹⁴ On the other hand, shareholders can decline to insulate incumbent management by refusing to enact such by-laws. If shareholders want to include pro- or anti-takeover devices in their corporate charters, that should be their prerogative. No single rule of corporate governance is likely to be suitable for all corporations. S. 1539 fails, for

¹⁴ For example, The Wall Street Journal of March 14, 1986, reported that "Dow Jones & Co. said it will seek shareholder approval of several anti-takeover measures at its annual meeting Dow Jones is proposing staggered terms for board members, which would prevent a majority of directors from being elected at an annual meeting; a 'fair price' provision that would require a prospective purchaser to make the same offer to all stockholders; and a requirement that the board consider non-economic factors in evaluating any takeover bid." According to The Wall Street Journal of March 20, 1986, as of the close of 1985, well over 300 of the Standard & Poor's 500 companies had passed some sort of anti-takeover measure.

the most part, to take this into account.¹⁵ The result may be that the bill unduly intrudes upon what the U.S. Council of Economic Advisers has recognized as "essentially a private contractual relationship between a corporation's stockholders and its management."¹⁶

Insofar as S. 1539 is unnecessary for the protection of shareholder interests, its potentially harmful effects should be critically examined.

We believe that takeover activity is generally beneficial to corporate shareholders. Takeovers typically increase the wealth of shareholders of firms that are acquired. Target firm shareholders on average earn premiums of about thirty percent in tender offers and twenty percent in mergers.¹⁷ By discouraging hostile takeovers, S. 1539 likely would reduce the expected profitability of hostile takeovers. This would result in a reduction of the expected wealth of all shareholders because the expected value of corporations as future acquisitions would be less. These prospective benefits, which are reflected in the value paid for the shares of companies that are acquired, would decline along with share prices as takeover activity lessened.

¹⁵ Section 5c of the bill does provide the board of directors a limited opportunity to amend the by-laws of a corporation so that any attempt to take over the corporation will not be subject to the act. Under the bill, the board must amend the corporation's by-laws within 45 days of the bill's passage. However, it seems unlikely that the board would ever undertake such action except in response to shareholder pressure. The 45-day time limit makes it unlikely that shareholders will have adequate time to understand the bill and, if they believe the bill is harmful to their interests, to petition their directors to disavow themselves of it. The bill does contain some other exceptions to its coverage. See S. 1539 § 5.

¹⁶ U.S. Council of Economic Advisers, Economic Report of the President at 213 (1985).

¹⁷ In contrast, share values tend to decline following an unsuccessful tender offer. For a thorough survey of the numerous studies that demonstrate net stockholder benefit from takeover activity, see Jensen & Ruback, "The Market for Corporate Control: The Scientific Evidence," 11 Journal of Financial Economics 5 (1983); Jensen, "Takeovers: Folklore and Science," 62 Harvard Business Review 109 (1984).

Moreover, hostile tender offers, the specific target of S. 1539's regulatory scheme, may also produce significant gains to the nation's economy. Corporate acquisitions, including those resulting from "hostile" tender offers, can serve to shift assets to higher-valued uses, allow firms to realize economies of scale and distribution, and spur managerial excellence.¹⁸ For example, companies whose markets are no longer expanding often generate more cash flow than can be reinvested productively in their traditional businesses. Rather than distribute this cash to shareholders, some corporate executives make unprofitable investments in mature markets or diversify into businesses with which they are unfamiliar and in which they perform poorly.¹⁹ This creates profit opportunities that could be realized by means of hostile takeovers aimed at acquiring control of such firms and eliminating these inefficiencies. S. 1539 would reduce the incentive to cure such inefficiencies.

Under S. 1539, even after the expiration of the five-year moratorium, a business combination between a resident corporation and an interested stockholder could be effected only if one of two somewhat problematic conditions were satisfied. First, the business combination could be consummated if approved by holders of two-thirds of the disinterested shares. However, this would allow disinterested stockholders to hold up controlling parties, even beyond the five-year moratorium prescribed in the bill. For example, consider a firm that acquires ninety percent of the voting shares of another company. As we understand it, such an acquirer would be an "interested stockholder" and unable to vote its shares with respect to a merger of the companies. If just four percent of the voting shares of the acquired firm remained in the hands of persons hostile to the merger -- incumbent

¹⁸ See U.S. Council of Economic Advisers, supra note 16, at 198, 199; see also Jensen & Ruback, supra note 17. But see D. Ravenscraft & F. Scherer, "The Profitability of Mergers," FTC Bureau of Economics Working Paper No. 136 (1986).

¹⁹ The apparent shift toward greater reliance on debt financing may well be a market response to this phenomenon. Unlike common stock, on which dividends can be withheld at management's discretion, debt instruments call for regular periodic interest payments. This constrains management's discretion with regard to the firm's cash flow and its ability to continue to use retained earnings to pursue unprofitable growth or diversification strategies. Thus, apart from the utility of takeover bonds as a means of financing acquisitions, these considerations portend significant efficiency gains from the increased use of debt financing, in and of itself.

managers, for example -- the merger could not be accomplished. The mere threat of such a hold up could significantly impede beneficial merger and takeover activity. It also impairs the efficiency with which capital markets rearrange asset ownership, and frustrates the preferences of the vast majority of the target firm's shareholders, 90 percent in our example, who would like to tender their shares.

Alternatively, the business combination could be consummated if the interested stockholder redeemed all outstanding shares of the resident corporation for consideration having the highest of several valuations.²⁰ This purchase option, however, could greatly -- perhaps prohibitively -- increase the cost of hostile takeovers, and to an amount that could not be determined in advance of an initial tender offer.²¹ It could also discourage the taking of substantial investment positions quite apart from a fixed intent to gain control. As a consequence, firms could have difficulty in obtaining capital for product development, refurbishment of physical plant, expansion, and the like, thereby possibly affecting their viability.

Taken together, the requirements of S. 1539 could deprive shareholders of the gains they might otherwise realize through tender of shares to an acquirer. The costs of efficiency-enhancing acquisitions could be artificially inflated and productivity gains that could be realized in an open and competitive market in

²⁰ E.g., the higher of "(a) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by that interested stockholder for any shares . . . acquired by it (i) within the five-year period immediately prior to the announcement date with respect to that business combination, or (ii) within the five-year period immediately prior to, or in, the transaction in which that interested stockholder became an interested stockholder, whichever is higher . . . ; and (b) the market value per share of common stock on the announcement date with respect to that business combination or on that interested stockholder's stock acquisition date, whichever is higher" S. 1539 §§ 4c(1)(a) and (b).

²¹ The valuation provisions of S. 1539 would induce stockholders to engage in opportunistic behavior rather than to tender shares in a prompt manner: if the price of shares on the open market increased after the interested stockholder's acquisition of a ten percent position, other stockholders could tender at the market price; if the price of shares on the open market fell after the interested stockholder's stock acquisition date, tendering stockholders could demand a higher than market price pursuant to Section 4c(1) of the bill.

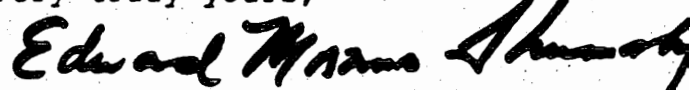
corporate assets and control could be greatly lessened. These costs, both to shareholders and to society at large, are justified only if the proposed regulation is necessary to avoid a well-defined and significant public harm. As the Council of Economic Advisers has cautioned:

Public policy should not . . . be based on the outcomes of individual transactions, because it is impossible to predict in advance which transactions will succeed and which will fail. Public policy therefore must be based on aggregate trends describing the consequences of takeovers as a whole. On this criterion, there is no economic basis for regulations that would further restrict the merger and acquisition process.²²

The need for further regulation of corporate takeover activity has not been established. Existing legislation governing corporate takeovers and internal shareholder governance adequately protect shareholders and the public interest in a fair, open, and competitive market for corporate assets and control.

We hope these comments are helpful to you. Please do not hesitate to contact us if you have any questions or would like further information.

Very truly yours,



Edward Manno Shumsky
Regional Director

²² U.S. Council of Economic Advisers, supra note 16, at 196.

STAKEHOLDERS IN AMERICA

RESEARCH COMMITTEE

Background Information

1. Case Histories
2. Profiles of Major Raiders

CASE HISTORIES

Greenmail*

- . Disney
- . Uniroyal
- . Scientific Computers

White Knight

- . Conoco
- . Unidynamics
- . Marathon Oil Company
- . Continental Group
- . Heublein

Escaped

- . Grumman
- . CBS (so far)
- . Unocal
- . Phillips Petroleum Company

Taken Over

- . Scovill
- . AMF
- . Conwed
- . McQuay
- . Gulf
- . Otis Elevator

- * Where one stockholder (generally the raider) is offered a premium for its shares by the target company.

Greenmail*

- . Disney
- . Uniroyal
- . Scientific Computers

* Where one stockholder (generally the raider) is offered a premium for its shares by the target company.

ATTEMPTED TAKEOVER OF DISNEY

Chronology of Events

- March 13, 1984
- Walt Disney Productions' stock price jumped 3-1/2 in the previous two days, and securities analysts said this was due in part to takeover speculation resulting from the resignation of Roy Disney from the Board, and in part to the box office success of two new films. Acquisition of Disney would cost about \$2.6 billion, and management had stated that a takeover attempt would be opposed. Management had good anti-takeover defenses. These included a provision requiring 80% shareholder approval for any buyout of the company and an expansion of the company credit line to \$1.3 billion to widen the alternatives available to Disney in the event of a takeover attempt.
- March 21
- Disney increased its credit line from \$900 million to \$1.3 billion, but maintained that it had no knowledge of a possible takeover attempt. Heavy trading sent stock to a 1984 closing high of \$63.375 from \$50.50 on March 8, just two weeks earlier. Purchases weren't being made by a single investor, although Roy Disney disclosed that he purchased 50,000 shares in late February, bringing the family's holdings to 2.7%.
- March 29
- Reliance Financial Service Corp. acquired approximately 2.2 million shares or 6.3% of Disney common shares between March 9 and March 28 at prices ranging from \$51 to \$64.63.
- April 25
- Reliance Financial Services Corp. said it intended to acquire up to 25% of Disney common shares. As of this day they held 3,193,233 or 9.3% of the total outstanding shares which cost them \$176.9 million. Saul Steinberg, Reliance's owner, continued to insist that he was a passive investor, but his filing with the SEC permitted the purchase of as much as 49% of the company's stock.
- May 1
- Saul Steinberg increased his stake in Disney to at least 12.1% through the purchase of a 1 million share block. A total of 1.9 million shares were traded, but Steinberg wouldn't admit to any purchase beyond the 1 million share block.
- May 17
- Disney Productions said it had entered into an agreement to acquire Arvida Corp. for \$200 million in Disney common stock. Arvida, of Boca Raton, Florida is privately owned by management and various members of the Bass family. Its principal business is the development of planned resort communities. The acquisition would appear to make Steinberg's bid more difficult by effectively diluting the voting power of his holdings.
- May 25
- Steinberg said he was considering obtaining control of Walt Disney Productions through a tender offer, proxy solicitation or the acquisition of additional shares.

- The F.T.C. notified Steinberg that the waiting period was over and that he could acquire up to 49.9% of the common shares without any additional notice.

May 29

- Steinberg said he would begin soliciting "consents" of other Disney shareholders in an attempt to gain enough votes to remove the current directors. In many states "written consents" can force nearly any corporate action, such as changing by-laws or even removing directors, by merely getting holders of a majority of a company's shares to sign written consents authorizing the change. But recent Disney by-law changes could make shareholder consents more difficult than Reliance had anticipated. Disney Directors had quietly changed the date for determining which shareholders could sign consents, allowing the company 40 extra days to take evasive action.
- Reliance also sued in Federal Court to block Disney's proposed acquisition of Arvida Corp., charging that the Disney Board had agreed to pay an excessive price for Arvida and entered into the proposed transaction solely to entrench itself.

June 1

- A federal Judge denied Reliance's request and granted early termination of the waiting period by the Federal Trade Commission, authorizing Disney to proceed with the Arvida acquisition.

June 6

- Disney agrees to acquire Gibson Greetings Inc. for at least \$310 million in stock, adding a new obstacle to Steinberg's plan to increase his stake in Disney. Disney also completed its \$200 million (stock) acquisition of Arvida Corp.

June 8

- Steinberg said in a letter to Disney directors that his group will make a cash tender offer of \$67.50 a share for 49% of Disney and would increase it to \$72.50 in cash and securities for all of the company's outstanding shares if the Gibson Greetings transaction were terminated and no further such corporate transactions are pursued.

June 11

- Walt Disney Productions paid Saul Steinberg \$325.3 million for his stake in the entertainment concern. This figure includes \$297.3, or \$70.83 a share plus \$28 million in expense reimbursement for Steinberg's 4.2 million common shares (11.1% of Disney). Reliance also agreed to withdraw its proposed partial tender offer and agreed that it wouldn't buy any additional Disney shares for a decade.

June 14

- A shareholder class action suit asked the court to rescind Disney's purchase of \$4.2 million of its shares from Reliance. It also sought a court order to pay to all other shareholders a

"dividend" which the suit alleged was paid to Steinberg in the form of a premium paid for his holdings.

- . The shareholders also charged that the Disney purchase of shares was a waste of corporate assets and a violation of Director's fiduciary duty to shareholders.

- June 15 . Standard & Poors' "creditwatch" included a statement that Disney's repurchase of Steinberg's stock in the company had negative implications for Disney's credit rating.
- July 2 . Disney said it and Gibson Greetings agreed to modify the terms of their previously announced merger agreement to provide that each share of Gibson stock be exchanged for one-half a a Disney share in lieu of the original variable market formula and further provided that Disney will pay Gibson shareholders the amount of \$30 million cash or about \$2.90 a share. The revised terms gives the acquisition a total value of \$269 million, and Gibson holders an indicated 13.4% interest in Disney.
- July 5 . A state court judge ordered a preliminary injunction limiting investor Saul Steinberg's ability to invest \$60 million in profit from his sale of 4.2 million shares of Disney stock.
- July 18 . Irwin L. Jacobs and four associates have acquired 5.9% of Disney stock, making the group the company's single largest shareholder. Jacobs said the shares were acquired as an investment and there would be "no present attempt" at an unfriendly takeover.
- July 27 . Jacobs and his investor group asked the Disney Board to terminate its proposed acquisition of Gibson Greetings Inc. If the Board failed to call a special meeting, the group intended to attempt to halt the transaction through litigation. Jacobs said other substantial stockholders had also advised Disney's Board of their opposition to the Gibson transaction. Those stockholders are believed to include the Bass Brothers of Texas, who gained about a 5-1/2% stake in the company when Disney purchased Arvida Corp., and Roy Disney, a nephew of Walt Disney and a 5% holder of the stock.
- July 31 . Jacobs sued Disney, seeking to block Disney's pending acquisition of Gibson.
- August 14 . Jacobs, who controlled 6.3% of Disney, said he had the "requisite support" to force a special shareholders meeting in his attempt to block the company's pending acquisition of Gibson and to oust directors who disagree with him. The Bass family of Texas joined Jacobs in opposing Disney's purchase of Gibson.
 - . Separately, Jacobs disclosed that in mid-May he had contacted Morgan Stanley & Co, Disney's investment banker, to explore a possible merger between Disney and Minstar. Minstar is a publicly held company of which Jacobs and associates own about 41%.

- August 16 . Jacobs' group raised its stake in Disney Productions to 6.9% of the common shares outstanding from 6.3%.
- August 20 . Disney Productions cancelled its agreement to acquire Gibson Greeting Inc.
- September 17 . Disney Productions announced that Ronald W. Miller resigned as President Chief Executive and as Director.
- September 14 . Irwin Jacobs, whose investor group owned 7.7% of Disney, said he may seek to control and perhaps dismantle the entertainment concern. In a filing with the SEC, Minstar said it had joined Jacobs' investor group with the view of possibly controlling the entertainment company. Minstar said its options included "achieving a business combination" directly with Disney, making a tender offer for Disney shares or allying itself with unnamed "third parties" to complete a combination.
- September 21 . Minstar said it expected to file with the SEC to offer \$300 million convertible subordinated debentures. Proceeds would be used for general corporate purposes including future acquisitions.
- September 24 . A divided Disney Board yielded to pressure from major shareholders including a threatened proxy fight by the Bass family of Texas in naming entertainment executives Michael D. Eisner and Frank Wells to head the embattled company. Eisner and Wells were supported by the Disney family which holds about 13% of the company's 33.7 million shares outstanding. The Bass group reported to the SEC that it had raised its holdings to 8.6% from 5.5%.
- September 26 . The sudden plunge in Walt Disney Production shares reflected Wall Street's conviction that would-be raider Irwin Jacobs would flinch in this showdown with the new allied Bass and Disney families.
- October 2 . The Bass family nearly doubled its stake in Walt Disney Productions to about 5.4 million shares or 16% of the 33.7 million shares outstanding.
- October 4 . Irwin Jacobs confirmed that he sold all the Disney holdings of his group, a total of 2,591,80 shares, to the Bass group in a block trade today. Jacobs had purchased much of his stake in Disney at \$51 a share. The block was crossed at \$61, giving Jacobs and his group a \$29 million profit on their 4-month investment.

- . Market reaction also indicated that the takeover wind has once again gone out of Disney's sales. The stock traded on the N.Y.S.E. at 57-1/4, down 2.
- . Sid Bass confirmed that his Texas-based investment group raised its holding in Walt Disney Productions to 24.83%, but said the group plans no additional purchases of Disney shares.

October 8

- . Irwin Jacobs said he had offered to buy the stake in Walt Disney Productions held by a Bass family-led group before he sold his stake in the entertainment concern to them. He had proposed to pay \$4 a share more than the \$61 a share he received from the group. Jacobs said, "Their answer was 'no, but we'll buy you out.'"
- . In buying out Jacobs, the Bass group increased its holding in Disney to 8.4 million shares, or 24.85% of the common stock.

January 15,
1985

- . Disney shares closed yesterday at \$65, up 1-3/4 in composite trading on the NYSE after trading as low as \$45-1/4 during the company's takeover battles last summer. Analysts say the stock price is responding to artful massaging of securities analysts by Eisner and Wells, Disney's new Chairman and President.

May 9

- . A California appeals court ruled that Disney shareholders have a "reasonable probability" of forcing investor Saul Steinberg to return \$60 million in so called greenmail profit he made by reselling stock to Disney last summer.
- . The state court's ruling upheld a lower court's preliminary injunction restricting the way Steinberg could invest the funds pending a later trial at which the buyback could ultimately be rescinded. A trial date was not set.

DISNEY

Background

Walt Disney Productions, a survivor of two takeover attempts in 1984, and their accompanying upset and distraction, is now trying to concentrate on the forward progress of the company. However, the company has been affected by these events in several ways.

Impact on Corporate Assets

The first takeover attempt by Saul Steinberg resulted in a "greenmail" payment of \$325 million for his stake in the entertainment concern. This figure includes \$297.3, or \$70.83 a share plus \$28 million in expense reimbursement for Steinberg's 4.2 million common shares (11.1% of Disney). Steinberg, who purchased his share for \$265.6 million, made an indicated profit of \$31.7 million on the transaction, plus the \$28 million for estimated "out of pocket" expenses. All litigation between Disney and Steinberg was terminated. Reliance also agreed to withdraw its proposed partial tender offer and agreed that it wouldn't buy any additional Disney shares for a decade.

Disney's repurchase of Steinberg's stock also had negative implications for Disney's credit quality. The company's lackluster performance weakened Disney's ability to reduce the debt incurred from the buyback, and Disney was put on Standard & Poors credit watch.

A shareholder class action suit alleged that the agreement to buy back Steinberg's shares was entered into for the sole purpose of furthering the personal interest of Disney's management and directors, and charged that Steinberg's offer would have been advantageous for most Disney shareholders.

The shareholders also charged that the Disney purchase of shares was a waste of corporate assets and a violation of Director's fiduciary duty to shareholders.

A California appeals court has ruled that Disney shareholders have a "reasonable probability" of forcing investor Saul Steinberg to return \$60 million in so called greenmail profit he made by reselling stock to Disney last summer.

The state court's ruling upheld a lower court's preliminary injunction restricting the way Steinberg could invest the funds pending a later trial at which the buyback could ultimately be rescinded. A trial date has not been set.

Disney undertook one acquisition and proposed another during this period. Industry analysts speculated that these acquisitions were mainly attempted as a tactical move to dilute Steinberg's holdings. Disney paid \$200 million in common stock to acquire Arvida Corp. of Boca Raton, Florida, in May of 1984 and also agreed to acquire Gibson Greetings Inc. in July 1984 for cash and stock worth \$269 million.* In order to finance these transactions, Disney's indebtedness rose to nearly \$900 million by the end of 1984. In addition to the obvious financial effects, the acquisition of Arvida was seemingly entered into rather hastily and thus may not have been fully evaluated vis-a-vis its future within Disney.

Impact on Company Management

The takeover attempt also resulted in significant management changes at Disney. Ronald Miller, President, and Ray Watson, Chairman, were forced to resign from the company, led by a coalition of outside directors and Roy Disney. They were subsequently replaced by Michael Eisner, President of Paramount Pictures, as Chairman and Frank Wells, Vice Chairman of Warner Brothers, as President.

Disney analysts say Miller was not highly regarded in the industry, and particularly by Roy Disney, who left the Board earlier in 1984 apparently after feuding with Miller and Disney Chairman Ray Watson. He rejoined the Company in June 1984 along with an associate, Stanley Gold, who serves as Chief Executive of Roy Disney's Shamrock Holdings Co. unit. The ouster of Miller had been in the works for several months. Some were critical of Miller's leadership and others viewed him as a scapegoat for a number of corporate missteps and situations beyond his control.

Impact on Stockholders

The stock price during the takeover attempts fluctuated greatly. The stock was trading at \$40-1/2 on March 8, 1984; two weeks later was up to \$65-5/8 (on takeover speculation) and traded for as little as \$45-1/4 during the summer. In January of 1985, the stock was back up to \$65. Analysts said the stock price was responding to artful massaging of securities analysts by Weisner and Wells, Disney's new Chairman and President, who have spelled out to major security analysts an ambitious program to relight the entertainment company's long-fading star.

*This was later cancelled.

**WALT DISNEY
FINANCIAL HISTORY
(IN MILLIONS OF DOLLARS)**

	<u>1984*</u>	<u>1983</u>	<u>1982</u>	<u>1981</u>	<u>1980</u>	<u>1979</u>	<u>1978</u>	<u>1977</u>	<u>1976</u>	<u>1975</u>
Total Revenue	1656	1307	1030	1005	915	797	741	630	N/A	N/A
Net Income	98	93	100	121	135	114	98	82	N/A	N/A
Return on Equity - %	9	7	9	10	13	12	11	11	N/A	N/A
Debt to Equity	.75	.25	.32	.15	.03	.02	.01	-	N/A	N/A
Stock Price Range	69-45	85-47	72-47	67-43	54-41	46-33	47-32	48-32	N/A	N/A
EPS - Net Income (Primary)	2.73	2.70	3.01	3.72	4.16	3.51	3.04	2.53	N/A	N/A

* Disney bought back stock from Steinberg in 1984.

10/28/85

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CHRONOLOGY OF EVENTS

CARL ICAHN ATTEMPTS TO TAKEOVER UNIROYAL

January 2, 1985

. Uniroyal announced it reduced senior debt by \$49.8 million by using available cash. The company's debt to equity ratio was reduced to .45 by the transaction. Management aims to achieve a .40 ratio.

February 20

. Uniroyal released earnings for 1984 of \$2.81 per share up from \$2.16 the previous year. CEO Joseph Flannery predicts further earnings gains in 1985.

March 28

. Uniroyal entered into a joint research and development agreement with Biotechnica International to develop genetic engineering technology to increase food crop yields.

April 4

. Uniroyal said it would ask shareholders to approve two anti-takeover measures: a staggered board and a fair-price measure requiring that all shareholders receive the same price in an acquisition and that acquisitions be approved by an 80% super-majority.

April 10

. Carl Icahn announced he plans an \$18.00 a share tender offer for a controlling interest of Uniroyal. Icahn said he had warned company management he would launch the tender unless the anti-takeover measures were withdrawn from the annual meeting agenda.

. Uniroyal shares closed at \$17.88.

April 11

. Uniroyal's Board rejected Icahn's threatened tender offer.

April 12

. Uniroyal CEO Flannery said he is willing to consider offers for the company. "We aren't opposed to an offer that satisfies the interest of our shareholders."

. He reiterated the anti-takeover provisions would be submitted to the shareholders.

. Uniroyal shares closed at \$19.25.

. Standard and Poor's placed Uniroyal on its "creditwatch list with developing

implications.* It said the company's ratings could be reduced if it is acquired by Icahn or if it moves to make the company less attractive to a raid. Uniroyal is rated single-B-minus.

April 15

. Icahn launched his bid to acquire 18 million shares of the 33.9 million outstanding for a 53% share.

. Uniroyal urged shareholders not to tender and announced it has received expressions of interest from other potential suitors.

. Uniroyal stock closed at \$20.30 a share.

April 16

. Uniroyal said it will adjourn its annual meeting until April 26 and will not announce until then the results of shareholder voting on the anti-takeover proposals. CEO Plannery also again asked shareholders not to tender their shares.

April 22

. Uniroyal said it might spin-off certain assets. It was rumored that potential "white knights" were losing interest due to the company's large unfunded pension liabilities and that specialty chemicals was the only interesting part of the company.

. Uniroyal stock closed at \$20.25.

April 24

. Icahn arranged a \$150 million bank credit line to finance his bid. National Westminster Bank USA is the lead bank.

. Unconfirmed reports that Uniroyal has several offers valued at slightly more than \$20 a share have circulated on Wall Street.

. Uniroyal announced that shareholders had approved the anti-takeover measures with 68% of the votes cast.

April 26

May 2

. Nearly a week passed before Uniroyal certified the results of the voting on the anti-takeover proposals. Icahn challenged the results in court. Uniroyal certified on May 2 that the proposals had been approved by a slight margin over the required two-third's majority.

May 7

. Uniroyal agreed to a leveraged buyout by Clayton and Dubilier at \$22.00 a share to be financed by junk bonds.

. Carl Icahn agreed to support the transaction and dropped his tender offer.

. The company said it agreed to pay Icahn \$5.9 million "for expenses and his cooperation."

May 10

. Standard and Poor's changed Uniroyal's creditwatch status to Negative from Developing citing the large addition of debt resulting from the LBO combined with high existing, unfunded pension fund liabilities.

June 17

. Holders of Uniroyal preferred stock protested that their shares will not be redeemed as part of the LBO. However, the company said it planned no change in the structure of the LBO deal.

July 30

. In its second quarter earnings release, Uniroyal reported net income of \$.72 per share vs. \$.86 a year earlier. It noted an extraordinary charge of \$9 million (\$.26 a share) for fees related to the tender offer.

August 13

. Holders of Uniroyal preferred stock filed suit to block the LBO.

September 9

. Uniroyal Directors awarded CEO Flannery a bonus of \$1.6 million. The bonus was disclosed in the proxy statement issued for a special shareholders' meeting scheduled for September 23 to vote on the LBO.

. Uniroyal also agreed to settle the suit of holders of preferred stock offering to retire one-sixth of the issue each year beginning in 1995 at \$100 per share plus accrued and unpaid dividends (\$8 per share).

September 23

. Uniroyal shareholders approved the LBO. At the same time the company was restructured into a holding company and several, wholly-owned subsidiaries.

October 3

. Standard and Poor's lowered Uniroyal's credit rating to Triple-C from Single-B-minus citing that the ratio of debt and preferred stock to capital rose from .36 to .99 as a result of the LBO.

October 30

. Uniroyal announced it might sell assets to pay-off debt from the LBO.

November 1

. Uniroyal Senior debt downgraded by Moody's from BA-2 to B-2.

November 8

. Uniroyal announced its specialty chemicals business will be put up for sale in an effort to raise cash.

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CARL ICAHN ATTEMPTS TO TAKE OVER UNI-ROYAL

Background:

John Flannery took over as CEO of Uni-Royal in 1979 when the company lost \$120 million on \$2.6 billion of sales. The performance of the company improved steadily as a result of his stewardship, reporting record earnings in 1984. At the end of that year, the company was able to retire a large chunk of debt due to the improved cash generation picture. In addition, Uni-Royal's management felt great confidence that during 1985 they would be able to fund \$99 million of an unfunded pension liability of over \$300 million. The company's prospects on the research and development front were also very bright as evidenced by the negotiation of a licensing agreement for biogenetic engineering technology in early 1985.

The picture changed dramatically during April of this year when Icahn first threatened and then launched a takeover bid which resulted in the payment of greenmail and an eventual restructuring of the company into an LBO. As a result, Uni-Royal took on \$750 million in debt. For all practical purposes, the company has been crippled. It has put up for sale a number of assets, including approximately 500 acres in the Middlebury, Connecticut area and its star specialty chemical business.

Impact On Employees:

Since the LBO was negotiated, Uni-Royal has laid off 50 chemical workers and 155 salaried employees, mostly at the corporate headquarters. Contributions to the pension fund were curtailed to half of the amount committed to by management at the beginning of the year.

There is apparently widespread feeling among Uni-Royal employees that the sale of the chemical division is a clear indication that the company will eventually be liquidated.

Impact On The Community:

The Waterbury/Middlebury area of Connecticut has received a double whammy of takeovers this year as both Scovill and Uni-Royal have been attacked by raiders with very negative consequences. In addition to the job losses, Uni-Royal has pulled back from operating several local service businesses, including an inn and managing the local airport.

In an effort to generate cash to retire debt, it has also put on the market 500 acres of property.

UNIROYAL
FINANCIAL HISTORY
(IN MILLIONS OF DOLLARS)

	<u>1985</u>	<u>1984</u>	<u>1983^b</u>	<u>1982^b</u>	<u>1981</u>	<u>1980</u>	<u>1979</u>	<u>1978</u>	<u>1977</u>	<u>1976</u>
Total Revenue	N/A ^a	2122	1936	1836	2260	2299	2575	2736	2582	2315
Net Income		77	67	26	51.6	(7.8)	(119.7)	6.5	35.0	18.9
Return on Equity - %		11	10	5	10	(2)	(24)	1	6	3
Debt to Equity		.23	.34	.61	.67	.80	.94	.65	.64	.65
Stock Price Range		18- 9-3/4	18- 11	11-7/8- 5-7/8	10-3/8- 5-1/2	6-3/8- 3-1/8	8-1/4- 3-1/2	8-1/2- 5	11-1/4- 7-1/8	10-1/2- 7-1/2
EPS-Net Income (Primary)		2.13	2.03	0.78	1.76	.30 ^c	(4.51)	.06	1.13	.45

(a) After a takeover attempt in early 1985 by Carl Icahn, Uniroyal underwent a leveraged buyout.

(b) 1983 and 1982 figures are restated for discontinued operations (losses of \$45.5 million in 1984 \$18.9 million in 1983, and \$6.2 million in 1982).

(c) Extraordinary credit of .60/share (tax loss carryforward).

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Impact On Corporate Programs and Finances:

By far, the major apparent impact of the hostile takeover bid and the eventual LBO on Uni-Royal is the heavy financial burden imposed by the huge debt now on its balance sheet. The company is trying to generate cash in every way possible, including offering for sale its most profitable and exciting business. The financial editor of the local newspaper expressed his view that Uni-Royal, without the chemical business, will become almost exclusively a tire company once again.

Impact On Shareholders:

The Icahn bid and its resolutions did give shareholders a 20% premium over the market value of the stock at the time of the bid. However, preferred stockholders, without direct consultation, found themselves becoming equity partners in a LBO with a very high degree of financial risk. Despite their suit protesting this, none of the preferred shares will be redeemable for 10 years. This was quite a sudden change in outlook for these investors who, until April, were investors in a quickly recovering company under competent management.

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STAKEHOLD RESEARCH/APACHE

TAKEOVER CANDIDATE NAME: Scientific Computers

CONTACTS' NAMES:

A. Richard A. (Dick) Walter
Chairman and Chief Executive Officer
Scientific Computers
10101 Bren Road E.
Minnetonka, MN 55343
612/933-4200

B. Mike Hamilton
Piper, Jaffray & Hopwood
Piper Tower
222 S. 9th Street
Minneapolis, MN 55440

SHORT COMPANY DESCRIPTION:

Scientific Computers, Inc., provides on line data processing services to businesses throughout the United States; and data entry, photocomposition, printing and mailing services to upper Midwest customers. Ketabular, a division in Phoneix, AZ, provides data entry services in that area.

In 1985, the company completed an acquisition of St. John's Data System, which is a personal computer based data collection and shop-floor management system that incorporates bar-code and laser-wand technology.

Traded national over the counter (OTC) symbol: SCIE

IMPACT ON STOCKHOLDERS

PRE-HOSTILE

1. EPS	1. YEAR	<u>.82</u>	2 YEAR	<u>.89</u>	3 YEAR	<u>.96</u>
2. Debt/Cap	2.	<u>.09</u>		<u>.10</u>		<u>.127</u>
3. R&D Exp.	3.	<u>\$1.3 M</u>		<u>\$2.0 M</u>		
4. Sales	4.	<u>14.6 M</u>		<u>12.8 M</u>		<u>12.6 M</u>
5. Stock Price	5.	<u>7 3/4-14</u>				
6. Asset/Share	6.	<u>\$6.59</u>		<u>\$6.04</u>		<u>\$5.38</u>
7. Op. Cash Flow/ Share	7.	<u>\$1.6</u>		<u>\$1.46</u>		<u>\$1.08</u>
8. Dividends	8.	<u>.28</u>		<u>.24</u>		<u>.24</u>

POST-ACTIVITY

1. EPS	.48
2. Debt/Cap	.39
3. R&D Exp	\$ 1 M
4. Sales	14.2 M
5. Stock Price	5 5/8-11 1/4
6. Asset/Share	3.51
7. Op. Cash Flow/ Share	\$1.63
8. Dividends	.28

DESCRIPTION OF LONG-TERM PERFORMANCE

SCI had experienced a slight but steady four-year decline in earnings as customers demanded more competing power at lower costs. Management build a cash reserve, thus total assets to provide for product development or acquisitions.

IMPACT ON EMPLOYEES
(by category, if known)

1. Number of Employees

- A. No loss of employment
- B. Wage and salary freeze for one year period

2. Number of Employees Relocated

- A. No impact

3. Impact on Benefit and Service Plans

- A. No impact

4. Impact on Training/Development Programs

- A. Reduced reimbursement for education programs

5. Impact on Stock Options

- A. Reduced asset value drove share prices downward making stock options worthless.

6. Impact on Pensions and Retirement

- A. No impact

IMPACT ON COMMUNITIES

1. If measurable reduction in taxes (Fed./State/County)

2. Reduction in community service programs

- A. Reduced profitability has reduced community growth

3. Closing of factories

IMPACT ON SUPPLIERS, CUSTOMERS

1. Significant reduction or elimination of purchases or sales
 - purchases or sales transferred to other suppliers or customers
 - transferred to local or out-of-state suppliers or customers or to foreign suppliers or customers
 2. Treatment of accounts payable and accounts receivable
 - delay in payments or acceleration in collections
- A. No impact

White Knight

- . Conoco
- . Unidynamics
- . Marathon Oil Company
- . Continental Group
- . Heublein

STAKEHOLD RESEARCH/APACHE

TAKEOVER CANDIDATE NAME: Conoco

"WHITE KNIGHT": DuPont

CONTACTS' NAMES:

1. Donald Sutherland - Director, Investor Relations
2. Edward P. Carter - Stockholder Relations (DuPont)
3. Louise Abercrombie - Business Editor, Ponca City News
4. Phyllis Batt - Conoco Public Affairs Manager
5. Foster Johnson - Managing Editor, Ponca City News
6. Deacon New - Asst. Managing Editor, Daily Oklahoman

SHORT COMPANY DESCRIPTION:

Dupont, based in Wilmington, Delaware, was founded in 1802 and is one of the world's largest chemical companies. Started in the gunpowder business and now sells everything from synthetic fibers and insecticides to cookware coatings and auto paints. Known most for invention of nylon and Teflon and growth historically has come primarily from in-house research and innovation. Petroleum is raw material for 80% of its products, thus relies heavily on petrochemicals as feedstock. Merger with Conoco secured supply in addition to cushioning effects of fluctuating energy prices on its products.

At time of 1981 merger (largest U.S. corporate merger to date), Dupont had prior year revenues of \$13.7 billion versus \$18.3 billion for Conoco. Conoco was based in Stamford, CT and was the ninth largest U.S. oil refinery and second largest coal company. Conoco had 2 billion barrels and 7.2 Tcf of natural gas reserves at the merger.

The companies had begun a joint venture in 1978 to find natural gas in Texas, Louisiana, Mississippi and Alabama, a relationship that led directly to the alliance in the summer of 1981 to fight off hostile takeover bids by Seagrams and Mobil.

At the time of the merger, the two companies had a combined worldwide employee population of 177,000 -- 35,000 were Conoco employees.

DESCRIPTION OF EVENTS LEADING UP TO HOSTILE BID/SUBSEQUENT EVENTS

Summary:

The Conoco-Dupont agreement in August, 1981 (effective in September) was the climax of a several-month drama which began with unwelcome assaults by two Canadian companies.

The first came in May when Dome Petroleum bought 20% of Conoco's stock. That threat was fended off when Conoco agreed to trade its majority interest in the Hudson's Bay Oil & Gas Co. in turn for Dome's Conoco stock.

In late May, Seagram approached Conoco privately with an offer to buy 35% of its shares. Conoco saw no rational integration into a liquor company and also feared Seagram would bring in new management. Conoco chairman Ralph Bailey sought out an alternative merger partner to thwart Seagram's plan. His first choice was Tulsa-based Cities Service, which was less than half Conoco's size but with exploration rights to 10 million U.S. acres. As they bargained with Cities Service, nine top Conoco officers drew up "golden parachute" employment agreements guaranteeing payment of their salaries for three years.

The day before the Conoco - Cities Service merger was to be announced, DuPont Chairman Edward Jefferson called Bailey to ask if they could play a constructive role; Bailey told him he was already negotiating with another company.

But the Conoco-Cities Service deal collapsed the next day when Seagram proposed to buy 41% of Conoco for \$73 a share. (Before the offer, Conoco shares were trading at \$62). Cities Service couldn't match that bid and dropped out.

Bailey called Jefferson back and merger talks moved swiftly, aided in part because the two had worked together three years earlier on joint gas exploration ventures in Texas.

In the midst of those discussions, Texaco made an offer to Conoco roughly comparable with DuPont's but there was concern on Conoco's part that the Reagan Administration would balk at a merger between two huge oil companies -- it would have created a combination larger than all U.S. energy firms except Exxon.

On July 17, Mobil (second-largest U.S. petroleum company) entered the fray with a record \$7.74 billion stock and cash bid. DuPont's bid was \$7.4 billion in cash and securities. The Mobil offer was null unless they received over 44 million shares of Conoco, however, a figure they never approached. Mobil asked the Justice Department to block DuPont's takeover but the Justice Department responded by delaying Mobil's bid when it said Mobil couldn't buy any shares until 10 days after Mobil provided additional information on its plans and the "competitive implications."

On Aug. 7, despite higher bidding by Mobil and Seagrams, DuPont announced it had been tendered approximately 47 million shares of stock -- about 55% of the total outstanding.

The fight for Conoco presaged more such bids. During that battle, five major oil companies drew down \$25 billion in credit from banks.

PRE-HOSTILE

	1981*	1980	1979
1. EPS	1. YEAR <u>\$5.81</u>	2 YEAR <u>\$9.51</u>	3 YEAR <u>\$7.57</u>
2. Debt/Cap	2. <u>.42</u>	<u>.30</u>	<u>.36</u>
3. R&D Exp.	3. _____	_____	_____
4. Sales	4. <u>22.8 Billion</u>	<u>18.8 Billion</u>	<u>13.1 Billion</u>
5. Stock Price	5. <u>37.25 (Year-End)</u>	<u>41-73</u>	<u>28-49</u>
6. Asset/Share	6. _____	_____	_____
7. Op. Cash Flow	7. _____	_____	_____
8. Debt Ratings	8. <u>AA</u>	<u>AAA</u>	_____
9. Dividends	9. <u>2.75</u>	_____	_____

* DuPont (includes 4 months of conoco generation: Sept-Dec)

POST-ACTIVITY

	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985(est.)</u>
1. EPS	3.75	4.70	5.93	--
2. Debt/Cap	.42	--	--	.25
3. R&D Exp			90 Million	100 Million (Co)*** (Sh)
4. Sales	33.3 Billion	35.4 Billion	35.9 Billion	
5. Stock Price	35 7/8	52	49.50	(All year-end quotes)
6. Asset/Share		102.27	100.57	
*** 7. Op. Cash Flow	4.4 Billion	3.8 Billion	3.8 Billion	
8. Debt Ratings	AA3		AA1	
9. Dividends	2.40	2.50	2.90	

**: Does not include drilling expenditures/exploration costs; total DuPont R&D was 966 million and 1.1 Billion in 1983, 1984, respectively. 1985 estimate: 1.2 billion

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***: After-tax operating cash flow for nine months equals \$10.62 (5.39 Conoco.

DESCRIPTION OF LONG-TERM PERFORMANCE

Evaluative Comments:

1. Overall extremely negative reaction initially in marketplace with DuPont stock dropping from 1981 high of 53 1/8 to 38 shortly after merger. That reaction lasted 3 + years and there is still concern for reduced attractiveness on P/E basis.
2. While DuPont debt rating is now AA1, they are able to borrow at AAA rate when they choose. They have made choice to stay at AA and use their cash to grow rather than pay debt down to 20 percent debt/capitalization level required for AAA rating. With addition of \$4 billion debt to swallow Conoco, DuPont's debt peaked at \$7.2 billion in 1981. They have now paid it down to \$4 billion.
3. Employee force: Target is roughly 140,000 by end of 1986 and they expect to be at 145,000 by end of this year (down from 177,000 peak). Feel they must reach these levels to be competitive within the markets they service; world markets not improving as fast as they foresaw.
4. Same basic Conoco management still in place and DuPont hasn't messed much with their operations. Technologies and backgrounds of the two companies were different but cultures similar. Biggest divestiture was \$750 million in production assets to Petro-Lewis in late 1982.
5. DuPont's vulnerability to cycle swings has been moderated. Eg. In 1982 and 1985, Conoco segments of the business (Petroleum, Refining, Marketing, Transportation, Exploration and Production, and Coal) outperformed DuPont (roughly 60-40 percent in earnings contributions). In 1983-84, the roles were reversed.
6. Synergy: DuPont uses approximately 300 Mmcfd, half of which is supplied by Conoco. That percentage is growing as DuPont's existing contracts expire. Conoco management now handles all buying and selling of petrochemicals for DuPont.

IMPACT ON EMPLOYEES

	<u>Pre-Action</u>	<u>Post-Event</u>
1. Number of Employees Conoco	35,000	27,000 (1985 year-end)
All DuPont		177,000*

* Total now 145,000 and anticipated to bottom at 140,000 next year.

2. Number of Employees Relocated

1,000-2,000 -- Most related to sale of chemical operation in Ponca City to Vista in Houston

3. Impact on Benefit and Service Plans

Some loss in employee benefits package, particularly insurance coverage.

4. Impact on Training/Development Programs

5. Impact on Stock Options

6. Impact on Pensions and Retirement

Largest concentration of Conoco employees at Ponca City, OK. As result of 3-year effort to reduce headcount, 650 of 4,500 employees there took early retirement(sweetened by adding 5 years to age and service total).

IMPACT ON COMMUNITIES

1. If measurable reduction in taxes (Fed./State/County)

2. Reduction in community service programs

No significantly discernible drop in volunteerism,, charitable giving or other impacts that could be traced to merger, with exception of loss of wage earners. Have maintained community programs already in place, but no new programs have been launched.

3. Closing of factories

IMPACT ON SUPPLIERS, CUSTOMERS

1. Significant reduction or elimination of purchases or sales

- purchases or sales transferred to other suppliers or customers
- transferred to local or out-of-state suppliers or customers or to foreign suppliers or customers

2. Treatment of accounts payable and accounts receivable

- delay in payments or acceleration in collections

CRANE ACQUISITION OF UNIDYNAMICS
CHRONOLOGY OF EVENTS

Jan. 7, 1985

Nortek acquired 6.2% of the outstanding shares of Unidynamics, and announced its intentions to acquire all 6.5 million shares via a \$20 per share tender offer. The total value of the transaction would be \$130 million.

Unidynamics stock rose \$5.00 to \$22.00.

H. Ridgely Bullock, Chairman and CEO of Unidynamics, placed a telephone call to Robert S. Evans, Chairman and CEO of Crane, to inquire as to Crane's interest in a possible merger or consolidation with Unidynamics.

Jan. 8

Nortek announced that it will sell certain assets of Unidynamics' merchandising equipment and industrial systems segments if its acquisition of Unidynamics is successful. Nortek will also rely on bank financing, which would raise the merged company's debt to capitalization ratio to greater than 70%.

Jan. 14

Unidynamics' Board rejected Nortek's tender offer of \$20 per share. The company hired Smith Barney and Goldman Sachs to assist in exploring alternatives "with a view towards obtaining greater value for Unidynamics shareholders."

Unidynamics announced 1984 earnings of \$2.25 per share. This means that Nortek's offer of \$20 per share is nine times earnings, compared to the stock's price/earning ratio of six times earnings one month prior to the announced offer.

Jan. 15

At a meeting of Unidynamics' Board of Directors, an acquisition offer from Crane was discussed, and the Board voted to recommend that shareholders accept the offer.

Jan. 16

Crane Co. announced that it had agreed to acquire Unidynamics for \$29 per share. Total value of the transaction would be \$188 million, a 56% premium over year-end 1984 book value.

Feb. 15

NYSE suspended trading of Unidynamics stock as Crane's acquisition of the company is completed.

Feb. 20

Crane announced that it is selling its Winsmith Division, acquired in the Unidynamics merger, to H.K. Porter Co. for an undisclosed cash price.

CRANE ACQUISITION OF UNIDYNAMICS

Background

Unidynamics, a \$400 million manufacturer of merchandising equipment, industrial equipment and specialty engineered materials, became the subject of a hostile takeover on January 7, 1985. Nortek Inc. offered \$20 per share for all outstanding shares of Unidynamics in a transaction valued at \$130 million.

The Board of Directors of Unidynamics urged its stockholders to reject this offer, stating that it was too low in light of the company's outlook. It announced, however, that it was hiring investment bankers to seek a "greater value for Unidynamics stockholders."

H. Ridgely Bullock, Chairman of Unidynamics, contacted Robert S. Evans, Chairman of Crane, to solicit Crane's interest as a "white knight." On January 16, Crane announced that it would acquire Unidynamics for \$29 per share, or \$188 million.

Subsequent to the acquisition of Unidynamics by Crane, the Winsmith division of Unidynamics was sold to the H.K. Porter Co. According to public sources, this is the only division that has been sold.

Impact on Directors and Officers

The Chairman, other Directors and senior management benefitted greatly from the Crane takeover versus the proposed Nortek takeover.

Under the Crane merger, Unidynamics' Chairman and President became Directors of Crane. Nortek did not state this possibility in its merger plan as filed with the SEC.

Nortek specifically stated that any employment contracts entered into after March 13, 1984 (date of last proxy statement by Unidynamics) could be grounds for cancellation of the merger. The March 13, 1984 Unidynamics proxy does not mention any employment contracts existing at that time.

Crane was much more favorably disposed to keeping Unidynamics management. On January 15, 1985, Unidynamics entered into "golden parachute" employment agreements with thirteen key executives which Crane honored. These agreements stated that the executives would continue in their current positions for two years plus specified renewal periods. If any executive were terminated, i.e., removed from office, demoted, forced to take a salary cut or reduced incentive compensation, or if the company offices were moved more than 45 miles away, the executive would continue to receive his salary for a period of six to twelve months, depending upon the executive. Crane also stated that it would maintain Unidynamics' existing incentive compensation and benefit plans for key executives. Nortek did not state its intentions in this matter.

Crane also spelled out its planned treatment of Unidynamics Directors, whereas Nortek did not do so in its SEC filings. In addition to continuing to indemnify the Directors (as well as officers) for a five year period, Crane agreed to maintain the Unidynamics Directors' Retirement Income Plan. This was worth \$.5 million at the time of the acquisition.

Impact on Other Employees, Suppliers, Communities

The potential impact on employees, suppliers and communities was the greatest in Crane's sale of Winsmith, a former Unidynamics division. This maker of gear speed reducers employed approximately 350 people in Springville, NY, a community of 5000 people near Buffalo. Winsmith was the second largest employer in town.

Crane never really exerted any influence over Winsmith because its ownership lasted less than a month. Many employees and townspeople were fearful that Crane would close the facility because it did not seem to fit with Crane's other businesses.

Seven months after being sold to Porter, Winsmith is essentially unchanged. Its business continues at normal levels, headcount has been maintained, the union is intact and general employee benefits remain unchanged. Dealings with customers have not changed, nor has the company's relationship with local suppliers or the community at large. In fact, Winsmith management is encouraged by the enthusiasm shown by senior management of its new parent company.

Unidynamics' corporate headquarters were located in Stamford, Connecticut. Crane has maintained that office, but it is logical to assume that the staff has been reduced (although no figures are available). Given the corporate headquarter environment of the Stamford area, opportunities for released employees are available.

Impact on Stockholders

By all measurements, Unidynamics stockholders benefitted greatly from the acquisition.

Over the past five years, the Unidynamics stock's compounded average annual yield was 9.5%. For the same period, the compounded average annual yield for the Value Line Composite was 9.3%. Return to the stockholders compared to this index had slowed down in 1984, however. Despite the company's improved 1984 performance, the stock was undervalued, with a P/E ratio of seven compared with the Value Line Composite P/E ratio of ten.

Unidynamics stock closed on Dec. 31, 1984 at \$16 per share. If the stock were still traded and performing with the market average, it would be trading in the \$17.50 - \$18.10 range. If the Nortek offer had been accepted, shareholders would have \$21.10 today. Unidynamics shareholders who invested their \$29 per share settlement would have \$30.70 today. The Crane offer was far superior to the Nortek offer, but it is clear that either alternative was more attractive than holding Unidynamics stock.

Crane stockholders also benefitted from the Unidynamics acquisition. Crane stock was trading at \$32 when it acquired Unidynamics, and has risen to \$36. This represents a 12.5% increase, versus a 6.7% increase in the Standard & Poor's 500 index for the same period. Analysts are very bullish on Crane's future, and have raised their estimates of 1985 earnings to recognize "the pep Unidynamics has brought to the company." More importantly, the strategic thrust of the merger leads analysts to expect strong performance through the end of the decade.

Two parties of note made substantial profits on this acquisition.

- Nortek, which made the original hostile takeover bid, earned \$5 million on its shares, for which it had paid \$6.7 million. This represented a 75% profit.
- Ivan Boesky, a noted arbitrageur, also profited handsomely. After Nortek announced its original offer, Boesky began buying Unidynamics shares. He made \$5 million profit when he sold these shares to Crane. There was speculation that Boesky had inside information through a board member of his own company who is also a Director and former President of Crane. The SEC never filed charges against Boesky or the director, however.

J. Drury
11/12/85

UNIDYNAMICS*
FINANCIAL HISTORY
(IN MILLIONS OF DOLLARS)

	<u>Est.</u> <u>1984</u>	<u>1983</u>	<u>1982</u>	<u>1981</u>	<u>1980</u>	<u>1979</u>	<u>1978</u>	<u>1977</u>	<u>1976</u>	<u>1975</u>
Total Revenue	385	315	316	336	318	318	256	N/A	N/A	N/A
Net Income	15	5	4	9	11	14	13	N/A	N/A	N/A
Return on Equity - %	12	5	4	9	11	14	14	N/A	N/A	N/A
Debt to Equity	.44	.59	.68	.66	.66	.56	.57	N/A	N/A	N/A
Stock Price Range	19-13	19-9	12-7	13-9	15-10	18-12	23-14	N/A	N/A	N/A
EPS - Net Income (Primary)	2.25	0.88	0.69	1.49	1.74	2.22	2.15	N/A	N/A	N/A

*Unidynamics was taken over by Crane in early 1985, acting as a "white knight" after an original bid by Nortek (Unidynamics was formerly called UMC Industries and Universal Match).

1984 financials are estimated because Unidynamics did not submit fourth quarter reports to the SEC.

STAKEHOLD RESEARCH/APACHE

TAKEOVER CANDIDATE NAME: Marathon Oil Company

CONTACTS' NAMES:

SHORT COMPANY DESCRIPTION

Founded in 1887 in Findlay, Ohio, Marathon is an integrated oil company that is engaged primarily in the exploration for and production, transportation and marketing of crude oil and natural gas, and in the refining, transportation and marketing of petroleum products.

Marathon is active in exploration and production in most of the major oil-producing areas of the U.S. It has four refineries in the U.S. and engages in retail marketing of refined products primarily in five Midwestern states. Marketing on a wholesale basis is conducted in 21 states, mainly in the Midwest and Southeast. In addition, a wholly-owned subsidiary, Marathon Pipe Line Company, operates crude oil and refined products pipelines in 13 states.

Overseas, Marathon has crude oil production in Libya, Nigeria and Abu Dhabi, and natural gas production in the Celtic Sea offshore Ireland, as well as in the Netherlands North Sea. Discoveries of oil and gas are being evaluated and/or developed in the U.K. sector of the North Sea and in the Indonesian sector of the Natuna Sea.

The company also has a wholly-owned petrochemical refinery in West Germany and an interest in a refinery in Spain. Refined products are marketed in Western Europe on a wholesale level.

The company conducts exploration for oil and gas and other minerals on a world-wide scale.

DESCRIPTION OF EVENTS LEADING UP TO HOSTILE BID/SUBSEQUENT EVENTS

10/30/81 -- Fresh from a defeat by DuPont to acquire Conoco for \$6.8 billion, Mobil Oil launches a \$5.1 billion (\$85 per share) attempt to take over Marathon Oil. Marathon, which described itself in its 1980 annual report as "a cash generating machine for the next few years", had recently set up a \$5 billion credit line to defend against a hostile takeover.

Marathon Oil replied that such an acquisition by Mobil would "substantially lessen competition in the gasoline market in the U.S. (Mobil would become the largest retailer in the country) and that it would also eliminate competition "in all areas of our business."

11/28/82 -- In a counter move, Marathon agrees to sell itself to U.S. Steel for \$6.4 billion.

Marathon has also asked for a court ruling that the takeover by Mobil would violate anti-trust legislation

12/28/82 -- A lower court ruling blocks Mobil's attempt

1/4/82 -- A Federal Appeals Court rejects Mobil's motion to overrule the lower court

1/7/82 -- U.S. Steel buys 30 million shares (51%) of Marathon

1/6/82 -- Mobil asks the U.S. Supreme Court to block U.S. Steel from purchasing shares of Marathon's stock. The Court refuses to hear the motion.

1/18/82 -- The Federal Trade Commission stalls Mobil's bid.

3/2/82 -- A group of dissident Marathon shareholders are heard in the U.S. District Court re: their allegations that the U.S. Steel offer is an unfair price for the stock. A proxy fight is underway.

U.S. Steel says it will seek a seat on Marathon's Board of Directors if the merger is not approved at March 11, 1982 meeting of shareholders. U.S. Steel will need approval by two-thirds of Marathon's shareholders.

3/11/82 -- The merger is approved by more than two-thirds of Marathon's shareholders.

IMPACT ON STOCKHOLDERS

<u>PRE-HOSTILE</u>	est. '82	1981	1980	1979
1. EPS		1 YEAR <u>\$5.82</u>	2 YEAR <u>\$6.27</u>	3 YEAR <u>\$5.34</u>
2. Debt/Cap Drilling		2. <u>39.2%</u>	<u>36.7%</u>	<u>38.9%</u>
3. ~~R&O~~ Exp.		3. <u>\$314,779,000</u>	<u>\$217,166,000</u>	<u>\$136,848,000</u>
4. Sales		4. <u>\$9,733,491,000</u>	<u>\$9,814,655,000</u>	<u>\$7,199,848,000</u>
5. Stock Price		5. <u>\$62.00 - \$108.13</u>	<u>\$64.00- \$82.50</u>	<u>\$26.44 - \$52.38</u>
6. Asset/Share		6. <u>\$102.12</u>	<u>\$83.82</u>	<u>\$71.37</u>
7. Op. Cash Flow		7. <u>\$7,471,000</u>	<u>\$5,043,092,000</u>	<u>\$4,321,133,000</u>
8. Debt Ratings		8. <u>BBB</u>	<u>BBB</u>	<u>n/a</u>
Total Capital Expenditures \$1.2B				
9. Other		9. <u>\$1,184,467,000</u>	<u>\$730,001,000</u>	<u>\$652,919,000</u>

POST-ACTIVITY

(see attachment A)

1. EPS
2. Debt/Cap
3. R&O Exp
4. Sales
5. Stock Price
6. Asset/Share
7. Op. Cash Flow
8. Debt Ratings
9. Other

DESCRIPTION OF LONG-TERM PERFORMANCE

In the last 2 years, U.S.Steel has installed a large new computer center at Marathon, which is said to be one of largest and best in oil business.

Hesse: "while Marathon is doing great, still have a gut feeling that it would be an even greater progress if it were still independent." But that's undocumented."

IMPACT ON EMPLOYEES

	<u>Pre-Action</u>	<u>Post-Event</u>
1. Number of Employees (in Findlay)	2,200	2,600
2. Number of Employees Relocated	approximately 100 top-level Marathon people have been relocated to Marathon's International Headquarters in Houston, but "they probably would have been anyway, since Marathon had been building the new headquarters offices there." But, many more middle-level management people have been added (recruited and brought from out-of-town)	
3. Impact on Benefit and Service Plans	Carlson: "U.S. Steel chairman Roderick made a commitment to Findlay and to Marathon that they would continue to run the company as it had been before -- as an independent entity -- and we believe they've done so." We have not heard of any benefits, etc. that have been curtailed or discontinued -- and believe we sure would have if they did.	
4. Impact on Training/Development Programs	appear to have continued, if not accelerated their programs	
5. Impact on Stock Options	did not know about this	
6. Impact on Pensions and Retirement	same plans as before -- have heard no complaints	

IMPACT ON COMMUNITIES

1. If measurable reduction in taxes (Fed./State/County)
none (if anything, an increase because of increased number of employees)
2. Reduction in community service programs
"U.S. Steel has a history of commitment to the community in its hometown and if anything, Marathon contribution and backing is greater."
(i.e. more support to United Way and current \$2-300,000 improvements to grounds and buildings at Marathon's headquarters.)

3. Closing of factories

IMPACT ON SUPPLIERS, CUSTOMERS

1. Significant reduction or elimination of purchases or sales none
 - purchases or sales transferred to other suppliers or customers none
 - transferred to local or out-of-state suppliers or customers or to foreign suppliers or customers none
2. Treatment of accounts payable and accounts receivable
 - delay in payments or acceleration in collections none

Carlson: "believe the good experience we've been having is due to the fact that Marathon was not acquired by another oil company. If it had been, they probably would have closed up things a lot and moved people out. Instead, U.S.Steel said 'you're the oil experts...just keep doing things the way you know how.'"

THE CONTINENTAL GROUP

CHRONOLOGY OF EVENTS

Founded at the turn of the Century	Originally called the Continental Can Company
Incorporated in New York	Principal business was canning and packaging
Late 1940's	Replaced American Can as world's largest can company
Early to mid 1970's	Expanded into paper and plastic products and became the world's largest packaging company--"an industry leader".
Late 1970's	Became a highly diversified conglomerate with friendly acquisitions of: a southeastern U.S. forest products company; the Richmond Company--a Virginia-based life insurance corporation; and a Florida-based energy company.
	Moved headquarters from New York City to Stamford, Connecticut where corporate staff numbered about 400.
1981-83	By 1982, with the acquisition of still another energy company, Continental's assets mix was 33% packaging, 31% energy, 23% forest products, and 13% insurance. Worldwide, Continental had about 40,000 employees, 144 plants and \$1.6 billion in equity.
	Also in this period, sales declined from \$5.2 billion in 1981 to \$4.8 billion in 1983, while earnings per share dipped from a high of \$6.60 in 1981 to \$3.66 in 1983. The company's stock traded between a low of \$25/share in 1982 to a high of \$54 in 1983.
1981-84	The company began to restructure in an attempt to become more profitable, selling off \$1 billion in assets. As a consequence, the stock rose in 1984 from the low \$20's to \$35/share, approximately the book value of the company. Continental had equity of about \$1.5 billion.

Spring 1984

Stock begins to rise for no apparent reason.

June 1984

Now clear that the company has its first suitor. Sir James Goldsmith called the executive office and informed them that he had acquired 1% of the company and desired a meeting with management within 48 hours. Before the meeting, the press announced Sir James' intentions were to pay \$50 in cash for 51% of the company's stock worth a total of \$2.1 billion.

Continental's Board rejected the offer as both too low and possibly inequitable treatment of differing classes of shareholders. The Board was also uncertain about the ability of Sir James to raise the promised cash.

Three weeks after the Goldsmith offer, the company announced it was considering a variety of "financial alternatives" including selling some of its divisions or the entire company.

Four weeks after the original Goldsmith offer, Kiewit/Murdock became a "white knight" and paid \$58.50 per share to all of Continental shareholders--\$8.50 more than the original Goldsmith offer.

August 1984

Even before completing the sale, Kiewit announced it planned to sell about \$1 billion of Continental's assets to help finance the purchase including some insurance units, all oil and gas properties, paper mills and some timber acreage. Kiewit said it would use the proceeds from the sale to reduce the credit it had arranged for the purchase of Continental--"retained businesses", it said, "will be continued substantially as they are being conducted".

October 1984

Continental announced layoffs of 30 of the remaining 260 headquarters staff noting, in addition, that 20 other job openings at the Stamford facility would remain unfilled.

November 1984

After a long delay caused by the regulatory requirements for the transfer of Continental's insurance subsidiaries, Kiewit gained control. During this period, the raiders and arbitrageurs made handsome gains.

Background

As a former Continental executive noted, "The company was a very diversified conglomerate and, because the investment fraternity could not understand it, there was a "conglomerate discount" applied to the stock price. This discount would disappear if the company were broken into individual pieces and either set free as a series of smaller businesses, or those businesses sold to other companies in similar lines of activity. This did ultimately happen with Continental. The pipeline was sold to another pipeline company, the oil and gas properties were sold to oil and gas companies, and the forest products business was split and sold to two forest products companies. Then the can company was in essence spun off as an independent unit. Continental was still a conglomerate, though a more streamlined one."

Impact on Employees

Since the sale, Kiewit has divested a total of \$1.6 billion in assets--keeping intact only the packaging business, whose employees are unscathed. Few if any other divisional workers have lost their jobs. By contrast, "the toll at Continental's worldwide headquarters in Stamford amounts to a bloodbath". Staff there now number 40--mostly bookkeepers and accountants. Despite Kiewit's assurance to keep management "in place", two of the three Stamford facilities have closed and the third will be vacated in early 1986.

Again, to quote a Continental executive, speaking of takeovers generally and not simply of his own company:

"Consider the case of a 45 year old executive who has made it to vice president, and has ambitions of becoming chief executive of the company in due course. He has put in 20 year of service, developed skills appropriate to the business, personal relationships with the other managers, and confidence of the board of directors. Thus he has paid by past service for the prospect of future promotion not yet delivered. Now the company is taken over and his opportunity to become chief executive disappears. He has lost the 20 years necessary to build towards that objective and it's too late to start over with an equal opportunity in another company. Clearly this person has been greatly disadvantaged by the takeover through no fault of his own and deserves some form of compensation for his loss."

Impact on Pensions

Before the sale to Kiewit, Continental's directors passed a proposal that indemnified employees and continued the current pension plan for the next two years or into 1986.

Impact on Stockholders

The sale was a bonanza for the stockholders--"a colossal killing" according to Forbes. Since Kiewit/Murdock is a private company, little recent information is available.

Impact on Current Managers

According to Forbes, "The Kiewit style of insuring good management is to give key managers a stake in their companies, and that is what it plans for Continental. First, Kiewit is preparing an \$800 million refinancing through which the packaging company will be privately spun off as a separate subsidiary, with local management acquiring an equity interest that can eventually rise to 20% of the company's stock. A similar arrangement is planned for the timber business.

Impact on Corporate Community

- . Large contributions to charities eliminated.
- . United Way contributions reduced from \$10 to \$2-3 million
- . Matching gifts abandoned.
- . The non-monetary contributions of headquarters executives and managers to local civic and artistic organizations have come to a halt.

Impact on Suppliers

- . None apparent.

**CONTINENTAL GROUP
FINANCIAL HISTORY
(IN MILLIONS OF DOLLARS)**

	<u>1984*</u>	<u>1983</u>	<u>1982</u>	<u>1981</u>	<u>1980</u>	<u>1979</u>	<u>1978</u>	<u>1977</u>	<u>1976</u>	<u>1975</u>
Total Revenue	N/A	4942	5089	5291	5171	4544	3934	3686	3468	3116
Net Income	N/A	199	180	234	200	185	126	144	117	108
Return on Equity - %	N/A	13	11	15	13	15	11	N/A	N/A	N/A
Debt to Equity	N/A	.47	.62	.61	.65	.69	.53	N/A	N/A	N/A
Stock Price Range	N/A	54-33	36-25	41-30	36-25	32-26	34-26	37-30	34-27	30-23
EPS - Net Income (Primary)	N/A	3.66	4.81	6.36	5.35	5.13	3.47	4.45	3.98	3.66

*After a takeover bid by Sir James Goldsmith in June 1984, Continental Group was taken over by a corporation owned by Peter Kiewit (80%) and David H. Murdock.

Case Study: Acquisition of Heublein by R. J. Reynolds Industries

General Overview

The 1982 acquisition of Heublein Inc. by R. J. Reynolds Industries has been generally positive. Heublein had turned to Reynolds as a white knight after all of its defenses were battered down.

Heublein had been "put in play" by General Cinema of Boston, which had begun secretly buying stock late in 1981. General Cinema announced these purchases early in 1982 and continued to acquire stock on the open market for the next six months. Heublein resisted for as long as it could, finally negotiating a merger with Reynolds in the summer of 1982.

The deal that was negotiated attempted to protect the interests of all Heublein stakeholders. Although there was some individual exceptions, in the main this effort was successful.

As a result, for most employees, communities and suppliers, the acquisition had virtually no impact. Heublein shareholders were clear winners. Heublein's operating divisions benefited from an infusion of capital.

The losers were Heublein's corporate staff officers, who became redundant. Most left voluntarily. The subsequent merger of Heublein's Grocery Products Group into Reynolds' Del Monte also caused some dislocation. But, again, most of the employees were offered positions.

Impact on Employees

The overwhelming majority of Heublein employees did not notice the change in ownership. For the most part, they continued to do what they had been doing, reporting to the same people they had been reporting to.

All of the Heublein corporate staff officers were offered jobs, although only two at the Reynolds corporate officer level. Most choose to move to other jobs. Corporate officers in line positions all stayed to run the businesses they had been running.

About a year after the acquisition, Heublein's Grocery Products Group was merged into RJR's Del Monte division. This impacted about 100 people.

Over time, Reynolds installed its compensations and benefits programs on Heublein. This resulted in a narrowing of salary

ranges and a reduction of some bonuses. However, employees whose salaries were above the range did not suffer salary cuts.

Impact on Stockholders

Heublein stockholders did very well as a result of the acquisition. When Heublein first went "into play," the stock was priced at about \$30. Reynolds paid \$60 per share for Heublein. Following the acquisition, RJR stock appreciated for a time. More recently, the stock price has declined, but that had nothing to do with the acquisition.

Impact on Corporate Programs

Reynolds made capital available to enable Heublein to grow its businesses. Kentucky Fried Chicken, for instance, was able to accelerate its expansion program, increasing the number of outlets it could build. The funds were also available to broaden the test the Zantigo Mexican-American fast food concept.

Reynolds also gave its Del Monte specialty grocery business to Heublein's Grocery Products Group to run for about a year. This was a good business move. RJR later moved the Heublein grocery business to Del Monte in San Francisco.

Impact on Communities

Heublein communities have not been significantly affected by the merger. Community social, charitable, welfare, arts and educational organizations continue to receive contributions at about the same level as before.

Impact on Suppliers and Customers

There was no dislocation of suppliers following the merger. Because of RJR's massive advertising programs, Heublein was able to get an additional discount on the advertising it placed.

Escaped

- . Grumman
- . CBS (so far)
- . Unocal
- . Phillips Petroleum Company

CHRONOLOGY
LTV's ATTEMPT TO TAKE OVER GRUMMAN

- September 21, 1981 . Paul Thayer, LTV Chairman, informed Grumman of LTV's interest in a merger. President Gavin responded that Grumman was not interested, but a formal decision would have to be made by the Board.
- September 23 . LTV announced a cash tender offer for 70% of Grumman stock at \$45/share, contingent upon gaining 50% of the company.
- . Secretary of Defense Caspar Weinberger said the Pentagon would review the effects of the takeover bid on U.S. weapons suppliers.
 - . Analysts disagreed on Grumman's real value, one calling the LTV offer "a bonanza" for Grumman holders while another estimated Grumman's value at \$59/share rather than the \$45 offered.
- September 25 . Grumman's Board of Directors voted unanimously to reject LTV's offer, and to authorize litigation to block the offer.
- September 28 . Grumman filed suit in U.S. District Court (Judge Jacob Mishler) seeking a preliminary injunction to block the LTV takeover as a violation of federal antitrust and securities laws.
- . 8,000 "Grummanites" attended a rally at Grumman headquarters in Bethpage, New York, to hear top managers explain LTV's bid and the Board's decision to reject it.
- September 30 . Long Island Congressional Caucus announced its opposition to the takeover.
- October 4 . Employee-paid anti-takeover advertising campaign begins, funded by over \$15,000 in contributions.
- . Newsday (Long Island newspaper) editorial opposes takeover.
- October 6 . Federal District Court hearings began on Grumman's motion for a preliminary injunction.
- October 7 . New York State Attorney General Robert Abrams announced investigation of disclosure aspects of the takeover proposal, at the request of Governor Hugh Carey.

- October 8 . Grumman Pension Plan rejected tender offer. The Pension Plans owns 525,022 shares, or 5.2%.
- October 12 . The Department of Defense announced that it will stay neutral.
- . Grumman's Employee Investment Plan announced rejection of the tender offer. The Plan holds 3.2 million shares, or 25% of Grumman's total.
- . Grumman's Pension Plan began to purchase additional stock. Under federal rules, the Pension Plan could buy enough stock to total 10% of the total outstanding.
- October 13 . Grumman Pension Plan completed acquisition of 1,160,000 additional shares of Grumman common stock.
- October 14 . Judge Mishler granted a preliminary injunction on both antitrust and securities law grounds, to block LTV from accepting tenders of Grumman stock pending trial on the merits.
- October 15 . LTV appealed Mishler ruling.
- . New York State Comptroller Regan announced New York State Pension Fund would not tender its Grumman stock.
- October 22 . Labor Department sued Grumman Pension Plan trustees, charging they violated laws preventing use of employee pension plan assets to benefit the sponsoring company.
- . Grumman retiree filed against pension plan trustees, charging breach of fiduciary responsibilities (suit dropped on 10/28).
- October 27 . The U.S. Federal Trade Commission voted to seek a stay of LTV's tender offer on antitrust grounds.
- . Employee filed suit against pension plan trustees.
- October 30 . Judge Mishler heard the Labor Department suit against pension plan trustees; six Grumman employees filed as intervenors in support of the trustees on behalf of 18,000 Grumman employees and retirees who signed a petition endorsing the trustees' action.

- November 9 . The Securities and Exchange Commission filed suit in Federal Court, accusing Grumman of making inadequate disclosures about its moves to fend off the LTV takeover attempt. The SEC also accused Grumman of failing to disclose that it had asked Madison Fund to buy Grumman stock to put another block into friendly hands. The Fund bought 396,600 shares on September 30 and October 1 but sold the stock between October 12 and October 14.

- November 12 . Six Grumman employees paid their own way to Washington D.C., to present petitions supporting the pension plan trustees to the Secretary of Labor and the Long Island Congressional Caucus.

- November 13 . The U.S. Court of Appeals upheld the temporary injunction barring LTV from continuing with its tender offer for Grumman stock until after a full trial to consider the antitrust issue.

- November 16 . LTV withdrew the takeover bid, saying that the preliminary injunction set down by the Federal District Court and upheld on appeal "requires a long and costly trial".

- December 4 . Judge Mishler ruled that the Grumman Pension Plan trustees violated federal laws in their efforts to thwart the takeover.

- Mid-1982 . Federal Appeals Court upheld Judge Mishler's position, including a preliminary injunction blocking any purchase or sale of Grumman stock by the Pension Plan unless the Labor Department approves.

- December 6, 1982 . The Supreme Court refused to hear an appeal by the trustees of Grumman's Pension Plan.

- Mid-1984 . Judge Mishler ruled that the "trustees' breach did not result in a loss, and thus the trustees were not liable".

- March 1985 . Ruling on an appeal by the Department of Labor, the Federal Court of Appeals overturned Mishler's judgment that the Pension Plan Trustees were not liable. However, the appeals court rejected the Labor Department's theory of calculating damages in favor of one that would cause much smaller claims to be repaid.

April 18

- . At its Annual Meeting, Grumman shareholders approved two anti-takeover amendments. The first established certain minimum price and other requirements for business combinations. The second amendment established requirements for calling special shareholder meetings and for shareholders' nominations of directors, as well as other related matters.

GRUMMAN/LTV TAKEOVER ATTEMPT.

Impact on Employees

While we cannot be certain how many employees might have been laid off as a result of a takeover, we can speculate that at least some of the 27,600 (19,400 on Long Island) would have been affected, either by layoffs or undesired relocations.

In addition, LTV clearly contemplated selling a number of Grumman's non-aerospace operations, noting in their SEC filing their intention to review all Grumman operations before disposing of units. These sales, too, would have brought a significant possibility of layoffs and/or relocations.

Another effect may be felt in the future, depending on the result of the Grumman Pension Plan's purchase of stock to avert the takeover. Although Grumman did not exceed the ERISA limit of 10% of the fund assets, the Department of Labor charged that the purchases were "to benefit the sponsoring company", and thus illegal. In this precedent-setting case, a federal court of appeals ruled in March of 1985 that the plan trustees may be held liable for the difference between the plan's profit on the stock (\$13.2 million) and its potential earnings on an alternative investment. While this figure has not yet been determined, it is expected to be near \$5 million.

Impact on Suppliers and Customers

Since the takeover was not successful, it is difficult to assess the potential effects on suppliers and customers. However, there is evidence that both of these constituencies had concerns that the takeover might not be in their best interests.

In the case of suppliers, Grumman supports over 200 small companies on Long Island, with 138 subcontractors involved in the F-14 contract alone. These suppliers purchased over 200,000 shares of Grumman stock during the takeover fight.

Grumman's largest customer, the Department of Defense, initially voiced a concern that the takeover might hurt the military by reducing the number of weapons suppliers. "We have an overriding interest", said Secretary Weinberger, in seeing "that we have a large number of qualified suppliers." However, after reviewing the situation, the DOD decided to remain neutral.

Impact on the Community

Grumman Corporation is Long Island's largest company, employing nearly 20,000 people there in 1981, and supporting a supply network of several hundred smaller companies. Grumman has traditionally been very active in Long Island community affairs. When LTV's takeover attempt was announced, the community reaction was immediate and strong. Local newspapers and radio and television stations on Long Island and in other Grumman communities ran editorials opposing the takeover, and the Long Island Congressional Caucus spoke out against LTV's offer. Bumper stickers saying "Long Island Loves Grumman" and "I love Grumman" were snapped up so quickly that another 50,000 had to be ordered.

Although LTV said it has no current plans to move south, Gary Reisch, an analyst who covered Grumman for Wertheim & Co., said he thought "that LTV will move as much as it can from Long Island to Texas". Representative Thomas Downey (D-NY) said: "I am very skeptical how this would help Long Island. I doubt very much that bigness makes it better for us. Grumman has grown up on Long Island...It has played an excellent and leading role in the arts and in community causes. It is the heart and soul of the Long Island economy."

The Long Island Association's Gaylor said a merger would be "devastating" to the Island's economy. "There's no guarantee they won't move out Grumman, no guarantee that corporate policy will be genuinely interested in what is best for Long Island, no guarantee that Grumman's involvement in the betterment of life will continue."

New York State Comptroller Edward V. Regan announced on October 15 that the New York State Common Retirement fund would not sell its 60,000 shares of Grumman common stock, saying: "We have concluded that the company's future prospects are undervalued in the marketplace as well as by LTV...The viability and stability of Grumman Corporation have led us to conclude that the company's future is excellent in terms of providing solid investment benefits."

Financial Impacts

Debts

At the end of 1980, LTV's long-term debt was over \$1.3 billion, for a debt-to-equity ratio of 1.64. LTV's tender offer filing noted that nearly another half-billion of debt would be needed to finance the takeover of Grumman. Using 1980 balance sheet figures, this would have brought the combined LTV-Grumman debt-to-equity ratio to nearly 1.9. Thus, this would have been a very highly leveraged company with an incentive to sell assets to reduce debt levels.

Impact on Shareholders

LTV's offer of \$45/share for Grumman stock was 68% over market (\$26-3/4 the previous day's close), 73% above book, and eleven times 1980 earnings. The total value was \$450 million for the minimum 70% stake, or \$621 million for 100%.

Subsequent to the takeover attempt, Grumman's stock price rose to the \$45 level during the fourth quarter of 1982. The high since 1981 was 36-3/8 in the third quarter of this year (after a 2-1 split, so the effective price was 72-3/4).

Profits From Takeover Attempt

Because LTV's offer was in the form of a tender (and thus owned no shares prior to the tender), LTV did not profit in any way from the return of the tendered securities to their owners. LTV, in ending its bid for Grumman, said that it spent \$2 million for legal, investment bankers, and other specialized services. Grumman's costs are estimated at between \$2 and \$3 million.

GRUMMAN CORP.
FINANCIAL HISTORY
(IN MILLIONS OF DOLLARS)
(TARGET)

	<u>1984</u>	<u>1983</u>	<u>1982</u>	<u>1981*</u>	<u>1980</u>	<u>1979</u>	<u>1978</u>	<u>1977</u>	<u>1976</u>	<u>1975</u>
Total Revenue	2604	2255	2057	1788	1559	1493	1468	1410	1394	1243
Net Income	108	111	90	74	44	20	20	32	24	24
Return on Equity	.18	.22	.09	.06	.10	.07	.09	.17	.14	.16
Debt to Equity	.40	.13	.45	1.18	.74	.74	.85	.63	.94	1.44
Stock Price Range	30-22	34-23**	51-21	40-22	33-18	24-15	25-15	23-15	19-14	20-10
EPS - Net Income (Primary)	3.62	3.82	2.33	1.46	2.35	2.06	2.43	4.04	3.04	3.08

* Grumman was the target of a takeover attempt from LTV in September of 1981.

** 2-for-1 stock split in August 1983.

10/28/85

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LTV CORP.
FINANCIAL HISTORY
(IN MILLIONS OF DOLLARS)

	<u>1984</u>	<u>1983</u>	<u>1982</u>	<u>1981*</u>	<u>1980</u>	<u>1979</u>	<u>1978</u>	<u>1977</u>	<u>1976</u>	<u>1975</u>
Total Revenue	7046	4578	4777	7054	5743	5658	3066	2762	2529	2197
Net Income	(378)	181	(155)	386	128	174	35	(55)	16	9
Return on Equity - %	(26)	15	(13)	30	16	32	7	(16)	4	3
Debt to Equity	1.52	1.32	1.24	.95	1.64	2.00	2.67	2.77	2.77	2.56
Stock Price Range	20-9	19-12	18-8	26-13	21-8	11-7	14-5	14-6	18-10	20-9
EPS - Net Income (Primary)	(5.84)	3.64	(3.20)	7.97	3.95	6.03	2.33	(3.96)	1.15	.60

* LTV attempted (unsuccessfully) to acquire Grumman in September of 1981.

10/28/85

ATTEMPTED TAKEOVER OF CBS INC. BY
TURNER BROADCASTING SYSTEMS INC.
CHRONOLOGY OF EVENTS

- March, 1985 Ivan Boesky increases his stake in CBS to 8.7% of total common shares outstanding.
- April 18 Ted Turner, Chairman and President of TBS, offers \$5.41 billion face value worth of high yielding debentures, so called "junk bonds," for all 29.7 million CBS Inc. outstanding common shares of stock.
- CBS stock fell \$3.50 per share to \$106.25.
- April 22 CBS rejects the offer outright and files a lawsuit claiming TBS materially misstated 1983 - 84 earnings in its SEC filing.
- CBS auditor Coopers and Lybrand projects a combined TBS - CBS entity would be bankrupt by 1987 due to inability to service large debt incurred in takeover.
- May 13 CBS announces it is considering a recapitalization program to fight the TBS bid.
- June 3 CBS asks the FCC to block the TBS bid on the grounds that it would ruin CBS financially.
- June 21 SEC approved the TBS registration statement.
- July 3 CBS announces its recapitalization plan. It offers to buy 21% of outstanding CBS common stock for cash and senior notes, totaling \$150 per share. The estimated cost is \$950 million.
- CBS files suit against TBS, claiming federal securities violations.
- July 11 SEC clears the CBS buyback plan.
- August 1 TBS tenders its CBS stock under the recapitalization plan.
- August 7 TBS withdraws its offer to buy CBS.
- August 12 CBS announces it will sell assets yielding \$300 million in aftertax profits and will cut annual expenses by \$20 million in order to reduce and service debt incurred in the takeover attempt.
- September 3 CBS offers early retirement to 2000 employees.
- September 16 CBS dismisses 74 employees of CBS News segment.

ATTEMPTED TAKEOVER OF CBS BY TURNER BROADCASTING SYSTEMS

Background

CBS Inc. (1984 net sales of \$4.8 billion, net income of \$212 million) and its almost 170 domestic and international subsidiaries have been the subject of takeover rumors since the beginning of 1985. Early this year, investor Ivan Boesky acquired 8.7% of CBS stock and was reportedly in the process of putting together a takeover package. Rumors also had CBS entering into discussions with The General Electric Company in order to solicit a "white knight" to counter any hostile takeover bids.

On April 18, Ted Turner of Turner Broadcasting Services Inc. (TBS) offered to buy all of CBS Inc.'s 29.8 million outstanding common shares. The package, consisting of high yielding debentures and securities known as "junk bonds", was valued by Turner officials at \$5.41 billion face value, or \$175 per share. Industry analysts, however, put the market value anywhere from \$135 to \$150 per share. As expected, CBS rejected the offer and began to examine defenses to combat the takeover attempt.

In early July, CBS announced a recapitalization plan aimed at preventing a Turner takeover. CBS offered to buy back 21% of its outstanding shares in return for \$40 cash and \$110 face value ten year notes paying 10 7/8% interest for each share repurchased. By August 7, after legal motions and appeals by both parties had been settled, TBS withdrew its offer to buy CBS Inc.

At this point in time, CBS is in the midst of restructuring its organization in the wake of the unsuccessful takeover bid; however, there are questions that can be answered and issues addressed resultant from Turner's attempt.

Impact on Employees

Thus far, approximately 100 employees have been dismissed from CBS, 74 of whom are from the once sacred news division. Another 51 news positions are being reduced through early retirement or eliminating of vacant slots. Early retirement is being offered to 2000 CBS Inc. employees (7% of total work force) who are at least 55 years old with 10 years service or more. Increased pension benefits are being given to personnel who take advantage of this plan. CBS estimates 25 - 30% of those eligible will retire. At this point, CBS has not been able to estimate the potential savings. A CBS official did confirm that no other fringe or benefit plans would be effected.

The TBS tender offer filed with the SEC (Schedule 14D-1) did not mention Turner proposed treatment of CBS employees, termination packages or other such items.

Impact on Corporate Assets and Programs

At the time the restructuring was announced, CBS pledged that assets bringing in \$300 million in after-tax profits would be sold in the next two years. Thus far, a small music division has been sold. On the CBS selling block are:

television station KMOX in St. Louis, valued between \$130 - \$200 million; its 29% share in Tri-Star Pictures, valued at \$55 million; and CBS Toys, which is in the process of being sold and thus the value was not discussed. It was mentioned, however, that CBS may have to take a \$100 million write-off as a result of the proposed toy division sale. In addition, CBS also pledged to cut corporate expenses by \$20 million annually, of which a portion is to come from the aforementioned headcount reductions. The net savings from these actions are earmarked to reduce and service the almost \$1 billion of additional debt CBS took on to fend off TBS.

Impact on Stockholders

Until the dust settles around CBS, this issue will remain clouded. According to investment analysts, once a company is "put into play" (jargon for companies made the target of a hostile bid), only one company in five stays independent. CBS is still high on many lists as a possible takeover candidate, and as recently as November 4, CBS stock rose dramatically as rumors spread of a new takeover attempt. Thus it is difficult to ascertain the long-term impact on shareholders' wealth.

Industry analysts state that information and media companies usually trade for 75% of their asset value, while CBS only traded for 50% of its asset value. Analysts generally agree that CBS stock has been somewhat undervalued in the past and may have risen to a more acceptable level; however, until takeover speculation ends, nobody will be certain.

The following is a summary of CBS stock activity one month prior to takeover rumors surfacing (March 7), the week of the rumors (April 4) and current market quotes (November 5):

<u>Date</u>	<u>High</u>	<u>Low</u>	<u>Close</u>	<u>Total Mkt. Value (At Close)</u>
March 7	86 5/8	85 5/8	85 7/8	\$2.56 billion
April 4	114 1/4	111	111	3.31 billion
November 5	121 1/4	117 1/2	121	2.85 billion

Corporate Financials - Before the stock buyback, CBS had a debt-to-total capitalization ratio of well under .5-to-1. After the buyback, this level rose to .66-to-1, but after the sale of assets and subsequent debt reduction, it should be down to about .5-to-1.

A CBS official would not speculate on how much expense was incurred fighting off the TBS bid, but was sure mention would be made in the 1985 Annual Report.

Impact on Communities and Suppliers

Because these events occurred very recently, the effects on communities and suppliers cannot yet be evaluated.

K. Sheehy
11/12/85

CBS INC.*
FINANCIAL HISTORY
(IN MILLIONS OF DOLLARS)

	<u>1984</u>	<u>1983</u>	<u>1982</u>	<u>1981</u>	<u>1980</u>	<u>1979</u>	<u>1978</u>	<u>1977</u>	<u>1976</u>	<u>1975</u>
Total Revenue	4925	4396	3994	3956	3852	3721	3278	2815	2267	1958
Net Income	212	187	111	163	189	201	198	182	164	123
Return on Equity - %	14	13	8	13	15	19	21	22	22	19
Debt to Equity	.24	.16	.18	.18	.18	.10	.11	.12	.13	.15
Stock Price Range	88-62	82-55	67-33	61-46	56-43	57-44	65-43	62-47	61-47	54-29
EPS - Net Income (Primary)	7.15	6.31	3.95	5.83	6.79	7.13	7.02	6.36	5.61	4.19

* CBS bought back stock from Ted Turner in mid-1985. This is not yet reflected in available financial data.

10/28/85

1985 QUARTERLY FINANCIAL DATA

CBS

<u>INCOME STATEMENT</u>			
QUARTERLY REPORT FOR:		<u>07/31/85</u>	<u>06/30/85</u>
NET SALES	1,102,885,000	1,211,791,000	
COST OF GOODS	778,512,000	729,650,000	
GROSS PROFIT	324,381,000	482,161,000	
R & D EXPENDITURES	NA	NA	
SELL GEN & ADMIN EXP	297,041,000	338,332,000	
INT-REF DEP & AMORT	27,333,000	143,829,000	
DEPRECIATION & AMORT	NA	NA	
NON-OPERATING INC	20,404,000	15,775,000	
INTEREST EXPENSE	21,839,000	18,817,000	
INCOME BEFORE TAX	25,088,000	144,787,000	
PROV FOR INC TAXES	9,130,000	66,667,000	
MINORITY INT INCOME	NA	NA	
INVEST GAINS/LOSSES	NA	NA	
OTHER INCOME	NA	NA	
NET INC BEF EX ITEMS	16,258,000	78,120,000	
EX ITEMS & DISC OP	NA	15,891,000	
NET INCOME	16,258,000	62,319,000	
OUTSTANDING SHARES	20,749,305	20,796,140	

1985 PER

<u>1985 QUARTERLY SUMMARY</u>				
	<u>1985</u>	<u>1984</u>	<u>1983</u>	<u>1982</u>
PER 1	111 1/2	107 1/2	107 1/2	107 1/2
PER 2	122	107 1/2	107 1/2	107 1/2
PER 3	125	107 1/2	107 1/2	107 1/2
PER 4	119 1/2	107 3/4	107 3/4	107 3/4

STAKEHOLD RESEARCH/APACHE

TAKEOVER CANDIDATE NAME: Unocal Corp.

CONTACTS' NAMES:

Claude S. Brinegar, Sr. Vice President

SHORT COMPANY DESCRIPTION:

Unocal Corp. is a large integrated oil company with domestic and foreign exploration and prod. Net U.S. reserves (about 75% of Co. total); 535 mill. bbl crude oil, 4.8 trill. cu. ft. gas. '84 oil prod.: 235,000 B/D. Refinery runs: 351,300 B/D. Net natural gas liquids output was 16,800 B/D, net natural gas prod. 1.1 bill. cu. ft./day. Product sales average 401,900 B/D. Pres. value proved U.S. reserves: \$6.9 bill.(est. pretax). In '85 spunoff gulf Coast properties to UXP, a limited partnership retaining 97% interest. Employees 20,664 has 82,700 shareholders. Insiders own less than 1 percent of common stock. Pres.: F.L. Hartley Inc.: California Address: Union Oil Center, Los Angeles, California 90017.

Unocal Corp. is the parent of Union Oil Company of California, an integrated, high technology earth resources company.

Union explores for, develops and produces conventional crude oil and natural gas resources in the United States, Canada and overseas. In addition, Union is a leader in the development of alternative energy resources. The company is the world's largest producer of geothermal energy, producing steam to power more than 1.6 million kilowatts of electrical generating capacity in the United States and the Philippines. Union's 10,000 barrel per day shale oil project in western Colorado is the United State's first commercial shale oil venture.

The company also manufactures and markets a wide range of petroleum products, chemicals, fertilizers and specialty metals.

DESCRIPTION OF EVENTS LEADING UP TO HOSTILE BID/SUBSEQUENT EVENTS MESA PARTNERS II and UNOCAL

On May 20, 1985, Unocal Corporation and Mesa Partners II ended a three-month battle for control of Unocal. The successful strategy employed by Unocal included legal actions against Mesa and its banks, steps to enhance shareholder value and a precedent-setting tender offer which excluded Mesa. Following is a chronology of the events during that takeover fight.

February 14, 1985: Mesa Partners II -- a group headed by T. Boone Pickens, Jr., discloses it holds 7.3 percent of Unocal's common stock, about 13.8 million shares, stating the holding is for "investment purposes only."

February 22, 1985: Mesa's stake in Unocal climbs to 9.7 percent, about 16.8 million shares.

March 12, 1985: Unocal sues Security Pacific National Bank, one of its principal banks, for "breaches of contract and fiduciary duty" and for "deceit and misrepresentation" in making loans to the Mesa group.

March 27, 1985: Mesa announces it bought another 6.7 million Unocal shares, increasing its stake to 13.6 percent.

March 28, 1985: In a new filing with the SEC, Mesa says it may seek control or force a restructuring of Unocal. Mesa presents proposals to delay election of directors at Unocal annual meeting and postpone meeting to late June.

April 1, 1985: Unocal sues the Mesa group, alleging violations of federal securities laws in its purchase of Unocal stock.

April 2, 1985: Unocal chairman Fred L. Hartley and Pickens testify before a Congressional committee convened to probe the issue of corporate mergers. Hartley calls the takeover mania in the oil industry a "speculative binge that must eventually collapse, leaving the wreckage of ruined companies, lost jobs and reduced U.S. oil production."

April 8, 1985: Pickens announces a \$54 per share tender offer for 64 million shares which would give Mesa 50.1 percent of Unocal. If the offer is successful, Mesa says it will exchange the remaining outstanding common stock for some form of paper.

April 14, 1985: The Unocal board of directors unanimously rejects Mesa's \$54 per share tender offer.

April 16, 1985: Unocal unveils an exchange offer for up to 87.2 million shares (49 percent of the outstanding stock) effective if Mesa completes its own tender offer. Unocal's offer is for \$72 in senior secured notes per share of Unocal common.

April 19, 1985: Unocal announces plan to form Union Exploration Partners, Ltd., a master limited partnership containing nearly half of the company's domestic oil and gas operations.

April 24, 1985: Unocal amends its exchange offer and announces it will buy 50 million shares from non-Mesa shareholders whether or not Pickens' tender offer is successful.

April 26, 1985: A Los Angeles federal court orders a delay of Unocal's annual meeting to May 13 so Unocal and Mesa can send corrected proxy materials to shareholders. The court also finds Unocal will probably be able to prove, at trial, that Mesa violated federal securities laws.

April 29, 1985: Delaware court grants restraining order which prohibits excluding the Mesa group from the \$72 exchange offer.

May 2, 1985: Delaware Supreme Court sends exclusion case back to chancery court for rehearing, noting that companies incorporated in Delaware "may deal selectively with their shareholders" under certain circumstances.

May 13, 1985: Unocal shareholder meeting held in Los Angeles. Pickens concedes his group lost the proxy fight to block election of Unocal directors and adjourn the annual meeting to late June. Delaware Chancery Court reaffirms earlier ruling that Mesa must be included in Unocal's exchange offer.

May 17, 1985: Delaware Supreme Court reverses lower court ruling, stating that Unocal has the legal right to exclude the Mesa group from its \$72 exchange offer.

May 20, 1985: Unocal and Mesa Partners II reach a settlement which includes the following provisions:

- * Unocal purchases a portion of Mesa's Unocal shares under the terms of the \$72 exchange offer in addition to the 50 million shares from non-Mesa shareholders. Mesa will then return \$105 million of the debt securities in return for 1.46 million Unocal shares;
- * Mesa enters into a standstill agreement on the shares it continues to own and ceases all efforts to acquire control of Unocal or influence its policies;
- * All litigation between the two companies is settled.

June 6, 1985: Unocal announces final proration of 39.27 percent for its \$72 exchange offer, accepting 59.307 million shares, including 9.3 million from Mesa.

July 26, 1985: Unocal makes public offerings of Union Exploration Partners, Ltd. (UXP), units. Union Oil Company of California, Unocal's operating subsidiary, retains 96.6 percent of the outstanding units of UXP.

October 21, 1985: Unocal redeems the \$4.2 billion in senior secured notes issued in the exchange offer. The refinancing, includes a \$3.3 billion revolving credit and a \$1.5 billion private placement at fixed rates, saving the company \$100 million a year in interest costs. The proceeds from these new borrowings, combined with company funds, paid the principal, redemption premium and accrued interest on the notes and a previously existing bank loan.

Unocal today: The takeover fight had an impact on Unocal earnings. In the second quarter 1985, takeover expenses and higher interest costs totaled \$60 million aftertax. The exchange offer radically changed Unocal's capital structure. Unocal has a 78 percent debt to total capitalization ratio, compared with 18 percent before the Mesa raid. But with certain cuts in capital expenditures the company will be able to amply service the higher debt levels.

Unocal continues to pay a 30 cent per quarter cash dividend on its common stock. In addition, Unocal will pay a special dividend of 0.0285 UXP units for each share of Unocal common, payable December 16, 1985. Based on a market price of \$23 per unit, the special dividend equals 65.5 cents per share. For the year 1985, Unocal paid a total of \$1.805 per share in cash and UXP unit dividends to its shareholders.

UXP also paid its first cash distribution of 41.125 cents per unit on November 15, 1985, reflecting the partnership's first two months of operations.

IMPACT ON STOCKHOLDERS

PRE-HOSTILE

1. EPS	1. YEAR	<u>\$4.03</u>	2 YEAR	<u>\$3.60</u>	3 YEAR	<u>\$4.63</u>
2. Debt/Cap	2.	<u>15.3%</u>		<u>17.6%</u>		<u>18.6%</u>
3. Capital Expd.	3.	<u>\$1,945 MM</u>		<u>\$1,931 MM</u>		<u>\$1,917 MM</u>
4. Sales	4.	<u>\$11,538 MM</u>		<u>\$10,691 MM</u>		<u>\$10,899 MM</u>
5. Stock Price	5.	H- \$43 1/2 L- <u>\$30.3</u>		\$37 5/8 <u>\$27.0</u>		\$37 7/8 <u>\$21 1/2</u>
6. Asset/Share	6.	<u>\$58.74</u>		<u>\$53.12</u>		<u>\$49.02</u>
7. Op. Cash Flow/	7.	<u>\$2,029 MM</u>		<u>\$1,799 MM</u>		<u>\$1,987 MM</u>
8. Debt Ratings	8.	<u>(NA)</u>		<u>(NA)</u>		<u>(NA)</u>
9. Other	9.	<u>(NA)</u>		<u>(NA)</u>		<u>(NA)</u>

POST-ACTIVITY

1985

1. EPS:

For the 3rd quarter 1985, Unocal earned \$158.7 million or \$1.37 a share, compared with \$181.2 million, or \$1.04 a share based on sharply higher number of shares outstanding, a year earlier. Revenue rose 5.4 percent to \$3.04 billion from \$2.89 billion.

For the nine months, the oil company's net income declined 16 percent to \$459.8 million, or \$31.7 a share, from \$547 million, or \$3.15 a share, a year earlier. Revenue rose 1.8 percent to \$8.72 billion from \$8.57 billion.

The company said a \$91 million gain on sale of units in Union Exploration Partners Ltd., its new oil and gas partnership, was offset by expenses incurred in fighting an attempted takeover by an investor group led by T. Boone Pickens Jr., chairman of Mesa Petroleum Co.

Unocal took a \$194.2 million third-quarter pre-tax charge in connection with its plan to redeem \$4.2 billion of senior secured notes as part of its takeover defense. But a spokesman for Unocal said that amount was reduced to about \$21 million after being partly offset by an amount representing the unamortized note premium on the exchange. After tax, the \$21 million was reduced to \$11 million, the spokesman said, which was accounted for as part of the about \$91 million in expenses involved with fighting the Pickens group.

2. Debt/Cap 76% as of 6/30/85
3. R&D Exp (NA)
4. Sales (See #1, EPS)
5. Stock Price \$31-1/8 closing price 11/26/85.
6. Asset/Share (NA)
7. Op. Cash Flow (NA)
8. Debt Ratings (NA)
9. Other (NA)

STAKEHOLD RESEARCH/APACHE

TAKEOVER CANDIDATE NAME: Phillips Petroleum Company

CONTACTS' NAMES:

Thomas Lambrix
Director, Government Policy

J. Bryan Whitworth
Vice President, Government Relations

Barry Morris
Investor Communications

SHORT COMPANY DESCRIPTION:

Phillips is an integrated oil company founded and headquartered in Bartlesville, OK since 1917. It employs 27,000 people world-wide and is involved in all aspects of the energy business from exploration, production and refining to marketing and research. Phillips has also been involved in petrochemicals and minerals, as well as alternative energy sources such as geothermal and solar power research. Phillips operates in 26 countries.

DESCRIPTION OF EVENTS LEADING UP TO HOSTILE BID/SUBSEQUENT EVENTS

Summer/Fall, 1984: Considerable speculation that Phillips may be target of hostile takeover attempt because stock was selling at discount to book value and company was one of least leveraged of major oil and gas companies making it prime candidate for a leveraged buy out.

11/8/84: T. Boone Pickens through Mesa partners announced tender for at least 15 million, or 15 percent, of Phillips shares for \$60 per share. Mesa partners previously secretly acquired a 5.7 percent stake.

12/23/84: Claiming that other shareholders will be treated equally, Pickens ends threatened takeover when Phillips buys for \$53 cash Mesa partners' 8.9 million shares which were purchased for an average price of \$43 per share. Mesa profit later confirmed to be \$89 million.

2/4/85: Phillips announces details of a recapitalization plan to take firm partially private (ESOP would own approximately one-third of Phillip's shares). Plan called for each \$154.6 million common shares to be converted into .62 common shares plus \$22.80 face amount of debt securities. Management values package at \$53 per share while Wall Street values it between \$45 and \$50 per share.

2/6/85: Carl Icahn warns Phillips to raise stock repurchase offer to at least \$55 per share or he would make hostile offer. Icahn claims he holds 7.5 million shares.

2/13/85: Icahn launches two-tier hostile offer of \$60 per share for first 70 million Phillips shares and \$50 in paper for remainder.

3/4/85: Not having won shareholder approval of restructuring plan, Phillips sweetens offer to shareholders to swap 50 percent of 154.6 million shares for \$4.5 billion in debt securities. Package valued at \$62 per share by company and between \$52-57 per share by Wall Street.

3/5/85: Phillips announces agreement to buy back Icahn shares. Profit later reported to be \$75 million.

3/19/85: Shareholders tender 133 million shares for exchange.

4/10/85: Three-for-one-stock split authorized and later approved.

10/23/85: With debt to total capitalization now 80%, one of highest in industry, Phillips announces \$1 billion of assets are sold or under contract for sale. Another \$1 billion to be sold by mid-1986. Company will, for first year in several, fail to replace reserves produced during the year, putting Phillips in a "liquidation" mode.

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IMPACT ON STOCKHOLDERS

(Numbers adjusted for 3 for 1 stock spit, July, 1985)

PRE-HOSTILE

HOSTILE		3 qts.- \$1.29	\$.96	\$1.07
1. EPS	1. YEAR	<u>\$1.73</u>	2 YEAR <u>1.39</u>	3 YEAR <u>1.61</u>
2. Debt/Cap	2.	<u>26%</u>	<u>26%</u>	<u>25%</u>
3. R&D Exp.	3.	<u>\$125 M</u>	<u></u>	<u></u>
4. Sales	4.	3 qts.-\$11.586 M <u>15,537 M</u>	<u>11,197</u> <u>15,249</u>	<u>11,615</u> <u>15,698</u>
5. Stock Price	5.	<u>14.92</u>	<u>11.50</u>	<u>10.88</u>
6. Asset/Share	6.	<u>\$110</u>	<u>\$85</u>	<u>\$79</u>
7. Op. Cash Flow/	7.	<u>\$2.2 B</u>	<u>\$2.0 B</u>	<u>\$1.9 B</u>
8. Debt Ratings	8.	<u>AA</u>	<u></u>	<u></u>
9. Other	9.	<u></u>	<u></u>	<u></u>
10. Capital Expenditures	10.	<u>\$1.4 billion</u>	<u></u>	<u></u>

POST-ACTIVITY

1. EPS	3 qts: 81¢
2. Debt/Cap	80%
3. R&D Exp	est. \$85 million
4. Sales	3 qts: \$12,005 million
5. Stock Price	\$12.875 + .1636 shares preferred at \$23.875 per share = shareholder of \$16.78
6. Asset/Share	\$68
7. Op. Cash Flow/	3qts: \$1.536 billion
8. Debt Ratings	BBB or BAA on senior debt
9. Other	
10. Capital Expenditures	\$1.4 billion

DESCRIPTION OF LONG-TERM PERFORMANCE

\$10,000 invested in 1970 yielded an average 4 percent per year and could now be sold for \$31,812 (includes preferred).

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IMPACT ON EMPLOYEES

1. Number of Employees

Of 30,500 employees before the takeover, approximately 3,500 will have lost their jobs by the end of 1985.

2. Number of Employees Relocated

3. Impact on Benefit and Service Plans

No Impact

4. Impact on Training/Development Programs

5. Impact on Stock Options

Don't have stock options

6. Impact on Pensions and Retirement

2,500 have accepted early retirement so far

IMPACT ON COMMUNITITIES

1. If measurable reduction in taxes (Fed./State/County)

2. Reduction in community service programs

"Contributions down."

3. Closing of factories
4. Retail sales in Bartelsville, OK off 10-30 percent

IMPACT ON SUPPLIERS, CUSTOMERS

1. Significant reduction or elimination of purchases or sales
 - purchases or sales transferred to other suppliers or customers
 - transferred to local or out-of-state suppliers or customers or to foreign suppliers or customers

Phillips exploration budget slashed 22 percent (roughly \$165 million decline) in favor of paying down debt.

2. Treatment of accounts payable and accounts receivable
 - delay in payments or acceleration in collections

Taken Over

- . Scovill
- . AMF
- . Conwed
- . McQuay
- . Gulf
- . Otis Elevator

THE BELZBERGS ACQUISITION OF SCOVILL

Chronology of Events

- December 14, 1984 . Scovill stock was up \$2 on heavy trading including a block of 100,000 shares handled by Oppenheimer & Co.
- December 20 . The Belzberg brothers launched a \$35-a-share, \$430MM tender offer for all of the stock of Scovill.
- . First City Properties, the Belzbergs' holding company, said it intends to combine Scovill with one of its affiliates upon successful completion of the tender offer. This is the first indication of Belzberg interest in operating an industrial company.
- . Scovill's Board of Directors urged shareholders to take no action pending a recommendation by the Board.
- December 24 . Scovill's Directors rejected the unsolicited tender offer, but said it was considering a sale of the company. While labeling the Belzberg's offer "inadequate", it asked management to work with Morgan Stanley and Morgan Lewis to explore available alternatives.
- . Meanwhile, the price of Scovill stock rose to \$39.50, \$4.50 above the offer price.
- December 26 . In an SEC filing, Scovill revealed it was exploring several defensive maneuvers including acquiring another company, repurchase of its own shares, partial liquidation and sales of its own securities in public or private transactions.
- . Scovill also criticized First City properties for being too highly leveraged and because it might need to sell Scovill assets to finance the transaction.
- December 27 . A spokesman for the Belzbergs said they are considering raising their offer.
- January 4, 1985 . Standard and Poor's placed First City Properties on its "creditwatch" surveillance list.
- . First City Properties announced it was increasing the price of its tender offer to \$42.50 per share. The offer will expire on January 18.
- . Scovill CEO, William Andrews, announced his support for the amended offer.

- January 7, . The Scovill Board endorsed the Belzbergs tender offer of \$42.50 a share for the company. Scovill also insulated the Belzbergs from competing offers by granting them an option to buy 2.3 million shares (20.7% of outstanding shares) at \$42.50.
- . The Belzbergs said they intend to retain Scovill management including CEO Andrews.
- . Some details of behind the scenes negotiations since the December 20 tender offer were revealed. Scovill had received a \$38.00 a share offer from Chicago Pacific Corporation and considered a leveraged buyout proposal from a management group including Andrews.
- January 9 . Scovill announced "golden parachute" agreements for 13 top executives totaling \$5 million. It said the agreements are intended to encourage key executives to remain with the company through a change in control.
- January 14 . The Belzbergs said they have acquired almost half of Scovill's outstanding shares. Ivan Boesky said he had acquired 1.1 million shares (7.4%) since the December 20 tender offer.
- January 21 . First City Properties announced it owns 93% of Scovill stock and will consummate a business combination with Scovill.
- February 11 . Scovill released earnings for the fourth quarter of \$.99 per share vs. \$.98 a year ago. For 1984, Scovill reported earnings of \$3.01 per share vs. \$2.30 in 1983.
- February 12 . Scovill announced that it will redeem on March 15 all shares of convertible preferred stock. Each share of preferred is convertible into 2.44 shares of common stock.
- . Scovill also said that its annual meeting, scheduled for April, has been postponed and no alternative date has been set.
- April 22 . Scovill announced it acquired an option to buy a 19.5% share of Moulinex, S.A., a French manufacturer of small appliances. The agreement also allows Scovill's Hamilton Beach Division to sell Moulinex products worldwide under its own brand name. A joint venture of the two companies will sell Moulinex products in the U.S.
- June 4 . First City Industries filed with the SEC \$175 million of subordinated debt securities to be used for capital restructuring and to pay acquisition debt. Drexel, Burham, Lambert Inc. is the sole underwriter.
- . The Canadian Imperial Bank of Commerce agreed to refinance Scovill's \$245 million loan to First City and \$56.2 million of existing Scovill debt.

- . Separately, First City is negotiating the sale of Scovill's Schrader Bellows (pneumatic control) unit.
- June 24 . Moody's lowered First City Industries' subordinated debt rating from Single- B - minus to Triple -C. It cited First City's acquisition of Scovill as significantly extending an already aggressive leverage posture.
- June 25 . Moody's lowered the senior unsecured debt of Scovill to Single - B2 from BAA2. Moody's said the rating reduction reflects Scovill's increased leverage resulting from its acquisition by First City Industries and the expectation that debt will remain at a high level for some time.
- June 27 . Parker Hannifin Corp. signed an agreement to acquire the Schrader Bellows subsidiary of Scovill for \$77.5 million in cash.
- . William Andrews said the divestiture is in line with Scovill's strategy to focus on brand name consumer products.
- August 12 . Scovill issues \$200 million in subordinated notes and debentures.
- August 25 . First City Industries completed its acquisition of Scovill. Each outstanding share of Scovill stock not owned by First City was converted into the right to receive \$42.50.
- October 31 . Parker Hannifin completed its acquisition of Schrader.

CID:11/11/85

THE BELZSBERGS ACQUISITION OF SCOVILL

Impact on Employees

There has been minimal loss of jobs at Scovill directly related to the takeover attempt. The psychological impact, however, is greater than the raw numbers would indicate. When 90 employees were laid off from Scovill's apparel fastener division due to a downturn in the business, the morale was very negatively affected. Even company sources admit that tempers were short. Some employees expressed that "people are just waiting for the ax to fall on them."

At Corporate headquarters, 18 employees of a staff of 80 were also laid off in August. Here again, the impact to this closely knit group of people is great. There is a sense that Scovill is trying to save money in silly or short-sighted ways. For instance, the job of receptionist has been combined with that of switchboard operator, meaning that unsightly switchboard equipment is now a fixture in the otherwise plush lobby of the Scovill building. Of greater importance is that the Human Relations Officers has also assumed the duties of the Corporate Communications Officers upon his retirement.

The only apparent changes in benefits were put in place by the Scovill Board shortly before the acquisition and were meant to encourage management to remain with the company through a change of ownership. Thirteen officers were given golden parachute contracts providing for anywhere from one to three times annual compensation if they stay with Scovill for six months beyond a change in control. Even this program appears to have telegraphed some of the intentions of the acquirers since only two division presidents were not included in the golden parachute program. One of those two divisions has already been sold.

Community Perspective

From the community's point of view, the impact of the Scovill takeover goes far beyond the fear of lost employment opportunities. Scovill is a symbol of the industrial vitality of the Waterbury area. Through almost 200 years, there has been a close identification between the company and the community, and Scovill exercises industrial leadership. As one visible example of the change in priorities and commitment, Scovill this year reduced its commitment to the local United Way to \$20,000 from last year's \$40,000 and Scovill is not taking its usual leadership role in the campaign.

Impact on Corporate Programs

Since the takeover, Scovill said it will focus largely on its proprietary consumer products. This is widely assumed to mean that Yale locks, Hamilton Beach small appliances and Nu-Tone housing products, will form the core of the company. Schrader Bellows, a manufacturer of pneumatic controls for industry, has already been sold to Parker Hannifin for \$77 million in cash. The Schrader automotive division is believed to be on the selling block, as would be indicated by the lack of golden parachute protection to its division head. Although nothing has been said about the apparel fasteners group since the lay off last August, many employees feel uncertain about their future and some key divisional managers are beginning to leave. The local newspaper has the impression that morale is low and the division's competitive edge has been lost.

On a positive note, Scovill announced in June an agreement with Moulinex S.A. of France for joint marketing of Moulinex and Hamilton Beach products which would indicate continuing emphasis and innovation in this product area.

Impact on Stockholders

Given that the acquisition of Scovill is a recent event and that the company does not survive as a publicly traded entity, it is difficult to evaluate the impact on Scovill's stockholders. Certainly they realized a premium of 30%-35% over the trading level of Scovill stock at the time of the acquisition. How Scovill would have done over time is a matter of speculation, although it had a reputation for being financially conservative and well-managed company, most of whose products occupy the number one or number two positions in their respective markets.

What cannot be denied is that the surviving entity is financially more leveraged. Scovill and First City Industries combined have borrowed a total of \$800 million in identifiable financings since the time of the acquisition. Scovill issued \$200 million in subordinated notes and debentures in August, while First City Industries raised \$175 million in the same type of instruments in June. In addition, the Canadian Imperial Bank of Commerce loaned \$245 million to Scovill. These issues carry interest of at least 1% over prime due to the reduced ratings assigned to both entities after the takeover. All of this debt is over and above approximately \$24 million in cash and negotiable securities on Scovill's balance sheet at the beginning of 1985 and the \$77 million proceeds from the sale of Schrader Bellows.

How well the Belzbergs do as the result of this acquisition remains to be seen and will probably never be fully known, since a significant element of Scovill's attractiveness is that its clean balance sheet enhances their debt capacity. However, arbitrageur Ivan Boesky purchased 1.1 million shares of Scovill's stock starting at the time of the Belzberg's tender offer. Assuming an average purchase price of \$39.50 per share, which was the price of the stock a few days after the offer, Boesky's profit would be approximately \$3.3 million.

CID:11/11/85

SCOVILL INC.*
FINANCIAL HISTORY
(IN MILLIONS OF DOLLARS)
(Target)

	<u>1984</u>	<u>1983</u>	<u>1982</u>	<u>1981</u>	<u>1980</u>	<u>1979</u>	<u>1978</u>	<u>1977</u>	<u>1976</u>	<u>1975</u>
Total Revenue	837	753	698	826	799	794	760	676	600	445
Net Income	37	27	20	(5)	24	32	31	28	22	(33)
Return on Equity - %	15	11	12	(3)	11	15	16	16	14	(23)
Debt to Equity	.26	.31	.57	.54	.51	.67	.58	.31	.39	.45
Stock Price Range	40-20	33-23	26-15	22-15	20-14	22-17	25-17	24-19	24-11	15-8
EPS - Net Income (Primary)	3.01	2.53	2.10	.50	2.56	3.46	3.35	3.18	2.73	(5.03)

* Scovill was acquired by the Belzberg Brothers (First City Industries) in early 1985. Since Belzberg is a Canadian company, financial information is not readily available.

10/28/85

1985 QUARTERLY FINANCIAL DATA

SCOVILL, INC.

INCOME STATEMENT

QUARTERLY REPORT FOR:	<u>03/31/85</u>	<u>06/30/85</u>
NET SALES	185,645,000	171,752,000
COST OF GOODS	130,781,000	120,172,000
GROSS PROFIT	54,864,000	51,580,000
R & D EXPENDITURES	NA	NA
SELL GEN & ADMIN EXP	44,978,000	36,915,000

INC BEF DEP & AMORT	9,886,000	14,645,000
DEPRECIATION & AMORT	NA	NA
NON-OPERATING INC	1,809,000	NA
INTEREST EXPENSE	12,043,000	18,506,000
INCOME BEFORE TAX	-548,000	-3,861,000
PROV FOR INC TAXES	67,000	-2,466,000
MINORITY INT INCOME	295,000	NA
INVEST GATNS/LOSSES	NA	NA
OTHER INCOME	NA	NA
NET INC BEF EX ITEMS	-710,000	-1,335,000
EX ITEMS & DISC OPS	-4,196,000	-46,000
NET INCOME	-4,906,000	-1,441,000
OUTSTANDING SHARES	12,302,170	12,313,309

STOCK PRICE

1985 QUARTERLY SUMMARY

	<u>HIGH</u>	<u>LOW</u>	<u>CLOSE</u>	<u>Vol (100's)</u>
FIRST	43 1/4	38 3/4	41 3/4	38339
SECOND	42	41 3/8	41 7/8	1347
THIRD	42 1/4	41 3/4	42 1/4	379

FIRST CITY FINANCIAL CORP. LTD.
(BELZBERGS)
FINANCIAL HISTORY
(IN MILLIONS OF DOLLARS)

	<u>1984*</u>	<u>1983</u>	<u>1982</u>	<u>1981</u>	<u>1980</u>	<u>1979</u>	<u>1978</u>	<u>1977</u>	<u>1976</u>	<u>1975</u>
Total Revenue	676	646	562	533	277	213	87	N/A	N/A	N/A
Net Income	48	42	17	56	15	7	5	N/A	N/A	N/A
Return on Equity - %	17	18	11	44	21	18	16	N/A	N/A	N/A
Debt to Equity	1.68	.95	1.07	1.26	1.28	1.53	1.68	N/A	N/A	N/A
Stock Price Range	15-11	24-15	21-11	26-13	14- 6	13-11	13- 9	N/A	N/A	N/A
EPS - Net Income (Primary)	2.37	2.55	1.09	3.34	1.32	0.62	0.45	N/A	N/A	N/A

*First City took over Scovill, Inc. in early 1985.

10/30/85

CHRONOLOGY OF EVENTS

TAKEOVER OF AMP BY MINSTAR

April 16 1985

. Jeffries & Co., a brokerage firm that often handles trades for corporate raiders, acquires two blocks of 500,000 and 100,000 AMP shares. Buyer not identified. Rumored to be Irwin Jacobs.

April 1

. Irwin Jacobs announces a bid by Minstar to acquire 50% to 100% of AMP. Jacobs owns 780,000 shares with option to buy another 1.2 million shares, giving him holdings of 7.3%.

April 23

. AMP annual meeting; board of directors opposes discussions with Jacobs.

April 26

. Jacobs announces offer to acquire 12 million of the approximately 26 million shares outstanding, at \$23/share. If more than 12 million were tendered, a portion of the \$23 would be in cash, the rest in junk bonds.

. AMP Board recommends against offer, adopting a "shareholder rights" plan to deter takeover.

. Jacobs files law suit in New York courts, seeking to block enforcement of the state law under which Minstar might be barred from buying tendered shares.

April 29-May 14

. AMP Board adopts "poison pill" provisions, including liberalized stock options and annuity benefits for employees, and more "golden parachutes" for company officers.

May 14

. Jacobs announces intention to call special stockholders meeting to add 11 directors to AMP's 10-member Board, eliminate "poison pill" provisions. Jacobs needs additional 2.5% of stock. Minstar will withdraw \$23/share offer if it cannot eliminate "poison pills".

. AMP fails to find friendly suitors for entire company; potential suitors interested in only parts.

June 3

. W. T. York, AMP Chairman, urges stockholders not to tender their shares.

- June 7 . AMP's "poison pills" are ruled illegal by federal judge, calling it an "unlawful entrenchment." AMP issues appeal.
- June 11 . More than 15.9 million shares - 57.5% of AMP's common stock - were tendered to Minstar.
- June 14 . AMP and Jacobs reach agreement for Jacobs to acquire company at \$24/share for 12.5 million shares. Minstar retains option to buy AMP's leisure division if deal should collapse.
- June 19 . York informs employees of acceptance of Minstar's offer.
- July 29 . Wall Street Journal reports that Jacobs is trying to attract \$2.5 billion in institutional backing for other takeovers.

 . AMP announces resignation of Chairman York and President William Sovey. Kenneth Severinson, chairman of a Minstar subsidiary, is named AMP chairman and CEO.
- August 27 . Severinson announces further reduction of 140 AMP employees.
- August 30 . Jacobs sells 16 AMP business units, accounting for 53% of AMP's 1984 sales of \$1.09 billion..
- October 3 . Stockholder's meeting consummates merger of AMP into Minstar.
- October 25 . Minstar announces shutdown of AMP's Westchester headquarters by early 1986. Six to 10 employees are invited to move to Minneapolis.

Background

AMP Inc. was a diversified company that included equipment controls, energy services, sports products, bowling products and marine products.

In 1984, its last full year of operations as AMP Inc., it had sales of \$1.09 billion (7) with a 3% return on investment.

AMP had begun a program aimed at improving profitability. In that move, worldwide employment was cut from 26,000 (1980) to 18,700 (1984). Headquarters staff in White Plains was cut, research programs reduced, and plans made to move headquarters personnel to smaller offices in Connecticut.

On April 16, 1985, nearly 1.2 million shares of AMF stock changed hands. The stock made the "most active" list several times that week. There were rumors of a takeover by Irwin Jacobs, the Minneapolis investor, or Charles Hurwitz, a Boston-based businessman.

On April 19, Irwin Jacobs announced a plan to acquire 50% to 100% of the company. On the 26th, he made a tender offer to purchase 12 million of the approximately 26 million shares at \$23 a share.

The AMF Board resisted takeover attempts, and made several moves designed to frustrate Jacob's efforts. Attempts by AMF to find a friendly buyer failed.

By June 11, more than 15.9 million AMF shares had been tendered to Jacob's company, Milstar. This represented 57.5% of AMF's common shares.

On the 14th, an agreement was reached for Jacobs to acquire the company for 12.5 million shares at \$24/share.

On July 29, AMF announced that its chairman and president had resigned. The chairman of Minstar subsidiary was named chairman and CEO of AMF.

Later that month, further reductions in employment were announced. Jacobs announced sale of 16 of AMF's business units. On October 3, a stockholder's meeting approved the merger of AMF into Minstar.

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IRWIN JACOBS' TAKEOVER OF AMF INC.

Impact on Employees

In April 1985, just prior to the takeover, AMF laid off 150 employees at their White Plains and Stamford facilities. This was supposedly a result of a decentralization of operations and which no doubt cut corporate central staff expenses. After the takeover 140 employees were laid off and corporate staff was reduced to less than 60 positions. By the end of October, an announcement was made that there would be no need for a corporate office in this area and all positions would be eliminated. Six to ten people would be asked to relocate to Minneapolis.

All employee benefit plans are still in effect and the pension plan benefits have been increased 20%. A corporate savings program (whereby 50% of each dollar saved by an employee up to 6% of annual salary was matched by the company in common stock) is now being matched by cash. Up to 16% can be saved in this investment plan and the return depends upon which investment election the employee makes. Employee stock options were cashed out at the current market value of the stock. Terminated employees became fully vested in the pension plan and the Thrift Investment Plan.

All terminated employees were given severance pay of three weeks for every year of service together with accrued vacation. All terminated employees were invited to attend a 3-4 day seminar conducted by Drake, Beam & Morin, an outplacement agency which aided in organizing job searches and resume writing. All of these severance benefits were written into the corporate policy prior to any change in control.

There are twelve "golden parachutes" that cover top management, and according to AMF sources they are being challenged by Minstar. These "golden parachutes" include extended severance pay of 2-6 years, paid-up life insurance, legal fees to cover any disputes over parachutes, and medical coverage.

In the April 1985 layoff, employees 55 years or older received a bridging of their pension to age 62 to give them full benefits. In the September 1985 layoff this was not done and according to AMF sources, there are several lawsuits being brought against the company to get their pensions bridged.

Impact on Corporate Programs

The corporate Research & Development facilities in Stamford and Sterling, Virginia were closed, including over 100 layoffs. A few of AMF's divisions had their own R&D departments; these budgets were also scaled down significantly.

Impact on Suppliers, Customers

Corporate purchases of supplies have been greatly reduced. Attendance at seminars and magazine and trade journal subscriptions have been eliminated. Company travel has been reduced.

The accounts payable payment schedule is on a 45 day delay basis which has been in effect since before takeover.

Impact on Communities

There were approximately 350 employees in the corporate office in the beginning of April 1985. All were eliminated by the end of the first quarter of 1985.

The corporation's latest tax liability for the headquarters community was \$139,914, covering White Plains city tax, school tax, sewer tax and Westchester county tax.

Community service projects were discontinued, such as the semi annual blood drive. United Way contributions through payroll deductions ceased as payroll stopped. Corporate AMF Foundation contributions were reduced.

Two office buildings in Stamford were sold and one is currently being leased back until it is no longer needed.

It is too early to evaluate the effects of Minstar's plans to sell a number of AMF's business units which include the entire energy services and products group.

Impact on Stockholders

Gerald Rivlin, managing director of Rodman & Renshaw Capital Group of Chicago, which represents 70,000 shares of AMF stock, plans to go to court in New Jersey, where AMF is incorporated, to challenge the merger on the grounds that the price paid to shareholders was too low."

Another shareholder, Edith Citron (20 shares) filed a class action suit in November in a New York federal district court seeking a higher price for AMF shares as well as to stop compensation payments to former AMF executives who were covered under a "golden parachute" plan.

Takeover defense cost AMF approximately \$7-\$8 million in legal fees (Skadden Arps) and investment banker charges (Morgan Stanley).

It is costing Minstar approximately \$525 million to purchase AMF. The AMF pension plan was terminated as of 12/31/84 and the new one has not yet been put into place. This old pension plan was overfunded, and Minstar will receive approximately \$100 million from this terminated plan. Together with this \$100 million and the sale of certain business units of AMF, the net cost to Minstar for the takeover of AMF could be nominal.

GR:11/5/85

AMF INC.*
FINANCIAL HISTORY
(IN MILLIONS OF DOLLARS)

(Target)

	<u>1984</u>	<u>1983</u>	<u>1982</u>	<u>1981</u>	<u>1980</u>	<u>1979</u>	<u>1978</u>	<u>1977</u>	<u>1976</u>	<u>1975</u>
Total Revenue	1113	984	1075	1172	1065	1156	1335	1233	1113	1023
Net Income	15	(1)	12	42	58	54	45	40	38	32
Return on Equity - %	3	(1)	3	9	13	13	12	11	11	10
Debt to Equity	.35	.35	.40	.31	.35	.41	.44	.55	.62	.67
Stock Price Range	18-13	19-15	28-12	29-19	25-12	18-15	24-16	23-16	24-18	22-10
EPS - Net Income (Primary)	0.45	(0.08)	0.53	1.84	2.58	2.43	2.25	1.97	1.90	1.59

* AMF was acquired by Minstar (Irwin Jacobs) in June of 1985. 1985 Quarterly information is attached.

10/28/85

1985 QUARTERLY FINANCIAL DATA

AMF

INCOME STATEMENT

QUARTERLY REPORT FOR:	<u>03/24/85</u>	<u>06/23/85</u>
NET SALES	237,918,000	273,669,000
COST OF GOODS	156,872,000	177,156,000
GROSS PROFIT	81,046,000	96,513,000
R & D EXPENDITURES	NA	NA
SELL GEN & ADMIN EXP	73,168,000	75,436,000
INC BEF DEP & AMORT	7,878,000	21,077,000
DEPRECIATION & AMORT	15,774,000	15,805,000
NON-OPERATING INC	6,661,000	-1,542,000
INTEREST EXPENSE	6,574,000	8,250,000
INCOME BEFORE TAX	-7,809,000	-4,600,000
PROV FOR INC TAXES	-3,203,000	-2,501,000
MINORITY INT INCOME	NA	NA
INVEST GAINS/LOSSES	NA	NA
OTHER INCOME	NA	NA
NET INC BEF EX ITEMS	-4,606,000	-2,099,000
EX ITEMS & DISC OPS	NA	-540,000
NET INCOME	-4,606,000	-2,639,000
OUTSTANDING SHARES	26,350,940	26,478,470

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STOCK AMF

1985 QUARTERLY SUMMARY

	<u>HIGH</u>	<u>LOW</u>	<u>CLOSE</u>	<u>VOL (100/S)</u>
FIRST	17 3/8	14	17 1/4	24633
SECOND	21 1/2	17 1/8	18 1/2	168327
THIRD	18 3/4	15	14	78838
FOURTH	14	13 7/8	13 7/8	4558

STAKEHOLD RESEARCH/APACHE

TAKEDOVER CANDIDATE NAME: Conwed

CONTACTS' NAMES:

1. Frederick (Ted) Weyerhaeuser
(former CEO)
2. William Cowles
President and CEO
P.O. Box 43237
444 Cedar St.
St. Paul, MN 55164

SHORT COMPANY DESCRIPTION:

Conwed Corp. is a diversified manufacturer of specialized industrial and interior products largely based on proprietary mineral fiber, cellulose fiber, and plastic extrusion processes. Products reflect highly developed technical, manufacturing, fabrication, and marketing skills. Products for industry include patented plastic nettings for material handling, product reinforcement and agriculture. The company also manufactures wood-fiber mulch for turf establishment, home insulation, oil sorbents, automotive sound insulation, and cushioning components for bedding and furniture. For building interiors, the company produces and markets a wide variety of acoustical and fire rated ceilings, integrated ceiling systems, office furniture, and acoustical room-dividing panels and wall systems. The firm leader in the development of open office interiors coordinating acoustics, lighting, space division and furnishings for energy and operating efficiency. A mineral ceiling products line is also produced and marketed for residential interiors. The company's products are sold in the United States through marketing divisions. Selected products are marketed outside the United States through an export sales department. Licenses are located in Canada, West Germany, Japan and New Zealand. Traded national DTC, symbol: CWED

DESCRIPTION OF EVENTS LEADING UP TO HOSTILE BID/SUBSEQUENT EVENTS

November 1984:

Conwed Corp., St. Paul. Attacked by Cardiff Acquisitions of La Jolla, Calif., a subsidiary of Leucardia National Corp. which owns 10.15 percent or 1.1. million shares of Jacobs Minstar conglomerate. Total elapsed time: 10 weeks.

After Leucardia made its offer for the company last November, Conwed used Minnesota's antitakeover law to delay the offer and force Leucardia to disclose more about its intentions for Conwed and how the purchase would be financed. The delay gave Conwed's board time to gain assurances from shareholders controlling more than 50 percent the company's outstanding shares that they wouldn't sell.

Leucadia's initial offer proved unsuccessful, with only 7 percent of Conwed's shareholders tendering their stock to Leucadia. Previously, Leucadia had purchased about 18 percent of the stock on the open market. It was stuck at only one-quarter ownership after extending the tender offer several time through December. The company had no better success in fighting the state's antitakeover law during the middle of the takeover fight, the Eighth U.S. Circuit Court of Appeals upheld the constitutionality of the law.

Faced with those two defeats, in early February Leucadia raised its offer for Conwed's stock from \$21.50 a share to \$28.50 a share, and the hostile takeover turned quickly into a friendly acquisition.

Leucadia was able to offset the \$44 million price by the \$40.5 million it grossed on the resale of Conwed's Cloquet and Red Wing plants. Also, Leucadia sold Conwed's casegood furniture business in High Point, N.C., for about \$2.1 million. Additionally, in buying Conwed, Leucadia immediately gained \$12.5 million in cash and securities that Conwed had amassed to help finance a business expansion it had planned for 1985-87.

IMPACT ON STOCKHOLDERS

PRE-HOSTILE

1. EPS	1. YEAR	2 YEAR	3 YEAR
2. Debt/Cap	2.		
3. R&D Exp.	3.		
4. Sales	4.	116.7 M	106 M
5. Stock Price	5.	9-13	10-16
6. Asset/Share	6.	\$40.89	
7. Op. Cash Flow	7.		
8. Debt Ratings	8.		
9. Other	9.		

POST-ACTIVITY

1. EPS
2. Debt/Cap
3. R&O Exp
4. Sales
5. Stock Price
6. Asset/Share
7. Op. Cash Flow
8. Debt Ratings
9. Other

*Not Available, Conwed was merged into Cardiff

DESCRIPTION OF LONG-TERM PERFORMANCE

Conwed earned \$4.4 million overall on revenues of \$116.7 million last year, its best year in the last five, and it provided shareholders with a 10.2 percent return on equity. Shareholder equity had increased 20 percent annually on a compounded basis during the 13 years Weyerhaeuser headed the company.

IMPACT ON EMPLOYEES

Of 1,600 employees before the takeover, only 900 remain.

1. Number of Employees**2. Number of Employees Relocated**

Leucadia sold the assets of Conwed's ceiling-tile business to USG Corp. of Chicago and terminated the Cloquet plant's 700-member work force. One hundred forty jobs were transferred to other Conwed plants on the East Coast. The remaining 560 Cloquet employees were given a chance to apply for 400 jobs that are being retained by the new owners.

3. Impact on Benefit and Service Plans

Unaffected

4. Impact on Training/Development Programs

All training and development programs were discontinued.

5. Impact on Stock Options

Exercised at time of acquisition.

6. Impact on Pensions and Retirement

Severance of two weeks pay for each year of service was paid.

IMPACT ON COMMUNITIES**1. If measurable reduction in taxes (Fed./State/County)**

State taxes reduced through loss of over 200 net jobs.

2. Reduction in community service programs

A. Conwed had given 2 percent of pretax profits to philanthropy.

B. Significant community support/volunteerism programs were eliminated.

3. Closing of factories

IMPACT ON SUPPLIERS, CUSTOMERS

1. Significant reduction or elimination of purchases or sales

- purchases or sales transferred to other suppliers or customers
- transferred to local or out-of-state suppliers or customers or to foreign suppliers or customers

2. Treatment of accounts payable and accounts receivable

- delay in payments or acceleration in collections

A. No delay or acceleration

STAKEHOLD RESEARCH/APACHE

TAKEOVER CANDIDATE NAME: McQuay

CONTACTS' NAMES:

Gene Booker
(former president of and COO of McQuay)
President, Custom Products Group
Phillips Plastic Corporation

SHORT COMPANY DESCRIPTION:

McQuay, Inc. was incorporated in May 1933. In June 1971 it acquired Perfex Corp. through a statutory merger, issuing 1,287,918 shares (adjusted for three-for-two stock splits Oct. 1, 1976, and Oct. 2, 1978) of common stock on share-for-share basis. The company changed its name from McQuay-Perfex, Inc. to McQuay, Inc. in May 1983. The company designs, manufactures and sells a broad line of commercial and industrial air conditioning, heating and ventilating equipment; heat transfer coils sold to original equipment manufacturers; commercial and industrial refrigeration equipment and commercial automatic ice making equipment; industrial heat transfer products, including components for highway trucks, diesel engines, farm equipment, roadbuilding, construction mining, petroleum, as well as for industrial process applications. It also manufactures a line of intricate grey iron and ductile castings. McQuay manufacturing plants are located in Grenada, MS; Fairbault and Minneapolis, MN; Spirit Lake and Washington, IA; Richmond, VA; Milwaukee and Berlin, WI; Miami, FL; and Catano and Cidra, Puerto Rico. International joint venture operations are located in Cecchina, Italy; Mexico City, Mexico; San Jose dos Campos, Brazil; and Neuenkirchen, West Germany. International licenses are located in Australia, England, Japan and Singapore.

Traded National over the Counter (OTC) symbol: MCQA

DESCRIPTION OF EVENTS LEADING UP TO HOSTILE BID/SUBSEQUENT EVENTS

August 1984: McQuay, Inc., Plymouth based manufacturer of heaters, air conditioners, radiators and ice-making equipment. Acquired by Snyder General Corp. of Dallas. Total elapsed time: one week. Price: \$30 million. Snyder's initial bid was \$17 a share which was subsequently raised to \$19. Layoffs: 125. James Hoaglund, McQuay's chairman and chief executive, remained on the job for several months but his powers were eliminated. On Feb. 9, 1985, while still at McQuay but searching for a new job, Hoaglund died of a heart attack.

Since seizing the reins at McQuay last November, Snyder General has laid off about 125 workers at its various plants, sold 11 of McQuay's 19 business units, and lost eight of the 12 vice presidents who once ran the company.

IMPACT ON STOCKHOLDERS

PRE-HOSTILE

	1. YEAR	2 YEAR	3 YEAR
1. EPS	_____	_____	_____
2. Debt/Cap	_____	_____	_____
3. R&D Exp.	_____	_____	_____
4. Sales	_____	_____	_____
5. Stock Price	_____	_____	_____
6. Asset/Share	_____	_____	_____
7. Op. Cash Flow	_____	_____	_____
8. Debt Ratings	_____	_____	_____
9. Other	_____	_____	_____

POST-ACTIVITY

1. EPS
2. Debt/Cap
3. R&D Exp
4. Sales
5. Stock Price
6. Asset/Share
7. Op. Cash Flow
8. Debt Ratings
9. Other

*Not available, merged into Snyder General

DESCRIPTION OF LONG-TERM PERFORMANCE

IMPACT ON EMPLOYEES

1. Number of Employees

Of 3,500 employees before the takeover, only 1,000 remain.

2. Number of Employees Relocated

11 of 19 divisions sold

3. Impact on Benefit and Service Plans

Senior management had golden parachutes

4. Impact on Training/Development Programs

Development programs eliminated

5. Impact on Stock Options

Eliminated

6. Impact on Pensions and Retirement

No impact

IMPACT ON COMMUNITIES

1. If measurable reduction in taxes (Fed./State/County)

2. Reduction in community service programs

McQuay was very supportive of community activities and philanthropy. Snyder has eliminated all commitments.

3. Closing off factories

IMPACT ON SUPPLIERS, CUSTOMERS

1. Significant reduction or elimination of purchases or sales

- purchases or sales transferred to other suppliers or customers
- transferred to local or out-of-state suppliers or customers or to foreign suppliers or customers

2. Treatment of accounts payable and accounts receivable

- delay in payments or acceleration in collections

STAKEHOLD RESEARCH/APACHE

TAKEOVER CANDIDATE NAME: Gulf Corp.

CONTACTS' NAMES:

(NA)

SHORT COMPANY DESCRIPTION:

Business Summary:

Gulf ranks as a major international oil company, with important stakes in hard minerals (coal and uranium) and oil shale. It also holds a 60 percent interest in Gulf Canada.

Oper. Profits	1983	*1982
U.S. Expl/ & Prod.	46%	55%
U.S. Ref. & Mkt.	6%	21%
U.S. Other	- 1%	-13%
Canada Expl. & Prod.	20%	14%
Canada Ref. & Mkt.	Nil	6%
Canada Other	Nil	Nil
Europe	17%	5%
Other Foreign.	12%	12%

*Reclassified

LIFO inventory drawdown profits added \$87 million and \$360 million to 1983 and 1982 net income, respectively.

In 1983 net worldwide crude oil and natural gas liquids production (including term purchases) averaged 858,000 barrels a day, net natural gas produced 1.5 billion cubic feet a day, crude oil processed 939,000 b/d, refined products sold 1,111,000 b/d, and coal mined 12.4 million tons.

Net proved reserves at 1982 year-end (latest available) stood at 1,968 million barrels of crude oil and natural gas liquids (41 percent U.S., 11 percent Canada, and 48 percent other foreign) and 5,705 billion cubic feet of natural gas (68%, 31% and 1%).

Cities Service is suing Gulf for \$3 billion for breach of contract on their 1982 aborted merger agreement.

Corporate Background:

Company is an integrated petroleum concern mainly engaged in the exploration, production, purchase, transportation, refining and marketing of crude petroleum and natural gas, and products derived therefrom. Co. also received revenues from non-petroleum related products and services.

EMPLOYEES - Dec. 31, 1984, 41,100

DESCRIPTION OF EVENTS LEADING UP TO HOSTILE BID/SUBSEQUENT EVENTS

Summary:

Gulf management solicited friendly merger bids from Socal and others as an alternative to having control of Gulf fall into the hands of the Gulf Investors Group, headed by Mesa Petroleum. On February 23, 1984, the Group made a cash tender offer for 13.5 million Gulf shares at \$65 each, to expire March 21, 1984, unless extended. If the group was to acquire these shares, its equity stake in Gulf would rise to 21.3 percent from 13.2.

On March 7, 1984 Standard Oil of California began a friendly cash tender offer to acquire all of the roughly 165 million common shares of Gulf Corp. for \$80 each. The tender offer expires April 3, 1984, unless extended. The merger requires antitrust clearance, and Standard Oil of California has said it is willing to sell off big pieces of Gulf's retailing and refining operations to ensure the merger goes through.

In what was at the time the biggest merger in corporate history, Gulf Oil announced that it had accepted a bid from Standard Oil of California.

The merger announcement followed several weeks of intense speculation in Gulf shares which sent them soaring from just under \$30 to \$70, creating huge profits for speculators and investors.

The boards of directors of both companies had approved the deal, which called for Standard Oil to buy Gulf's outstanding shares for \$80 each in cash, according to Gulf.

Gulf, the fifth largest US oil company, said Standard Oil, the fourth largest, would soon initiate a cash offer for all Gulf's 165 million outstanding common shares.

Standard Oil was not obligated to purchase shares unless 51 per cent of the outstanding shares were tendered to it.

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Gulf had been seeking a way to avoid a hostile takeover bid by Mesa Petroleum, which had led a group competing with Gulf's

Gulf's board considered the options and, according to informed sources, heard presentations by Standard Oil, Atlantic Richfield, the seventh largest US oil company, and the Wall Street investment bank of Kohlberg Kravis and Roberts.

The merger was the largest in a series of mammoth agglomerations in the American oil industry which have been made possible by the Reagan Administration's approach to big takeovers. In virtually every case of a big oil merger, the Federal Trade Commission -- the US monopolies' watchdog -- has ruled in favor.

Recently, the FTC gave its go ahead to takeover by Texaco for Getty Oil. This lead to a bout of takeover fever in oil shares.

The interest of oil companies in big takeovers on their competitors is explained by the gap between the cost of drilling for oil and buying it on the New York stock exchange. It currently costs Standard Oil an estimated \$13 per barrel to explore for oil but was able to buy Gulf's oil reserves for around \$6 a barrel through a merger.

On May 1, 1984, Socal approved the change of the company's name to Chevron.

IMPACT ON STOCKHOLDERS

<u>PRE-HOSTILE</u>		1983	1982	1981
1. EPS	1. YEAR	<u>\$5.83</u>	2 YEAR <u>\$4.98</u>	3 YEAR <u>\$6.37</u>
2. Debt/Cap	2.	<u>14.1%</u>	<u>14.6%</u>	<u>13.0%</u>
3. Capital Expd.	3.	<u>(NA) MM</u>	<u>\$2,952 MM</u>	<u>\$3,561 MM</u>
4. Sales	4.	<u>\$28,249 MM</u>	<u>\$30,193 MM</u>	<u>\$30,025 MM</u>
5. Stock Price	5.	H - \$48 L - \$29 $\frac{1}{2}$	<u>\$113.08</u>	<u>\$105.71</u>
6. Asset/Share	6.	<u>\$124.97</u>	<u>\$113.08</u>	<u>\$105.71</u>
7. Op. Cash Flow <u>a</u>	7.	<u>\$2,438 MM <u>a</u></u>	<u>\$2,361 MM <u>a</u></u>	<u>\$2,526 MM <u>a</u></u>
8. Debt Ratings	8.	<u>(NA)</u>	<u>(NA)</u>	<u>(NA)</u>
9. Other	9.	<u>(NA)</u>	<u>(NA)</u>	<u>(NA)</u>

a = (Net Income + DD & A) Note that other operating items are unavailable at present time.

POST-ACTIVITY

1. EPS = (NA) However, Net Income declined from \$978 MM in 1983, down to \$331 M in 1984
2. Debt/Cap as of 12/31/84 = 12.9%
3. Capital Expd. (NA)
4. Sales Fiscal 1984, \$12,503 MM
5. Stock Price - (NM)
6. Asset/Share - (NM) - But if shares are at 165,070 M (as of 3/13/84) then ratio = \$128.94
7. Op. Cash Flow - (Net income + DD & A) only, as other operating items are unavailable at present time = \$1,873 MM
8. Debt Ratings -(NA)
9. Other

DESCRIPTION OF LONG-TERM PERFORMANCE (NA) for Gulf Oil separately; however, see below for Chevron prospects for 1985 (earnings release WSJ 10/30/85 - 9 mos.), and Value Line Report on Chevron with financial projections for 1985, 1986 and 1988 - 90E.

Chevron's Future Profits are difficult to forecast because Chevron has sold considerable assets in 1985, and more sales will probably be forthcoming. In fact, Chevron is considering selling some of Gulf's producing properties, which according to CEO George Keller, "May be startling when we have emphasized that our primary interest in Gulf was its oil and gas reserves." Mr Keller adds, "However, from a financial standpoint, when you look closely at certain of these properties, you see that some may be more valuable to other potential owners."

The addition of Gulf's properties to those of Chevron more than doubled CHV's exploration acreage in the Gulf of Mexico to 834,000 net acres, and Company is "looking forward to developing this acreage." Chevron plans to continue to be an active participant in frontier area exploration such as the U.S. Beaufort Sea, in Africa, the Far East and other foreign regions.

The addition of Gulf's refineries in Texas, Pennsylvania and Ohio to Chevron's network "will re-establish CHV's position as the largest crude oil refiner in the U.S. and will significantly increase Company's flexibility in its markets in the south and the east."

IMPACT ON EMPLOYEES

1. Number of Employees	41,000 as of 12/31/84
2. Number of Employees Relocated	N/A
3. Impact on Benefit and Service Plans	N/A
4. Impact on Training/Development Programs	N/A
5. Impact on Stock Options	N/A
6. Impact on Pensions and Retirement	N/A

IMPACT ON COMMUNITIES

1. If measurable reduction in taxes (Fed./State/County)	N/A
2. Reduction in community service programs	N/A

3. Closing of factories

(NA)

IMPACT ON SUPPLIERS, CUSTOMERS

1. Significant reduction or elimination of purchases or sales

- purchases or sales transferred to other suppliers or customers
- transferred to local or out-of-state suppliers or customers or to foreign suppliers or customers

2. Treatment of accounts payable and accounts receivable

- delay in payments or acceleration in collections

UNITED TECHNOLOGY ACQUISITION OF OTIS

CHRONOLOGY OF EVENTS

- 1852 Otis Elevator established in Yonkers, NY
- 1968 Otis revenue at \$481 million and net income at \$22 million; stock range \$39-\$56 per share
- 1969 Yonkers, NY, allocates \$14 million in state, local, and federal funds to help Otis expand in that community.
- 1974 Otis employment reaches 1500 workers in Yonkers. Earnings reach \$1.183 billion and net income \$41 million. Share price \$24-\$45.
- 1975 United Technologies acquires Otis, promising to maintain investment and growth, thus making good on the city's prior investment.
- 1979 UTC says Otis earnings have declined and its market share has slipped 25%. Employment cut to 375.
- 1983 UTC closes Yonkers plant, and moves Otis headquarters to Hartford, Connecticut.
- 1983-4 UTC sells the real estate of the Yonkers plant at a considerable profit over its sale price in 1975 (figures unavailable).
- 1984 A new industrial park is created on the land Otis vacated and now (1985) a Kawasaki plant plans to employ 2600 people.

Background

Otis Elevator was formed in the 19th century and became one of the country's leading elevator manufacturers. Its Yonkers plant was a major employer for that city and was located in the heart of a business district the city sought to redevelop as part of a revitalization program started in the late 1960's. City, state and government bond funds totalling \$14 million went into the Otis expansion program beginning in 1969. United Technologies, headquartered in Connecticut, saw Otis as a good acquisition to join its rapidly expanding list of subsidiaries. Otis' sales and revenues had roughly doubled over the previous six years (since the infusion of capital), but its stock price had actually gone down somewhat. When UTC acquired the company, Otis had told Yonkers Mayor Angelo Martinelli that it planned to expand rapidly, growing to 2000 employees in the next several years. UTC assured Martinelli that the acquisition would not affect these plans. By the late 70's, however, Otis faced serious financial problems. Its market share dropped 25%, largely due to the introduction of new microcompressor technologies that UTC said could not be manufactured at the plant. In 1983, UTC closed the Yonkers plant and moved Otis headquarters to Hartford.

Impact on Directors and Officers

The officers of Otis generally remained until normal retirement age, including the President, Ralph Waller, who retired a year and a half ago. The Yonkers plant manager retained his position until the plant closed. One officer, Mr. Faure, has risen in UTC and is Executive Vice President reporting to Mr. Gray, CEO of UTC. No information is available on members of the board.

Impact on Employees, Suppliers and Communities

The loss of 1500 jobs and a \$7 million payroll in a medium-sized city such as Yonkers was obviously a serious blow. Moreover, Yonkers had invested \$14 million to develop property for Otis to use to expand, but Otis paid only \$1.39 million for the facility. Mayor Martinelli, a Republican, said that "I think the United Technologies people have perpetrated a rape upon our city", noting that UTC was able to make a substantial profit on the sale of the facility for an industrial park. [In 1983 the city instituted a suit against UTC for breach of contract; as of November, 1985, that suit had not come to trial.] The industrial park has been a success, however, and about 2600 people will work there for Kawasaki.

Impact on Stockholders

The material available on this acquisition did not indicate what the stock price was immediately prior to the event. Thus, we cannot determine how the stockholders fared in the \$44/share takeover. It is clear, however, from prior data that Otis stock had been performing very poorly.

OTIS ELEVATOR COMPANY*
FINANCIAL HISTORY
(IN MILLIONS OF DOLLARS)

	<u>1975*</u>	<u>1974</u>	<u>1973</u>	<u>1972</u>	<u>1971</u>	<u>1970</u>	<u>1969</u>	<u>1968</u>	<u>1967</u>	<u>1966</u>
Total Revenue	1183	1104	985	807	730	621	561	481	N/A	N/A
Net Income	41	44	40	28	25	24	23	22	N/A	N/A
Return on Equity - %	12	15	15	11	10	10	10	10	N/A	N/A
Debt to Equity	.34	.44	.39	.46	.50	.47	.13	.11	N/A	N/A
Stock Price Range	45-24	42-21	50-33	43-36	45-35	55-35	52-40	56-39	N/A	N/A
EPS - Net Income (Primary)	5.02	5.43	5.02	3.50	3.05	2.91	2.84	2.57	N/A	N/A

*Otis Elevator was taken over by United Technologies in 1976.

THE RAIDERS

As we begin to examine the effect of various hostile takeovers, several names are mentioned frequently. These people are often called "raiders", and they are a relatively new breed that has attracted much attention recently, as shown in the attached articles. These articles show that each of these players has a different set of motivations and operating styles, as briefly summarized below.

As we continue to research the role of "raiders" in the context of evaluating the effects of hostile takeovers, there is one area that clearly merits further examination--the claim that hostile takeovers serve to force management to manage their companies "better".

- Irwin Jacobs (Minstar). Jacobs is known as "Irv the Liquidator" for his propensity to buy "undervalued" assets of various types and sell them piece-meal for a high profit. He began his career in his family's grain bag recycling business, he progressed to liquidating bankrupt and overstocked merchandise, and graduated to purchasing companies, selling some of the assets to finance the purchase.

An indication of Jacobs' motivation in choosing targets is his statement that "buying companies with lots of different assets diversifies my risks". It is also noted, however, that selling off parts of a conglomerate can be easier than disposing of pieces of a one-product company. Jacobs sees himself as a catalyst: American industry is restructuring, he says, and as far as he is concerned, he is merely an agent. On the issue of greenmail, Jacobs denies ever accepting greenmail although he has profited handsomely from a number of premium buy-outs that came mostly from third parties. He is quoted as saying "I don't blame the greenmailers as much as the company" [that pays them].

- Carl Icahn. Icahn started his career as a stock trader, became active in arbitrage, then moved to launching takeovers himself. His strategy is effectively portrayed in a 1980 confidential memorandum that was recently revealed at the request of The American Lawyer..

It is our opinion that the elements in today's economic environment have combined in a unique way to create large profit

making opportunities with relatively little risk...It is our contention that sizeable profits can be earned by taking large positions in "under valued" stocks and then attempting to control the destinies of the companies in question by:

- a) trying to convince management to liquidate or sell the company to a "white knight";
- b) waging a proxy contest, or;
- c) making a tender offer and/or;
- d) selling back our position to the company.

Icahn prides himself on negotiating without lawyers, since he (probably rightly) feels that he can best any of his target CEO's one-on-one. Moreover, Icahn compares his work to the battlefield, saying that during one takeover attempt he was "beginning in some ways to sort of feel that surge of battle a little bit".

- . T. Boone Pickens (Mesa Petroleum). According to the attached interview in Baron's, Pickens seems to be bewildered and offended by the fact that target companies consider him a "raider" when he takes a position in their stocks. While Pickens is "media's favorite liberator of oil companies plagued by entrenched managers", Pickens seems to be rather entrenched himself with anti-takeover provisions and a golden parachute. Pickens states that he "never takes greenmail", although he has accepted premium payments a number of times. On greenmailers, Pickens, like Icahn, blames the target company for being "stupid enough to pay them a premium to get rid of them".
- . Ivan Boesky. Boesky is probably the most active arbitrager, not only taking profits from stock price changes due to takeovers and takeover rumors, but also attempting to encourage takeover attempts from which he can make a trading profit.

In addition, one investment banking firm has been most active in financing hostile takeovers--Drexel Burnham Lambert. Drexel has quickly become expert in "junk bonds" deals and has even developed a team to find takeover targets and interest their clients in them. These clients include Saul Steinberg, Carl Lindner, Victor Posner, the Bass Brothers, the Belzberg family, Irwin Jacobs, Sir James Goldsmith, T. Boone Pickens, and Carl Icahn.

Study

by

The Office of the Chief Economist
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

July 24, 1985

Shark Repellents and Stock Prices: The Effects
of Antitakeover Amendments Since 1980

The views expressed herein are those of the Office of the
Chief Economist only. The Commission has expressed no
view on this study.

224X

Shark Repellents and Stock Prices: The Effects
of Antitakeover Amendments Since 1980

- First Draft -

PERSONS TO

CONTACT : Gregg Jarrell - 272-7104
Annette Poulsen - 272-7115
Lynne Davidson - 272-3002

I. Introduction.

"Shark repellents" is the popular term for amendments to corporate charters that condition and restrict the transfer of managerial control. 1/ Almost always subject to approval by majority vote of shareholders, the specific forms of shark repellents, or antitakeover amendments, have changed considerably over the last five years in response to new takeover techniques and to shareholder resistance towards amendments designed primarily to entrench incumbent management. The popularity of these modern antitakeover amendments has increased dramatically since the invention of the "fair price" amendment. Fair price amendments are old-fashioned requirements for supermajority voting approval by shareholders for transfers of managerial control that are triggered only by takeover bids that offer non-uniform prices ("two-tier" offers).

Once rare among large corporations, the modern day anti-takeover amendments have attained considerable respectability. A recent survey of S&P 500 corporations shows that 112 firms had passed antitakeover amendments as of the end of 1984. Only 13 of these firms had passed amendments as of the end of 1982. (See Table 1.) Moreover, 77 of the 99 firms that passed amendments since the end of 1982 adopted the modern "fair price" requirement. It is clear that the fair price amendment is a remarkably popular innovation, both with managements of corporations and with their voting shareholders.

Antitakeover amendments, however, are not popular with everyone. A widely quoted 1985 study by the Investor Responsibility Research Center (Pound, 1985) concludes that the actual behavior of takeover targets protected by these amendments is generally contrary to the shareholders' interest. 2/ A recent study by the Office of the Chief Economist (OCE, 1984) of the U.S. Securities and Exchange Commission (SEC) concludes that the net-of-market stock returns, averaged over 131 exchange-listed firms around the time of release of the relevant proxy disclosures, is negative 1.78 percent. 3/ Many knowledgeable commentators have complained that this wave of antitakeover amendments will serve to disenfranchise equityholders, seriously harming national economic welfare.

The SEC disclosure rules reflect this concern by requiring that proxy forms describing antitakeover proposals contain specific language warning shareholders about the possibility of entrenchment and of foregone takeover premiums. 4/

Academic studies of this subject are few and inconclusive. DeAngelo and Rice (1983) examine NYSE-listed firms adopting antitakeover amendments during 1971-79 and show negative (about one percent) and statistically insignificant net-of-market stock returns around the public announcement of the proposed amendments. 5/ Linn and McConnell (1983) investigate the net-of-market return to public announcement of antitakeover amendments during 1960-80 for 475 NYSE-listed firms. 6/ They find statistically significant, positive net-of-market stock returns, on average, accompanying public announcement for these cases.

Although there are important differences between these two finance studies in the composition of their samples and the selection of specific time periods over which market returns are measured, the overall impression that one receives from this evidence is that antitakeover amendments passed before 1980 had only a trivial effect on equity value.

Our study examines a total of 649 antitakeover amendments proposed between January 1979 and May 1985. About two-thirds of this total are exchange-listed firms, and the rest are

over-the-counter firms. Of these 649 firms, 554 proposed their amendments after 1982, again reflecting the dramatic increase recently in their popularity. The sample consists of 487 fair price amendments, 104 supermajority amendments, and 58 classified board or authorized preferred provisions. Table 2 presents these figures and clearly demonstrates the success of the modern fair price amendment in dominating the sample since 1982.

For this sample, we compute net-of-market stock returns for various time periods around the date the relevant proxies were signed and consider the impact of proposed antitakeover amendments across our sample and several subsets of it. The widest "event window" is from 20 days before to ten days after the proxy signing date. In addition to the impact on stock returns, we examine the extent of institutional and of insider stockholdings for each proposing firm.

There are several reasons for believing that this sample of proposed amendments could show significant stock price results despite the generally insignificant findings of previous studies. First, the size of this sample is very large, which should reduce the level of statistical "noise" in measuring stock returns. Second, over 85 percent of the current sample is comprised of amendments proposed after 1982, which have not been studied before. Third, the current

sample is dominated by fair price amendments which have become common only since 1982. Finally, there have been many changes in the market for corporate control that may cause modern antitakeover amendments to have relatively larger effects on shareholder wealth. For example, state antitakeover laws have become nearly impotent since 1982, and antitrust regulators have reduced considerably the barriers to mergers between large firms and between competitors since 1980. 7/ These latter developments could cause antitakeover amendments and other defensive actions to have a greater impact on firm value. Antitakeover amendments can be thought of as substitutes for the protection against hostile takeovers once afforded by state antitakeover and federal antitrust laws. These external developments may have contributed in some degree to the increased demand by firms since 1982 for antitakeover amendments.

Briefly, the stock returns data show an average loss of 1.31 percent for the entire sample. Separating the amendments by type, however, reveals that fair price amendments have very little effect on stock value, while the supermajority, authorized preferred, and classified board amendments have substantial negative effects on stock value. We find that the most harmful amendments are proposed by firms that have relatively high insider and low institutional stockholdings.

The composition of stockholdings by proposing firms is important for understanding both the economic effects of particular kinds of amendments and how the approved amendments received a majority of shareholder votes. Large insider holdings can help management win majority approval by shareholders of an amendment that clearly reduces stock value. Also, different levels of insider holdings can cause a given supermajority requirement (say 80%) to confer different degrees of autonomy on incumbent management (20% provides veto power). Stock price reactions may well be a function of these differences in autonomy.

Institutional stockholdings may shed light on the important issue of rational voting. Sophisticated, well-informed shareholders such as institutions should vote in accordance with their economic interests more consistently than do less-informed shareholders. This assumption implies that value-decreasing amendments should be proposed by firms having relatively low institutional stockholdings (and relatively high insider holdings). Also by this reasoning, specific amendments that achieve widespread acceptance by firms with significant institutional stockholdings should not decrease (significantly) equity value.

II. How Antitakeover Amendments Operate.

Antitakeover amendments generally operate by imposing new conditions that must be satisfied before changing managerial control of the corporation, whether through a tender offer, through a merger, or by simply replacing the board of directors. They are almost always proposed by management, and they almost always require majority voting approval by shareholders. Also, it is extremely rare for a proposed antitakeover amendment to be rejected by voting shareholders. 8/

A. Supermajority Amendments.

Most state corporation laws set the minimum approval required for mergers and other important control transactions either at 50 percent or two-thirds of the voting shares. Supermajority amendments require the approval by holders of at least 66-2/3 percent (and sometimes as much as 90 percent) of the voting power of the outstanding capital stock to approve a merger, tender offer or certain other business combinations involving any interested shareholders of some particular size (usually set between five and twenty percent of the voting power). This provision is almost always accompanied by a "lock-in" provision that requires the same supermajority voting approval to change this and related amendments. Without the lock-in, of course, simple majority approval would usually be sufficient to undo the supermajority

requirement for changing managerial control. These provisions may apply also to (or only to) changing the firm's board of directors.

Pure supermajority provisions are very rare today, having been replaced by similar provisions that are triggered either by action by the board of directors or by the type of takeover bid received by the target firm. If the board is able to determine when and if the supermajority provisions will be in effect, the amendment is said to have a "board out" clause. In some instances, managements of firms with pure supermajority provisions with lock-ins have been unable to eliminate them from the firm's charter. Indeed, takeover specialists generally advise against adopting a pure supermajority amendment because it can seriously limit the flexibility of the board in any future takeover negotiations.

B. Fair Price Amendments.

The modern fair price amendment is a supermajority provision with a board escape and an additional clause waiving the supermajority requirement if the offeror agrees to pay a "fair price" for all purchased shares. 9/ The fairness of the offer is determined in several ways. The most common fair price is defined as the highest price paid by the bidder for any of the shares it has acquired in the target firm during a specified period of time. There may be an additional

requirement that the premium over current market price offered in any subsequent tender offer or merger must be equal to the highest premium over market price paid by the acquirer in obtaining his current equity position in the target. Less frequently there are requirements that a fair offer price must exceed some multiple of the target's reported earnings, the historical high price-earnings ratio of the acquirer, or the stated per-share book value of the target.

In its most common form, the fair price amendment requires supermajority approval of non-uniform, or two-tier, takeover bids that are not approved by the target's board of directors. Hostile bidders can avoid the supermajority requirement by making a uniform, fair price for less than all outstanding shares (subject to prorationing under Federal law if the offer is oversubscribed). If the acquirer attempts to purchase the remaining shares with a subsequent merger or tender offer, he must then pay the uniform, fair price to avoid the supermajority requirement.

Although fair price amendments are described as devices designed to encourage bidders to negotiate directly with the target's board, the hostile bidder can with relative ease structure his tender offer to avoid the supermajority requirement. They are effective mainly against hostile, two-tier tender offers, whether the bidder uses an explicit two-tier

offer (where consideration for each tier is stated in the initial tender offer) or an implicit two-tier offer (where the terms of the second-stage merger are not described in the initial tender offer for control). Because the availability of the two-tier tender offer is not considered by many experts to be an essential tactic for successful hostile takeovers, the modern fair price amendment is widely regarded as the least restrictive (or protective) among the family of supermajority-type amendments. 10/

C. Classified Boards.

Classified board provisions classify (or stagger) the board into (usually three) groups so that only a fraction of all directors are elected each year. Classification makes it more difficult to change the composition of the incumbent board, therefore making it more difficult for any insurgent shareholder or group to gain control of the firm. Classification of the board also reduces the effectiveness of cumulative voting by requiring a greater shareholder vote to elect a single director. Accompanying most classified board amendments is a lock-in provision, which requires a supermajority shareholder vote to change the number of directors and mandates that directors may be removed only for cause.

D. Authorization of Blank-Check Preferred Stock.

Authorization to issue blank-check preferred stock allows the board of directors to establish voting, dividend, conversion and other rights for preferred stock that the company may issue, sometimes in defense against a hostile takeover bid. While the historical rationale for this authority is that it gives the board flexibility to finance general corporate activities under changing economic conditions, this device also allows the board to discourage hostile bidders by issuing to friendly parties preferred stock with special voting rights and/or by creating a "poison pill" security.

Although poison pill issuances are new and not very common, this defensive tactic has received great attention because of its complex operation and its believed invincibility. 11/ Poison pills are special forms of blank-check provisions in which holders of the company's common stock are issued rights to purchase a newly issued class of preferred stock (or other security). These rights, however, are commonly worth very little unless one of several triggering events occurs. Also, the rights can be bought up cheaply by the target at the discretion of the board until a triggering event occurs. Triggering events include a tender offer for the firm's shares or the acquisition by an outside party of a sufficiently large block of the company's stock. After the trigger event occurs the new rights are freely tradeable, and they provide the holder with considerable value in the event of a merger.

Usually, the rights can then be used to purchase common stock of the newly merged firm at a substantial discount, or they may allow holders to swap their shares for other, higher-valued debt securities. This defense makes the target prohibitively expensive to take over via a hostile bid.

III. How Should Antitakeover Amendments Affect Firm Value?

There is widespread disagreement among academic experts and among industry takeover specialists about whether anti-takeover amendments are good or bad for shareholders. Proponents of antitakeover amendments argue that these provisions, by providing additional degrees of negotiating leverage (veto power) to incumbent management of the targets, enable target management to negotiate better deals (on average) for their shareholders. Opponents claim that these amendments are mainly used to entrench incumbent management by insulating them from competition in the market for corporate control. They further contend that widespread voting approval of antitakeover amendments is evidence of the persuasive ability of management and the complacency of shareholders.

A. Shark Repellents Benefit Shareholders.

DeAngelo and Rice (1983) present the former view by referring to corporate control as a communal resource. Diffuse and non-colluding shareholders of the target firm are not capable of negotiating the best price for control of

their firm, especially when faced with a specialized bidder using a two-tier tender offer. Under these conditions, target shareholders may fail to hold out for the tender price that would be optimal for them if they were to act collectively. 12/ In response to this potential problem, shareholders of prospective target firms may find it advantageous to adopt amendments that effectively appoint target management as their central negotiating agent, especially when confronted with two-tier tender offers. By this reasoning, antitakeover amendments help to force once diffuse target shareholders to respond in unison to takeover bids, thereby gaining a larger share of the economic gains from the prospective merger. Often this added leverage allows target management to benefit their shareholders by inducing competitive bidding between potential acquirers for the target. 13/

These expected benefits come with the risk that target management might in some cases abuse this new responsibility by repelling takeover bids that benefit shareholders but harm incumbent management. Because would-be acquirers now expect they will have to pay more on average to gain control of prospective targets, there is also an expected cost of deterring prospective takeover bids by passing antitakeover amendments.

This hypothesis holds that under these conditions the potential benefits to shareholders (higher bids) from empowering their incumbent management with near-veto power over hostile offers will outweigh the potential costs (detering bids). 14/ The hypothesis rests strongly on the assumption that other powerful mechanisms besides hostile tender offers will operate generally to align management interest (agent) with shareholders' interest (principal). 15/ Proponents can take comfort from the observation that the modern fair price provision appears to be designed specifically to appoint target management as central negotiators only when shareholders are faced with two-tier tender offers. These offers create the most difficult hold-out problems for diffuse shareholders.

This view implies that, although there can be important exceptions, the proposal of antitakeover amendments should increase the market value of the target firm's stock. This hypothesis is consistent also with rational and well-informed shareholder voting. When economic conditions exist that make these amendments valuable to shareholders, their management will propose them and shareholders will approve them. If the amendments do not enhance stock value, then managements should not propose them; and if they do so, by mistake or with improper motives, their shareholders should vote them down. Although real-world cases can be expected to contain exceptions

due to incomplete information or mistakes, the prediction is that antitakeover amendments that are actually proposed (almost all pass) should be accompanied by positive net-of-market stock returns on average upon public announcement.

B. Shark Repellents Harm Shareholders.

The arguments against antitakeover amendments rest on irrational or misinformed voting behavior by ratifying shareholders. This view emphasizes the potential for abuse by target management of the near-veto power over hostile tender offers that is provided by these amendments. It is argued that hostile tender offers provide a fail-safe mechanism to oust incumbent managements when other methods fail to align managements' interests with those of their shareholders. Because of the extraordinary conflict of interest between target management and their shareholders that nearly always exists in hostile control contests, it is rarely in shareholder interest to restrict ex ante their opportunity to receive takeover bids that are not approved by their firm's management.

Opponents of antitakeover amendments reconcile their judgment that such devices are harmful with increasing shareholder acceptance of them by contending that shareholder voting works badly in practice. Most individual shareholders have a relatively small economic stake in any particular firm's internal affairs. It is generally in their interest,

therefore, to simply vote in accordance with management's recommendations. This strategy by shareholders conserves on expenditures to become informed, and is especially logical if their managements have proven to be faithful and well-informed agents and/or if the proposed action is expected to have a trivial effect on shareholder wealth. Antitakeover amendments reduce firm value by reducing the probability of receiving valuable takeover bids. For the typical proposing firm, this probability may not be high at the time of the proposal. Therefore, the corresponding deterrence effect should cause only negligible declines in stock price, providing little incentive for low stake shareholders to become informed.

Institutional investors and individuals or firms holding large blocks of shares have better economic incentives to learn the effects on shareholder wealth of antitakeover amendments especially given the increased frequency with which they are asked to vote on them. Opponents of antitakeover amendments help support their view by pointing to the conventional wisdom that large institutional shareholders are generally opposed to antitakeover amendments. The less uniform opposition encountered from some (usually smaller) institutional shareholders can be explained, opponents argue, by the potential for retaliation by angry proposing managements that decide which institutions will manage their often large employee pension fund

The hypothesis that antitakeover amendments are generally counter to shareholders' interests predicts that their public proposal will be accompanied on average by negative net-of-market stock returns. Since this negative effect is predicated in theory on the degree of veto power over hostile offers that particular amendments provide target managements, the theory also implies larger negative returns the higher are insider stock holdings.

The theory of shareholder voting behavior that reconciles this prediction of negative stock returns with majority voting approval suggests other testable implications. More harmful amendments should have lower institutional stockholdings than less harmful amendments. Moreover, more harmful amendments should have relatively high insider holdings, helping explain how they were approved. Finally, since the costs of learning the true economic effects of various antitakeover amendments for all kinds of shareholders declines with experience, this theory predicts that harmful kinds of amendments should decline in popularity over time. Only amendments that have a positive or neutral effect on stock value, on average, should prosper or even continue to be proposed frequently.

IV. Data and Methodology.

A. Data.

Our sample of firms proposing antitakeover amendments is derived from several sources. The investment banking firms

of Drexel Burnham Lambert (DBL) and Kidder Peabody (KP) have both collected extensive samples of antitakeover amendments proposed to shareholders beginning in 1979. The DBL sample ends December 1983 and reports antitakeover amendments by category, including fair price, supermajority, classified board, and authorization of preferred securities provisions. The KP study ends in July 1984 and reports fair price amendments during this period. Our third source for firms introducing antitakeover amendments is the SEC's Office of Tender Offers. Beginning in October 1984 and ending in May 1985, this sample of firms includes all firms proposing antitakeover amendments during this period. 16/

Once the sample was identified, we collected the corresponding proxy statements. We extensively reviewed these proxy statements and classified the amendments into the various categories used in our study, rather than depending on the classifications determined by the various sources. Fair price amendments dominated all other types of amendments in the classification scheme -- if the firm proposed a fair price amendment, whether or not it simultaneously proposed a supermajority provision, a classified board, authorization of preferred securities, or other antitakeover provisions, the proposed amendment was classified as a fair price amendment.

Our second category is that of supermajority provisions. If the firm introduced a supermajority provision simultaneously with another antitakeover provision (except a fair price requirement), the firm was categorized as having introduced a supermajority amendment. Firms introducing supermajority amendments are further categorized as having a "board out" or not. That is, if the board is able to override the supermajority requirement to approve a merger or acquisition, a board-out designation is noted. In the supermajority sample, we have a gap in the time period covered. The DBL sample identifying firms introducing supermajority amendments ends December 1983. The SEC sample, which also identifies supermajority amendments, picks up again in October 1984. Thus, we are missing supermajority amendments introduced from January 1984 through September 1984.

Our third category of firms introducing antitakeover amendments is the "other" category. This set consists of those firms which introduced amendments to classify boards or authorize the issuance of preferred stock. Two cases in the sample introduced both an amendment to classify its board and to authorize the issuance of preferred stock. These were placed in the "authorized preferred" category. Again, the KP sample does not identify firms introducing these amendments so we are missing firms which may have introduced these other amendments from January 1984 through September 1984.

For each firm in our sample, we collect several data items. Insider holdings (officers and directors of the firm) are identified from the proxy statements which propose the anti-takeover amendments. Institutional stockholdings are collected from Spectrum 3: 13(f) Institutional Stock Holdings Survey, which reports data from Forms 13F filed with the SEC and from other sources. Institutional investment managers, including Federal and state chartered banks, insurance companies, investment companies, and independent investment advisors, exercising discretion over accounts with combined equity assets over \$100 million are required to file Forms 13F on a quarterly basis with the SEC. Because of the size requirement and the corresponding exclusion of smaller institutional investors, institutional holdings are underestimated in our sample.

Stock price data for the firms in our sample are obtained from the Investment Statistical Listing (ISL) tapes from Interactive Data Services, Inc. From these price data, we compute daily returns to each stock, adjusting for dividends and stock splits. These data have an advantage over the more commonly used Center for Research in Security Prices (CRSP) data because we are able to obtain stock price data for securities which are traded over the counter or on regional exchanges, while CRSP data are limited to securities which are listed on the New York or American stock exchanges.

Approximately one-third of the firms in our sample is not traded on the major exchanges. In addition, ISL tapes are available on an up-to-date basis while the CRSP tape provides data only through the end of 1983. Our sample contains over 300 firms that have introduced antitakeover amendments since 1983.

The CRSP value-weighted market return is not available for our tests for dates after the end of 1983. Therefore, we use the S&P 500 to proxy for the market portfolio. To ensure consistency, we use the S&P 500 for all our testing, even when the CRSP market return is available. We compared the regression results under these two alternative market proxies for data before the end of 1983 and concluded that this choice makes virtually no difference for our cases.

Stocks that are traded over the counter but are part of the National Market System report last trade data, providing information on actual trades as in exchange-traded firms. However, over-the-counter securities which are not part of this system report bids and asks rather than actual prices at which trades occur. For these over-the-counter securities, we use the average of the last reported bid and ask each day to estimate the price at which the security actually traded. Because bid and ask quotations are only necessarily applicable to 100 shares of the security and orders may be transacted

anywhere inside the spread (and even outside of it), these estimates may not completely represent actual price changes. The effect of this approximation should be to dampen some of the observed variability in day-to-day price changes.

The ISL tapes, which are the source of stock price data for the CRSP tapes, involve certain problems because they have not been as extensively reviewed and corrected as the CRSP tapes. ISL does not correct earlier tapes for cusip number changes. When a firm experiences a name change or other structural change, the corresponding cusip is changed. Thus, when we attempt to match current cusips against the tape, no match is identified for these firms. We lose 62 firms from our sample because of these changes. (These firms are listed in Appendix C.) In addition, in several cases we found it necessary to adjust certain daily returns due to obvious errors in the price data and in cases where a tender offer, leveraged buyout or other significant information about the firm was disclosed. We take considerable effort to ensure that none of the adjustments substantively affect the measured impact of the proposal of antitakeover amendments on the value of the firm.

B. Methodology.

We use market model methodology to determine the impact of the proposal of antitakeover amendments on security prices.

Developed by Fama, Fisher, Jensen, and Roll (1969) and used extensively in the finance literature, this popular procedure allows one to correct for overall market influence in returns of securities and to measure abnormal returns in any given period. To estimate the abnormal returns, a control period must be chosen over which to determine the estimated relation between the return to the security and the return to the market. Specifically, the relation is hypothesized to take the following form:

$$(1) \quad R_{it} = a_i + b_i R_{mt} + e_{it},$$

where:

R_{it} = the return on the security of firm i at time t ,

R_{mt} = the return on a market portfolio (S&P 500) at time t ,

a_i, b_i = parameters of the relation between the return on the individual security and that of the market,

e_{it} = the residual of the relation at time t , assumed to be distributed normally with mean equal to zero, a constant variance over the control and prediction periods and zero correlation between residuals over time.

$t = 0$ on the event date, -1 on the trading day before the event, $+1$ on the trading day after the event, and so on.

Thus, at any given time, the return on the individual security is expressed as a linear function of the return on the market portfolio and a stochastic error term which reflects firm-specific information.

To determine estimates of the parameters a_i and b_i , the model is estimated using ordinary least squares regression techniques over 150 trading days, starting 170 trading days before the event day. The model assumes that these parameters

are constant over the control and prediction periods. Using this model fit over the interval $(-170, -20)$, we predict returns for the period over which the antitakeover amendments are announced. These predicted returns should be unbiased estimates of actual returns unless firm-specific information significantly influences returns. Predicted returns are compared to actual returns to determine excess, or net-of-market, returns (ER):

$$(2) \quad ER_{it} = R_{it} - \hat{a}_i - \hat{b}_i R_{mt}.$$

Once excess returns are determined for the individual firms, cumulative excess returns are determined by summing over the days of interest and then portfolios of the various categories of antitakeover amendments are formed and average cumulative excess returns (CER) are computed. Significance levels of the CER are determined with standard t-tests.

We found it necessary to make certain adjustments in the data. In the period over which the parameters of the relationship are estimated, we deleted any observations in which the security was not traded and any observations in which the return to the individual security was greater than 50% in a solute value. These deletions provide a more accurate estimate of the true relation between market returns and individual firm returns. Also, if fewer than 50 observations were left in the estimation period, then the firm was deleted from the sample.

In the prediction period, we made several additional adjustments. If the security was not traded on a certain day, we set that day's return on the security equal to zero. This is preferable to deleting the observation because this treatment ensures that the market return on the corresponding day is included in determining the cumulative excess return. Since the raw return following the day of the missing return is a multiple-day return, deleting the observation would result in an upward bias, on average, in the CER. We also set the raw return equal to zero in instances where we found errors in the price data and where we found large returns attributable to alternative news about the firm. The data was extensively reviewed to find these outliers and full details on the specific cases are presented in Appendix B. We also found it necessary to delete several firms from our sample at this point due to lack of data in the prediction period. These cases are also detailed in Appendix B.

V. Empirical Results.

A. Institutional and Insider Stockholdings.

Table 3 (first column) presents institutional and insider stockholdings averaged by type of antitakeover amendment. These figures include all cases, even those subsequently deleted from the computations of stock returns because of insufficient data. For the entire sample, the average stockholdings by institutions is 27.6 percent of total outstanding

common. The average stockholdings by insiders is 13.6 percent. These figures can be compared to rough approximations of institutional holdings for a hypothetical control group. The 27.6 percent institutional ownership is probably below for a control group. The overall average institutional stockholdings reported as of December 31, 1983 is 34.6 percent according to the Spectrum survey. (See Table 3.) Therefore the typical firm in our sample is characterized by below average institutional stockholdings. Note that about one-third of our sample is non-exchange firms (column 3 of Table 3). As Table 7 shows, average institutional stockholdings for the exchange firms (33.1 percent) are much higher than for non-exchange firms (19.0 percent). However, the Spectrum survey covers all public firms in which institutional shareholders have a position. Therefore, it is unlikely that our sample contains a disproportionately high representation of non-exchange firms compared with the Spectrum survey.

There is even less information available on average insider stockholdings, so that this comparison must be extremely rough. What is available, however, suggests that our sample's average insider holdings of 13.6 percent is probably comparable to a hypothetical control. Bradley and Kim (1985) compile insider holdings for a 192 merger target and 112 tender offer targets between 1969 and 1980. The average stockholdings of insiders around the time of the transaction

is 15.9 percent which is close to the average 13.6 percent for our sample.

The more interesting results come from disaggregating the entire sample by the different types of antitakeover amendments. Comparing the fair price cases with all supermajority cases (the second and third rows of Table 3) shows that average institutional stockholdings are much higher (28.8 versus 19.2 percent) and average insider holdings are much lower (13.0 versus 18.4 percent) for the fair price cases. These differences cannot be attributed to different fractions of exchange firms between these two subsamples. (see column 3.) This result suggests that institutional stockholders and non-insider stockholders are more hostile towards supermajority amendments. To pass more restrictive supermajority amendments, it is apparently advantageous for the proposing firm to have relatively low stockholdings by institutions and high stockholdings by insiders. 17/

A somewhat puzzling finding emerges from decomposing all supermajority cases into pure supermajority amendments and supermajority amendments with board out clauses (see the fourth and fifth rows of Table 3). The pure supermajority cases have higher average institutional stockholdings (22.4 versus 16.6 percent) and lower average insider stockholdings (16.3 versus 20.1 percent) than do the less restrictive supermajority amendments with board out clauses. These

differences may simply reflect the higher fraction of exchange firms among the pure supermajority cases, rather than revealing anything about different voting attitudes towards these amendments.

The other, non-supermajority antitakeover amendments (the last two rows of Table 3) have higher average institutional stockholdings and lower average insider stockholdings than do the supermajority or the fair price amendments. This is consistent with the higher representation of exchange firms for these other amendments (column 3). Also, it is consistent with the general belief that institutional investors are less hostile towards classified board and authorized preferred proposals than they are towards supermajority voting requirements (including fair price amendments). 18/

B. Stock Returns

Table 4 summarizes the net-of-market stock returns that accompany the public release of the proxy materials containing the proposed antitakeover amendments. These data are averaged over all cases (the first row) and for the various subsamples (the next six rows). The column headed "Mean CER (-20,10)" shows the mean net-of-market return, which is computed for each case over the period from 20 days before to ten days after the proxy signing date. The next column, headed "t(Mean)", presents the ratio of the mean CER

to the cross-sectional standard error of the respective mean (the t-statistic).

The average net-of-market stock return for the entire sample of 544 antitakeover amendments is negative 1.31 percent. This mean CER (-20,10) is significant at the 95 percent confidence level. Table 5A, which presents CERs for different "event windows", shows that about half of this negative return occurs between twenty and ten trading days before the proxy signing date. This could indicate that there is some anticipation by the market of these actions before the date that we regard as the public release date. We discuss this issue of anticipation in more detail later.

The column headed "Fraction CERs Neg." presents the proportion of the individual cases that have negative net-of-market stock returns cumulated over the relevant event window (from -20 to 10 in Table 4). If one assumes that the distribution of this fraction is binomial, then the 55 percent of CERs (-20,10) that are negative for the entire sample is significant at the 95% confidence level (the t-statistic is 2.34, as shown in the column headed "t(Neg)"). The final two columns show the average institutional and insider stockholdings, respectively, for this sample. (The number of firms is smaller than that used for Table 3 because of deletions for insufficient stock returns data. Note that these deletions do not appreciably change the average stockholdings that are reported in Table 3.)

The most interesting result in Table 4 is the difference in mean (CER -20,10) between the 405 fair price cases and the 139 nonfair price cases. (The latter group includes 88 supermajority amendments, 24 authorized preferred and 27 classified board cases.) The subsample of 405 fair price amendments has a mean CER(-20,10) of negative 0.73 percent, which is statistically insignificant (the t-statistic is -1.19). Note, however, that 55 percent of these 405 CERs has a negative sign. This fraction is above the 50 percent that would obtain purely by chance at the 95 percent confidence level. The t-statistic of the difference between the mean CER (-20,10) for the fair price group and that of the non-fair group is 1.80, assuming equal standard errors of the means. The t-statistic of this difference is 1.69, assuming unequal standard errors of the means. In sum, this decomposition shows that the average net-of-market return of negative 1.31 percent for the entire sample is attributable largely to the non-fair price amendments.

Table 4 (last four rows) also presents CERs for the portfolios of the various kinds of non-fair price amendments. Although this breakdown results in small portfolios having large standard errors, these CERs hint at an interesting pattern. The pure supermajority amendments have an insignificant mean CER (-20,10) of negative 1.25 percent, while the portfolio

containing supermajority with board out cases has a significantly negative mean CER of 4.86 percent. This seems counter-intuitive, because the pure supermajority amendments are considered to be more restrictive on takeovers than the repellents containing escape clauses for target management. Yet, the latter cases show the most negative stock returns of all of the various portfolios.

The explanation may be that insider stockholdings are largest for the portfolio containing supermajority with board out amendments, averaging 19.2 percent for the 48 cases that have stock returns data and 20.1 percent for the 59 cases from the entire sample. (See Table 3.) The typical 80 percent supermajority requirement effectively provides veto power since the insiders hold nearly 20 percent of the votes, on average, in these cases. The pure supermajority cases show average insider holdings of 15.7 percent (16.3 percent for the larger sample of Table 3), which would not provide absolute veto power to target management under an 80 percent supermajority requirement.

Also of interest is that average institutional stockholdings are lower for the board out group than for the pure supermajority group (16.1 percent versus 23.4 percent in Table 4). This difference helps to explain how the board out amendments received shareholder approval, despite their

more negative effects on stock prices. There were fewer sophisticated, institutional shareholders voting on these board out amendments.

The non-supermajority type amendments, which consist here of 24 cases of authorized preferred and 27 cases of classified board provisions, show negative but insignificant mean CERs. (See the last two rows of Table 4.) The blank check preferred cases have a mean CER $(-20,10)$ of negative 2.84 percent, and the classified board cases have a mean CER of 2.42 percent. Although these means are non-trivial in size, the standard errors for these small portfolios are large enough that both means are insignificant at the 95 percent confidence level.

Indeed, it is difficult to gain much statistical information from decomposing the sample into portfolios containing less than forty or fifty cases, given the event window of thirty trading days and the small net-of-market stock returns that can be expected to result from announcing antitakeover amendments. We simply conclude from Table 4 that (i) fair price amendments have, on average, less negative (and insignificant) net-of-market stock returns than do non-fair price amendments, and (ii) the supermajority with board out amendments induce the largest negative net-of-market stock returns among the four kinds of non-fair price amendments.

Table 5 presents similar averages of net-of-market stock returns calculated using event windows of varying lengths. Besides repeating CER (-20,10), Table 5 adds CER (-20,5), CER (-10,10), and CER (-10,5). Table 5A presents these mean CERs for the entire sample (All in panel A), and breaks out fair price (panel B) and non-fair price (panel C) subsamples. Several observations are noteworthy. First, the wider event windows appear to be necessary to capture more fully the effects of these announcements on stock prices. In each panel, the t(mean) increases in absolute value as the event windows widen, especially when days (-20,-10) are included. Indeed, the general antitakeover amendment (panel A) would be judged to have an insignificant effect on stock prices if we eliminated days (-20,-10) from the event window.

Second, although the wider event windows seem to capture more fully the stock price effects of these amendments, the narrower event windows result in a larger fraction of negative CERs for the portfolios containing harmful amendments. This is evident for non-fair price cases as a group (panel C of Table 5A), and especially for the supermajority with board out subsample (Panel B of Table 5B). A startling 73 percent of the 48 supermajority with board out cases have a negative CER (-10,5), compared with an insignificant 56 percent negative

of the same cases when using the wider event window (-20,10). Another example shows that 67 percent of the 51 "others" (which lump together authorized preferred and classified boards) have negative CER (-10,5), compared with an insignificant 59 percent when using CER (-20,10).

The reverse pattern holds for the amendments judged to be less harmful based on the stock returns data. The 40 pure supermajority cases (Panel A of Table 5B) show only 40 percent have negative CER (-10,5), compared with 55 percent having negative CER (-20,10). Also, the fair price amendment appear to be completely benign when using CER (-10,5), whereas a significant 55 percent of these same 405 cases have negative CER (-20,10). (See panel B of Table 5A).

C. Anticipatory Effects

The net-of-market returns reported in Tables 4 and 5 reveal some evidence that the information about antitakeover provisions contained in the proxy statement is anticipated by the market. The effect of this anticipation is seen by comparing the mean CER (-20,10) with CER (-10,10) for each of the various subsamples. Generally, the wider event window measures larger (in absolute value) and more significant cumulative stock returns. More than half of the total net-of-market returns for the entire sample is measured over the "anticipatory" period (-20,-10). This observation

motivates a closer study of the events that precede the proxy signing date and the net-of-market returns over this earlier time period.

Although the proxy signing date is considered to be the first public information that a firm is proposing an anti-takeover amendment, there are many private actions taken in the months preceding this date in preparation for the shareholder referendum. Briefly, the antitakeover provisions are originally devised by firm management, usually in consultation with outside investment advisors, well before the board of directors meets to consider whether to officially propose them. Sometimes the firm's management will engage proxy solicitation experts to study the prospects for voting approval by shareholders. This is done before the board meets and is not expected to release significant amounts of information to the market. 19/ In fact, SEC regulations prohibit anyone from soliciting favorable votes from shareholders before the the proxy materials are sent out. 20/ After the proxy signing, considerable efforts often are made by firm officials and proxy solicitors to persuade shareholders to vote favorably. Therefore, we expect any resulting changes in stock prices to occur immediately around the proxy signing date.

Linn and McConnell (1983) report that, for their large sample of 1960-1980 antitakeover amendments, there are an

average of 27 trading days separating the board meeting dates from the proxy mailing dates (the median interval is 24 trading days), and an average of 24 trading days separating the proxy mailing dates from the shareholder voting dates (the median is 24 trading days). 21/ Although it is against SEC rules to actively solicit votes before the proxy mailing date, the possibility remains that the decision by the board is leaked to some market participants, especially as the proxy mailing date draws near. The evidence presented here shows that about half of the changes in stock price measured between $(-20,10)$ occurs in the interval $(-20,-10)$, which ends two weeks before the proxy mailing date. Also, Linn and McConnell (1983) report evidence of significant positive average abnormal stock returns over the 90 trading days before the board meeting date. (They also measure significant positive stock performance over the interval between the proxy mailing date and the shareholder meeting date.) In light of this evidence, it is plausible that for our sample some related information leaks out even earlier than twenty trading days before the proxy signing date.

To test this conjecture, we measure the net-of-market returns in the interval $(-40,-20)$. This time period roughly surrounds the board meeting date. (The Linn and McConnell averages put the board meeting date at -27). The results

are reported in Table 6, together with the averages of CER (-20,10) that were reported earlier. The column labeled (-40,10) simply adds the average CER (-40,-20) and the average CER (-20,10) for each portfolio. This total effect would be attributable entirely to news about the antitakeover amendment if we treat (-40,-20) as purely a result of news leakage.

Two important observations can be made about the mean CER (-40,20). First, it is negative- for the entire sample and for each of the portfolios. This is contrary to the positive net-of-market returns reported by Linn and McConnell (1983) for their sample of 1960-80 amendments averaged over the 90 day period before the board meeting date. Second, the magnitudes of these "leakage" returns are roughly comparable to the magnitudes of the returns measured over the period (-20,10). For the entire sample, the mean CER(-40,-20) is negative 1.46 percent (the t-statistic is -2.76) compared with the mean CER (-20,10) of negative 1.31 percent. The subsample of fair price amendments has a significant mean CER (-40,-20) of negative 1.32 percent (the t-statistic is -2.31), which is larger in absolute value than the insignificant mean CER(-20,10) of negative 0.73 percent.

The total net-of-market returns from (-40,10) do not substantially change the conclusions we draw based on the mean CERs (-20,10) that non-fair price amendments depress

equity values considerably more than do fair price amendments. The mean CER $(-40,10)$ of negative 2.05 percent for the fair price subsample is still statistically insignificant at the 95 percent confidence level. The mean CER $(-40,10)$ for the non-fair price amendments is a negative 4.89 percent, which is statistically significant at the 95 percent confidence level and is almost two and a half times the magnitude (in absolute value) of the mean CER $(-40,10)$ for the fair price amendments.

A surprising result is contained in Table 6. The average leakage effects measured for the non-fair price amendments are mostly attributable to the 47 supermajority with board out amendments. As noted earlier, this category has the most negative mean CER $(-20,10)$ among the various portfolios. Table 6 shows that they also have the most negative mean CER $(-40,-20)$, which is a significantly negative 4.95 percent. Combining this figure with the negative 4.86 percent for mean CER $(-20,10)$ yields a total net-of-market return over $(-40,10)$ of negative 9.81 percent. This figure is statistically significant at the 95 percent confidence level. An equity devaluation of this magnitude (nearly ten percent on average) is difficult to rationalize simply as a market response to the proposal of supermajority amendments. These figures resemble more closely the effects on equity value of defeated actual tender offers for control. Recall that this sample

of antitakeover amendments have been screened to exclude firms involved in actual contests. Thus, it becomes almost incredulous that instituting supermajority amendments in these cases could involve such large reductions in expected control premiums.

D. Comparing Exchange with Non-Exchange Firms

The results presented so far mix together exchange and non-exchange firms. This data contains some evidence suggesting that this distinction may be important. Specifically, the net-of-market stock returns tend to be more negative for cases having high insider holdings and low institutional holdings. This regularity may simply reflect where these firms are listed, since non-exchange firms typically have high insider holdings and low institutional holdings compared with exchange firms.

Tables 7A and 7B present mean CER (-20,10), institutional holdings, and insider holdings for different kinds of antitakeover amendments broken down by exchange and non-exchange cases. Tables 8 through 12 compare the mean CERs over various windows between exchange and non-exchange cases, for fair price (Table 8), non-fair price (Table 9), and the three subsamples that comprise the non-fair price subsample (Tables 10-12 are pure supermajority, supermajority with board out, and others, respectively).

Comparing panels A with B of Table 7 shows that for every type of amendment the exchange firms have higher institutional holdings (33.1 vs. 19.0 percent for All) and lower insider holdings (11.1 percent vs. 17.2 percent for All) than do the non-exchange firms. These CER comparisons show that, in general, the exchange firms have less negative net-of-market stock returns than do the non-exchange firms. The exception in Table 7 (and Table 12) is the subsample of Classified Boards, which shows a more negative mean CER (-20,10) for the twenty exchange firms than for the seven non-exchange firms (-3.82 vs. 1.59 percent). In fact, the overall mean CER (-20,10) for the 369 exchange firms is negative 0.81 percent and insignificant at the 95 percent confidence level (t-statistic is -1.30). The 175 non-exchange firms show a significant mean CER (-20,10) of negative 2.18 percent which is about two and a half times the mean CER for exchange firms.

Roughly the same result holds within the fair price and the non-fair price subsamples. For the fair price subsample the non-exchange mean CER of negative 1.34 percent is several times as large as the exchange firms' mean CER of negative 0.31 percent. (Both of these mean CERs are insignificantly different from zero.) For the non-fair price subsample, the exchange firms show a mean CER of negative 2.21 percent,

compared with the negative 4.83 percent mean CER for the non-exchange firms. Also note that 67 percent of the CERs (-20,10) for these 42 cases of non-exchange, non-fair price amendments are negative, compared with only 53 percent for the exchange firms.

Isolating the subsamples that comprise the non-fair price group reveals that the supermajority with board out amendments for non-exchange firms have very large negative net-of-market stock returns (negative 9.0 percent). Although this subsample contains only 18 cases, this mean CER has a t-statistic of negative 3.56, and 67 percent of these CERs are negative. While it is hard to rationalize such large declines in stock value, it is noteworthy that these cases of supermajority amendments have very low average institutional holdings (13.7 percent) and very large average insider holdings (23.8 percent). The high insider holdings may contribute to the pernicious effects of these supermajority cases, and both facts help explain the apparent lack of shareholder resistance to them.

In sum, the typical fair price amendment for an exchange-listed firm has no perceptible effect on its stock price. For the typical non-exchange firm, the fair price amendment has a slight, but nontrivial, negative effect on its stock price. The typical non-fair price amendment for an exchange-listed

firm induces about a two percent decline in stock price. For the typical non-exchange firm, proposing the same amendment apparently causes a substantial stock price decline of about five percent. The latter result can be attributed largely to the supermajority with board out amendments, which have very high average holdings by insiders (nearly 24 percent).

VI. Conclusion

This paper examines the effects on shareholder wealth of antitakeover amendments (shark repellents) proposed between 1979 and 1985. We focus on the net-of-market stock return to proposing firms in the thirty trading days around their proxy signing dates. The 649 cases in the study have been classified into five subsamples - fair price, pure supermajority, supermajority with board out, authorized preferred and classified board amendments. Fair price amendments account for 75 percent of the 649 cases, supermajority amendments 16 percent, and the other two categories nine percent. The time trends clearly demonstrate that the wave of antitakeover amendments passed after the 1982 proxy season reflects primarily the tremendous success of the new fair price amendments. This provision requires supermajority voting for two-tier takeovers, unless they are approved by the target's board of directors.

The debate about shark repellents centers on whether they help or harm shareholder interests. By providing target management with veto power over certain kinds of takeover offers, these provisions should reduce the probability that target shareholders will receive valuable takeover bids. If this deterrence effect predominates, then shareholders should vote against these amendments. On the other hand, target management could use these new powers to negotiate better terms for target shareholders in actual control contests. If this premium effect predominates, then shareholders should approve these amendments.

The net-of-market stock return averaged over the entire sample is negative 1.31 percent. This lends significant statistical support to the theory that these amendments harm target shareholders by deterring valuable takeover bids. But, this general conclusion becomes excessively broad when the data are broken down by different kinds of shark repellents. The popular fair price amendment has an insignificant average net-of-market stock return of negative 0.73 percent. Separating these fair price cases into 272 exchange and 133 non-exchange firms shows that the former has essentially a zero average net-of-market return, while the non-exchange group has an insignificant negative return of 1.34 percent.

The non-fair price amendments, which include supermajority amendments and the other two classes, show a negative and statistically significant average net-of-market return of 3.0 percent. Separating the 97 exchange from the 42 non-exchange cases shows that the former group has a negative 2.21 percent average net-of-market return, and the latter a negative 4.8 percent return. A recurring pattern in these data is that supermajority amendments have more negative stock returns the larger are the insider stockholdings. The large average insider holdings for the non-exchange firms is probably the main reason why these firms show more negative stock returns. The simple explanation for this relation between negative stock returns and insider holdings is that a supermajority requirement is more restrictive of hostile takeovers the larger are the stockholdings of insiders.

Another pattern is that institutional stockholdings are lower on average for firms proposing the more harmful amendments. This low participation by sophisticated investors, together with relatively high insider holdings, helps to explain how these amendments received voting approval despite their harmful effects on outside shareholders. The implication here is that non-institutional shareholders are less likely to vote on shark repellents in accordance with their economic interests. Although this implication is not directly rejected,

fair price amendment, which have statistically insignificant effects on stock prices. Moreover, the demonstrably harmful kinds of shark repellents are becoming increasingly obsolete in this marketplace.

These results for shark repellents do not support assertions that shareholding voting has failed in its role as a monitor of self-interested behavior by management. On the other hand, the stock returns data presented here are not conclusive evidence that fair price amendments benefit target shareholders. Their average effect is negative (albeit insignificant), whereas the shareholder welfare theory predicts positive returns. The ultimate resolution of this question probably will come with experience. Future research should be performed to determine how fair price amendments work in practice. 22/

FOOTNOTES

1. Easterbrook and Fischel (1983) provide an overview of the general rules that state statutes establish over shareholder voting rights. They point out that state laws are enabling statutes that would tolerate many different kinds of voting practices. Fundamental changes in voting practices and other important transfers of corporate control must generally be approved by shareholder vote.
2. Through comparison of firms that have introduced antitakeover amendments to a control sample of firms that have not, Pound (1985) finds that firms with antitakeover amendments are less likely to be subject to an acquisition attempt than those without protective amendments. Protected firms are more likely to resist takeover attempts and are more likely to succeed in their defensive moves. Despite these maneuverings and argued benefits to shareholders resulting from more intensive negotiating, Pound finds no significant differences between premiums paid to shareholders of firms with antitakeover amendments and those without.
3. This study considered a subsample of the antitakeover amendments included here. It is this study that originally identified that shareholders may view antitakeover amendments differently depending on the specific amendment characteristics.
4. An example of this warning is found in the proxy statement of U.S. Industries, Inc., signed March 18, 1983, proposing its supermajority amendment:

"[T]he adoption of the amendments would make more difficult discourage a proxy contest or the assumption of control by a holder of a substantial block of the Corporation's stock or the removal of the incumbent Board and it is recognized that as a consequence this could have the effect of entrenching incumbent management."

5. DeAngelo and Rice reviewed all proposed amendments during the sample period and deleted observations in which the proxy statement contained confounding events, such as proposals to change the number of shares and other proposals affecting corporate control. Overall, DeAngelo and Rice interpreted their evidence as weak preliminary support for the managerial entrenchment hypothesis.
6. Linn and McConnell consider the impact of proposed antitakeover amendments over several periods, centered on several events including the board of directors' meeting date, the proxy mailing date, and the stockholders' meeting date. In each case they find weak support for the hypothesis that these amendments benefit shareholders.
7. In June 1982, the Supreme Court struck down the Illinois Business Take-Over Act on the grounds that it pre-empted Federal law and was overly burdensome to interstate commerce (Edgar v. Mite, 102 S. Ct. 2629 (1982)). This decision effectively invalidated most antitakeover statutes passed by states since 1970.

8. The Corporate Governance Bulletin of the Investor Responsibility Research Center reports voting results on all antitakeover proposals suggested by public companies. For 273 proposing firms from 1983 through September 1984, only 15 firms had proposals rejected by shareholders.
9. We understand from a February 1985 conversation with Peter Harkins (then with Georgeson & Co.) that the fair price amendment was actually invented by White & Case in 1973. Hochman and Folger (1979) report (on page 554) that the first fair price provision appeared in the proxy statement dated April 18, 1975 of Chicago Pneumatic Corporation. Their overwhelming popularity began with the Bendix-Martin Marietta contest, in which Bendix instituted such a provision.
10. Two-tier tender offers were used in seven of 82 successful tender offers in 1984 (OCE, 1984). Overall, OCE finds relatively small differences between premiums paid in two-tier tender offers and any-or-all tender offers and no evidence of any coercion over target shareholders.
11. In Moran v. Household International, Inc., No. 36 (Del. Ct. of Chancery 1985), the Delaware Chancery Court upheld a poison pill plan adopted by Household International. The Court found that the plan was not "intended primarily for entrenchment of management and serves a rational corporate purpose." This decision is currently on appeal to the Delaware Supreme Court. The SEC has filed an amicus curiae brief urging reversal of the decision on the grounds that the poison pill is not in the best interest of shareholders.

12. For a summary of theoretical reasons why bidders use two-tier and partial tender offers, refer to OCE (1985), "The Economics of Any-or-All, Partial, and Two-Tier Tender Offer" especially pages 10-14. Also see Bradley (1980), Grossman Hart (1980), and DeAngelo and Rice (1983).
13. Jarrell (1985) confirms that in cases where litigation by incumbent management against the bidder results in competing bids, shareholders receive an additional average premium of percentage points during the period of the auction. He also reports that for these cases of litigious targets, an auction style takeover is a much more common outcome than is the defeat of the attempt.
14. An additional cost imposed by potential tender offers, according to corporate managers, is that they are forced to emphasize earnings and short-run profits at the expense of long-run investment. For example, see Sommer (1985), Sigler (1985).
15. Fama (1980) notes the importance of both the external and internal managerial labor markets in ensuring that managerial incentives are aligned with shareholder returns.
16. Overall, we are missing two months from our sample -- August and September 1984. In the DBL sample, all amendments have been approved by shareholders. In the KP and SEC samples, all amendments have been proposed but a few were not approved by shareholders or had not yet been voted on at the time of our study.

we also computed average institutional and insider stockholdings for subsamples by year of proposal to check for evidence of a secular trend. We found fair price amendments have high institutional and low insider stockholdings relative to other cases for each year (excluding 1984, which does not have a comprehensive sample of non-fair price amendments).

Georgeson & Co. (1985) surveys the voting by over 1,700 institutional investors (including all of the top 100) on 61 recent solicitations to adopt fair pricing and staggered board amendments. The top 100 institutions voted nearly three-to-one against fair price amendments and split evenly on staggered boards. The other institutions voted three-to-one in favor of both fair price and staggered boards. This supports the belief that institutions are less hostile towards staggered boards than fair price amendments. Note, however, that larger institutions are more hostile towards both provisions than are smaller institutions.

Proxy solicitors sometimes call institutional holders to confirm details about their share holdings and voting authority. This communication can tip off these sophisticated investors on occasion, since this questioning is done mostly in connection with proposed antitakeover amendments.

20. Industry insiders note that inexperienced firm officials sometimes reveal this information to some of their institutional

holders before the proxy is mailed when attempting to arrange meetings for formal solicitations, to be held after the mail. This is not expected to be a common occurrence.

21. Linn and McConnell (1983), see page 385. Note that the proxy mailing date (used by others) is usually the same day or the day after the proxy signing date (our event date).
22. Our research provides some preliminary evidence on the deterrent effect of these antitakeover amendments. We cross-matched a sample of antitakeover amendments (including the DeAngelo and Rice list of 1960-80 antitakeover amendments) against the OC sample of successful tender offer targets between 1981-84. Only 18 targets had proposed, or were just about to propose, antitakeover amendments. Three of these had tender offers a month or less after proposing the amendment. Two proposed the amendments a week to 21 days after an initial tender offer. The remaining 13 targets received offers from five months to seven and a half years after passing the antitakeover amendments. Twelve of these cases were apparently friendly takeovers.

This preliminary evidence suggests that hostile takeover are very infrequently attempted against firms having these antitakeover amendments. This result should caution against concluding too quickly that fair price amendments are beneficial to target shareholders.

Table 1: Number of Antitakeover Amendments for S&P 500 Firms, by Year of Passage and Type of Amendment.¹

YEAR	FAIR PRICE	SUPERMAJORITY
Before 1981 ²	7	9
1981	1	2
1982	2	2
1983	29	6
1984	48	6
TOTAL	87	25

Notes:

1. The source of S&P 500 firms with antitakeover amendments is Investor Responsibility Research Center Inc., Antitakeover Charter Amendments: A Directory of Major American Corporations, Washington, 1985.
2. Before 1981 includes four fair price and two supermajority cases for which the exact year of passage was in doubt.

Table 2: Number of Antitakeover Amendments in Survey by Type of Amendment, for each year 1979-May, 1985.¹

Year	<u>Absolute Number</u>				<u>Number of Fair Price</u>	
	Fair Price	Super-Majority	Other	Total	Relative to Yearly Totals	Relative to All Fair Price
1979	12	1	0	13	.92	.02
1980	10	23	1	34	.29	.02
1981	5	17	0	22	.23	.01
1982	11	13	2	26	.42	.02
1983	161	22	23	206	.78	.33
1984 ²	193	4	2	199	N.A.	.40
1985 ³	95	24	30	149	.64	.20
ALL	487	104	58	649	N.A.	1.00

Notes:

1. Sources identifying antitakeover amendments are Drexel Burnham Lambert, Inc., Shareholder Protective Amendment Analysis, 1984, Kidder, Peabody, Effects of Adoption of Fair Price Amendments on Stock Prices and Institutional Ownership, 1984, and SEC, proxy statements (DEF 14As).
2. The proportion of fair price amendments to all antitakeover amendments in the sample in 1984 is 0.97. This is not a meaningful number because the non fair price sample does not cover January - October 1984.
3. Through May only.

Table 3: Institutional and Insider Stock Holdings (in percents) for Firms Proposing Antitakeover Amendments, by Type of Amendment, 1/79-5/85.

Price		Institutional Holdings ¹	Insider Holdings ²	Exchange Fraction ³
ative All r Price	All	27.6 (599) ⁴	13.6 (624)	0.67
	Fair Price	28.8 (441)	13.0 (461)	0.66
	All Supermajority	19.2 (103)	18.4 (106)	0.68
	Pure Supermajority	22.4 (46)	16.3 (47)	0.74
	S.M. Board out	16.6 (57)	20.1 (59)	0.63
	Auth. Preferred	31.7 (27)	11.8 (28)	0.73
	Classified Board	36.9 (28)	7.7 (29)	0.75

Notes:

1. The sources for institutional stock holdings are Comput Directions Advisors, Inc., Spectrum 3: 13(f) Institutional Stock Holdings Survey, 1979-1984, and Drexel, Burnham, Lambert Shareholder Protective Amendment Analysis, 1984.

Table 3: (Continued)

2. The source for insider stock holdings is proxy statements (DEF 14As) that propose the original antitakeover amendment to shareholders.
3. Exchange fraction is that proportion of all firms in each category that is listed on either the New York Stock Exchange or the American Stock Exchange.
4. The number of observations is given in parentheses beneath the percentages of institutional and inside stock ownership. The total number of observations, in each case, is larger in this table than in the following tables because only those firms for which CERS (cumulative excess returns) were found were used in the computation of institutional and inside ownership in those tables. Deletions were necessary due to lack of stock price information.

Table 4: Net-of-Market Stock Returns Around Proxy Statement Signing Date and Institutional and Insider Stock Holdings (in percent) for Firms Proposing Antitakeover Amendments, by Type of Amendment, 1/79-5/85.

Type of Amendment	Mean CER ¹ (-20,10)	t(Mean)	Fraction CERs Neg.	t(Neg) ²	Institutional Holdings	Insider Holdings
All (544) ³	-1.31	-2.38	.55	2.34	28.6 (533) ³	13. (53)
Fair Price (405)	-0.73	-1.19	.55	2.02	29.7 (396)	12. (39)
Non-Fair Price (139)	-3.00	-2.50	.57	1.67	25.5 (137)	14. (13)
Pure Supermajority (40)	-1.25	-0.60	.55	0.64	23.4 (40)	15. (40)
S.M. Board out (48)	-4.86	-2.26	.56	0.84	16.1 (47)	19. (48)
Auth. Preferred (24)	-2.84	-0.81	.54	0.39	32.1 (24)	9.2 (24)
Classified Board (27)	-2.42	-1.15	.63	1.40	39.6 (26)	6.8 (27)

Notes:

1. The source for CERs (-20, 10) (cumulative excess returns from twenty trading days before to ten trading days after the proxy statement signing date of amendments) is the ISL (Investment Statistical Listing) tapes of Interactive Data Services Inc., New York.
2.
$$t(\text{neg}) = \frac{p - 0.5}{(pq/n)^{1/2}}$$
 where p is the fraction of all CERs that are negative, q equals 1-p and n is the number of observations.
3. Number of observations is in parentheses.

**Table 5A: Net-of-Market Stock Returns Around Proxy
Signing Date for Firms Passing Antitakeover
Amendments, by Type of Amendment, for Various Intervals
1/79-5/85.**

A. All Antitakeover Amendments (544)

<u>Interval</u>	<u>Mean</u>	<u>t(Mean)</u>	<u>Fraction of CER's Neg.</u>	<u>t(Neg)</u>
CER (-20,10)	-1.31	-2.38	.55	2.34
CER (-20,5)	-1.08	-2.09	.54	1.87
CER (-10,10)	-0.57	-1.31	.53	1.40
CER (-10,5)	-0.34	-0.66	.53	1.40

B. All Fair Price (405)

<u>Interval</u>	<u>Mean</u>	<u>t(Mean)</u>	<u>Fraction of CER's Neg.</u>	<u>t(Neg)</u>
CER (-20,10)	-0.73	-1.19	.55	2.02
CER (-20,5)	-0.57	-0.98	.52	0.81
CER (-10,10)	-0.12	-0.24	.52	0.81
CER (-10,5)	0.05	0.10	.50	0.00

C. Non-Fair Price (139)

<u>Interval</u>	<u>Mean</u>	<u>t(Mean)</u>	<u>Fraction of CER's Neg.</u>	<u>(t Neg)</u>
CER (-20,10)	-3.00	-2.50	.57	1.67
CER (-20,5)	-2.57	-2.32	.59	2.16
CER (-10,10)	-1.89	-1.99	.58	1.91
CER (-10,5)	-1.46	-1.73	.61	2.66

Table 5B: Net-of-Market Stock Returns Around Proxy Signing Date for Firms Passing Non-Fair Price Antitakeover Amendments, by Type of Amendment, for Various Intervals, 1/79-5/85.

A. Pure Supermajority (40)

<u>Interval</u>	<u>Mean</u>	<u>t(Mean)</u>	<u>Fraction of CERS Neg.</u>	<u>t(Neg)</u>
CER (-20,10)	-1.25	-0.60	.55	0.64
CER (-20,5)	-0.62	-0.33	.50	0.00
CER (-10,10)	0.25	0.15	.45	-0.64
CER (-10,5)	0.89	0.63	.40	-1.29

B. Supermajority with Board Out (48)

<u>Interval</u>	<u>Mean</u>	<u>t(Mean)</u>	<u>Fraction of CERS Neg.</u>	<u>t(Neg)</u>
CER (-20,10)	-4.86	-2.26	.56	0.84
CER (-20,5)	-4.46	-2.19	.60	1.41
CER (-10,10)	-3.29	-2.13	.71	1.68
CER (-10,5)	-2.89	-2.05	.73	3.59

C. Others (51)

<u>Interval</u>	<u>Mean</u>	<u>t(Mean)</u>	<u>Fraction of CERS Neg.</u>	<u>t(Neg)</u>
CER (-20,10)	-2.62	-1.33	.59	1.31
CER (-20,5)	-2.32	-1.27	.65	2.25
CER (-10,10)	-2.25	-1.35	.57	1.01
CER (-10,5)	-1.95	-1.32	.67	2.58

Table 6: Net-of-Market Stock Returns Around Board Meeting and Proxy Signing Dates for Firms Proposing Antitakeover Amendments, by Type of Amendments, 1/79-5/85.

Type of Amendment	Mean CER (-40,-20)	t(Mean)	Fraction CERS Neg	t(Neg)	Mean CER (-20,10)	t(Mean)	Total CER(-40,10)	t(Mean)
All (539,544)	-1.46	-2.76	.56	2.81	-1.31	-2.38	-2.77	-2.55
Fair Price (401,405)	-1.32	-2.31	.55	2.01	-0.73	-1.19	-2.05	-1.73
Non-Fair Price (138,139)	-1.89	-1.51	.59	2.15	-3.00	-2.50	-4.89	-1.97
Pure Supermajority (40)	-0.04	-0.02	.55	0.64	-1.25	-0.60	-1.29	-0.37
Supermajority Board Out (47,48)	-4.95	-2.71	.62	1.69	-4.86	-2.26	-9.81	-2.47
Other (51)	-0.59	-0.25	.61	1.61	-2.62	-1.33	-3.21	-0.72

Note:

1. Number of observations is given in parentheses. Two numbers are given when the number of observations for CER (-40,-20) is different from that of CER (-20,10).

Table 7: Net-of-Market Stock Returns Around Proxy Statement Signing Date and Institutional and Insider Stock Holdings (in percent) for Firms Proposing Antitakeover Amendments, By Type of Listing, 1/79-5/85.

A. Exchange Firms

Type of Amendment	MEAN CER (-20,10)	t(Mean)	Fraction CERS Neg.	t(Neg)	Institutional Holdings	Insider Holdings
All (369)	-0.81	-1.30	.53	1.15	33.1 (363)	11. (36)
Fair Price (272)	-0.31	-0.45	.53	0.99	34.5 (266)	10. (26)
Non-Fair Price (97)	-2.21	-1.64	.53	0.59	29.4 (97)	12. (97)
Pure Supermajority (29)	-1.09	-0.41	.48	-0.22	25.0 (29)	15. (29)
S.M. Board Out (30)	-2.38	-0.78	.50	0.00	17.5 (30)	16. (30)
Auth. Preferred (18)	-1.92	-0.95	.56	0.51	36.5 (18)	7.6 (18)
Classified Board (20)	-3.82	-1.81	.60	0.91	47.5 (20)	4.4 (20)

Table 7: (Continued)

B. Non-Exchange Firms

Type of Amendment	Mean CER (-20,10)	t(Mean)	Fraction CERs Neg.	t(Neg)	Institutional Holdings	Insider Holdings
All (175)	-2.18	-1.97	.61	3.82	19.0 (170)	17.2 (171)
Fair Price (133)	-1.34	-1.10	.59	2.11	19.9 (130)	16.7 (129)
Non-Fair Price (42)	-4.83	-1.96	.67	2.34	16.0 (40)	18.9 (42)
Pure Supermajority (11)	-1.69	-0.54	.73	1.72	19.3 (11)	16.9 (11)
S.M. Board out (18)	-9.00	-3.56	.67	1.53	13.7 (17)	23.8 (18)
Auth. Preferred (6)	-5.61	-0.41	.50	0.00	18.9 (6)	14.0 (6)
Classified Board (7)	1.59	0.29	.71	1.22	13.2 (6)	13.5 (7)

Table 8: Net-of-Market Stock Returns Around Proxy Statement Signing Date for Firms Proposing Fair Price Amendments, by Type of Listing, for Various Intervals, 1/79-5/85.

A. Fair Price for Exchange Firms (272)

Interval	Mean	t(Mean)	Fraction CERs Neg.	t(Neg.)
CER(-20,10)	-0.31	-0.45	.53	0.99
CER(-20,5)	-0.20	-0.31	.50	0.00
CER(-10,10)	0.23	0.42	.50	0.00
CER(-10,5)	0.34	0.69	.51	0.33

B. Fair Price for Non-Exchange Firms (133)

Interval	Mean	t(Mean)	Fraction CERs Neg.	t(Neg.)
CER(-20,10)	-1.34	-1.10	.59	2.11
CER(-20,5)	-1.07	-0.94	.57	1.63
CER(-10,10)	-0.65	-0.70	.56	1.36
CER(-10,5)	-0.37	-0.45	.47	-0.69

Table 9: Net-of-Market Stock Returns Around Proxy Statement Sign Date for Firms Proposing Non-Fair Price Amendments, by Type of Listing, for Various Intervals, 1/79-5/85.

A. Non-Fair Price for Exchange Firms (97)

Interval	Mean	t(Mean)	Fraction CERs Neg.	t(Neg.)
CER(-20,10)	-2.21	-1.64	.53	0.59
CER(-20,5)	-2.15	-1.74	.56	1.19
CER(-10,10)	-0.91	-0.92	.55	0.99
CER(-10,5)	-0.85	-1.01	.56	1.19

B. Non-Fair Price for Non-Exchange Firms (42)

Interval	Mean	t(Mean)	Fraction CERs Neg.	t(Neg.)
CER(-20,10)	-4.83	-1.96	.67	2.34
CER(-20,5)	-3.53	-1.52	.67	2.34
CER(-10,10)	-4.16	-1.95	.67	2.34
CER(-10,5)	-2.85	-1.44	.74	3.55

Table 10: Net-of-Market Stock Returns Around Proxy Statement Signi-
Date for Firms Proposing Supermajority Amendments, by
Type of Listing, for Various Intervals, 1/79-5/85.

A. Supermajority for Exchange Firms (29)

Neg.)	Interval	Mean	t(Mean)	Fraction of CERs Neg.	t(Neg.)
0.59	CER(-20,10)	-1.09	-0.41	.48	-0.22
1.19	CER(-20,5)	-0.07	-0.03	.41	-0.99
0.99	CER(-10,10)	0.69	0.32	.41	-0.99
1.19	CER(-10,5)	1.71	1.06	.31	-3.97

B. Supermajority for Non-Exchange Firms (11)

Neg.)	Interval	Mean	t(Mean)	Fraction of CERs Neg.	t(Neg.)
2.34	CER(-20,10)	-1.69	-0.54	.73	1.72
2.34	CER(-20,5)	-2.06	-0.61	.73	1.72
2.34	CER(-10,10)	-0.90	-0.34	.55	0.33
3.55	CER(-10,5)	-1.28	-0.44	.64	0.97

Table 11: Net-of-Market Stock Returns Around Proxy Statement Signing Date for Firms Proposing Supermajority with Board Out Amendments, by Type of Listing, for Various Intervals, 1/79-5/85.

A. Supermajority with Board Out for Exchange Firms (30

Interval	Mean	t(Mean)	Fraction of CERS Neg.	t(Neg.)
CER(-20,10)	-2.38	-0.78	.50	0.00
CER(-20,5)	-2.49	-0.83	.53	0.33
CER(-10,10)	-0.63	-0.36	.63	1.47
CER(-10,5)	-0.73	-0.43	.63	1.47

B. Supermajority with Board Out for Non-Exchange Firms (18

Interval	Mean	t(Mean)	Fraction of CERS Neg.	t(Neg.)
CER(-20,10)	-9.00	-3.56	.67	1.53
CER(-20,5)	-7.74	-3.71	.72	2.08
CER(-10,10)	-7.74	-2.92	.83	3.73
CER(-10,5)	-6.48	-2.84	.89	6.83

Table 12: Net-of-Market Stock Returns Around Proxy Statement Signing Date for Firms Proposing Other Antitakeover Amendments,¹ by Type of Listing, for Various Intervals, 1/79-5/85.

ms (30)

A. Others for Exchange Firms (38)

t(Neg.)	Interval	Mean	t(Mean)	Fraction of CERS Neg.	t(Neg.)
0.00					
0.33	CER(-20,10)	-2.92	-2.01	.58	1.00
1.47	CER(-20,5)	-3.47	-2.79	.68	2.38
1.47	CER(-10,10)	-2.36	-1.73	.58	1.00
	CER(-10,5)	-2.91	-2.67	.68	2.38

ms (18)

B. Others for Non-Exchange Firms (13)

t(Neg.)	Interval	Mean	t(Mean)	Fraction of CERS Neg.	t(Neg.)
1.53					
2.08					
3.73	CER(-20,10)	-1.73	-0.26	.62	0.89
6.83	CER(-20,5)	1.06	0.17	.54	0.29
	CER(-10,10)	-1.95	-0.36	.54	0.29
	CER(-10,5)	0.84	0.17	.62	0.89

Note:

1. The category "others" includes those amendments with authorized preferred stock provisions and those providing classified boards.

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APPENDIX A

TICK	COMPANY NAME	CUSIP	PROXY DATE	INST HOLD	INS HOLD	SRC	TYPE
AIR	A A R CORP	361	830916	5.8	17.9	D	BSM
ACRA	ACCURAY CORPORATION	4396	840323	34.5	7.9	K	FP
AECE	AEC INC	1015	850225	2.6	44.5	SEC	FP
ARX	AEROFLEX LABS INC	7770	801027	0.0	21.3	D	SM
TUX	AFTER 6 INC	8315	831109	14.6	29.5	D	BSM
APD	AIR PRODS & CHEMS INC	9158	821209	67.0	1.0	D	CB
ABF	AIRBORNE FGHT CORP	9266	840309	52.2	16.7	K	FP
AGA	ALABAMA GAS CORP	10727	840611	13.2	1.3	K	FP
EST	ALASKA INTST CO	293582	830413	14.9	15.0	D,K	FP
ABS	ALBERTSONS INC	13104	850412	31.2	20.6	SEC	FP
AG	ALLEGHENY LUDLUM STL CORP	17372	840327	32.2	4.9	K	FP
AT	ALLIED TEL CO	19555	830902	0.0	6.2	D	FP
AH	ALLIS CHALMERS MFG CO	19645	830422	58.0	8.0	D	CB
AHA	ALPHA INDS INC	20753	830722	59.0	3.4	D,K	FP
AA	ALUMINUM CO AMER	22249	850327	60.7	1.0	SEC	CB
AMBN	AMBANC CORP	990234	850318	.	8.4	SEC	FP
AMY	AMEDCO INC	23433	830429	10.1	28.9	K	FP
ABNK	AMERIBANC INC	23618	850403	17.7	21.4	SEC	FP
ACIX	AMERICAN CARRIERS INC	25043	840413	21.7	0.5	K	FP
ACY	AMERICAN CYANAMID CO	25321	850307	62.6	1.2	SEC	FP
AXR	AMERICAN RLTY & PETE CORP	32159	820805	10.6	19.8	D	BSM
ASZ	AMERICAN STERILIZER CO	30087	830331	21.0	2.0	D,K	FP
AUND	AMERICAN UNDERWRITERS GROUP	30341	850402	.	29.6	SEC	AP
AMWEL	AMERICAN WELL SERVICING CORP	.	840418	.	49.3	K	FP
AMWS	AMERIWEST FINANCIAL CORPORATION	30903	840302	.	3.2	K	FP
AD	AMSTED INDS INC	32177	841123	59.8	1.0	SEC	FP
ARH	ANCHOR HOCKING GLASS CORP	33047	790331	.	5.6	K	FP
AYL	ANDERSON CLAYTON & CO	33609	830920	20.8	35.2	D,K	FP
AGV	ANDERSON GREENWOOD & CO	33849	840417	12.5	33.2	K	FP
BUD	ANHEUSER BUSCH COS INC	35229	850321	56.2	14.6	SEC	FP
ANR	ANR COMPANY	1814	840307	.	.	K	FP
ATM	ANTHEM ELECTRS INC	36732	840518	55.7	5.8	K	FP
ARDN	ARDEN GROUP INC	39762	800512	4.4	0.8	D	BSM
ARG	ARGO PETE CORP	40138	810413	3.7	25.9	D	BSM
ABZ	ARKANSAS BEST CORP	40789	800418	4.2	45.1	D	SM
ABZ	ARKANSAS BEST CORP	40789	840410	28.5	23.3	K	FP
ALG	ARKANSAS LA GAS CO	41237	830405	45.0	1.7	D,K	FP
AMLT	ARMEL, INC	42198	840521	62.7	40.9	K	FP
AI	ARROW AUTOMOTIVE INDS INC	42727	831031	24.5	65.0	D,K	FP
ARV	ARVIN INDS INC	43339	830321	40.0	2.8	D	CB
AHST	ASSOCIATED HOSTS INC	45654	840105	4.1	59.0	K	FP
AHST	ASSOCIATED HOSTS INC	45654	850115	5.4	53.0	SEC	BSM
B	ASSOCIATED SPRING CORP	67806	830307	42.0	21.7	D,K	FF
ACOM	ASTROCOM CORPORATION	46390	840410	.	15.9	K	FP
ABAN	ATLANTA BANCORPORATION	48222	840305	25.2	24.1	K	FP
AGLT	ATLANTA GAS LIGHT COMPANY	47753	841221	19.0	1.0	SEC	FP
ATRC	ATLANTIC RESEARCH CORP	48816	840322	49.0	14.0	K	FP
AV	AVCO CORP	53501	830316	43.0	1.5	D,K	FP
BAC	BACHE & CO INC	56357	791010	0.0	8.3	K	FP
BKO	BAKER OIL TOOLS INC	57264	821217	48.0	2.0	D,K	FP
BKFR	BAKER, FENTRESS AND COMPANY	57213	840213	16.8	14.8	K	FP

CMD	CHARTER MED CORP	161241	801222	20.4	45.6	D	SM
CHEK	CHECKPOINT SYSTEMS	162825	850313	24.6	10.7	SEC	FP
CHEM	CHEM LAWN CORP	163530	830316	26.4	32.3	D	BSM
CSK	CHESAPEAKE CORP VA	165159	830325	39.6	21.1	D,K	FP
CNW	CHICAGO & NORTH WESTN TRANSN	167166	830331	25.0	9.2	D,K	FP
CRH	CHICAGO BRDG & IRON CO	124800	830316	29.4	13.1	D,K	FP
CID	CHIEFTAIN DEV LTD	168664	850315	3.4	10.0	SEC	AP
CINF	CINCINNATI FINANCIAL CORP	172062	830301	13.0	22.2	D,K	FP
CSGA	CITIZENS & SOUTHERN GEORGIA CORP	173124	830304	20.9	3.7	D,K	FP
CTYN	CITY NATIONAL CORP		810313	6.0	30.5	D	BSM
CLRS	CLAIRE'S STORES	179584	840524	13.6	24.7	K	FP
CLOW	CLOW CORPORATION	189468	840330	21.4	12.4	K	FP
CNBB	CNB BANCSHARES	126126	841228		6.5	SEC	FP
CSP	COASTAL STS GAS PRODUCING CO	190441	820412	24.9	8.1	K	FP
COBE	COBE LABS INC	190893	830330	25.3	25.6	D	SM
CLN	COLEMAN INC	193558	830411	34.0	36.9	D	CB
CGES	COLONIAL GAS COMPANY	195674	840329	1.0	3.5	K	FP
COLC	COLORADO NATIONAL BANKSHARES, INC	196538	840312	21.9	8.0	K	FP
CSP	COMBUSTION ENGR INC	200273	830318	32.9	1.2	D	CB
CMCA	COMERICA	200340	840307	31.2	1.2	K	FP
CBSH	COMMERCE BANCSHARES	200525	830318	17.4	9.0	D,K	FP
CBU	COMMODORE BUSINESS MACHS LTD	202660	841016	17.3	20.1	SEC	BSM
COMFD	COMMONWEALTH FEDERAL SAVINGS BANK		830707	0.0		K	FP
CDI	COMPREHENSIVE DESIGNERS INC	125071	830824	6.3	27.0	D	FP
CDC	COMPUDYNE CORP	204795	810227	0.0	27.8	D	SM
CCS	COMPUTER CONSOLES INC	205003	830419	37.1	28.7	D,K	FP
CMTL	COMTECH GROUP INTERNATIONAL LTD	205286	831026	16.3		D,K	FP
COE	CONE MLS CORP	206813	830322	25.7	7.8	D	SM
CNFG	CONIFER GROUP INC		800324	1.9	6.6	D	CB
CNE	CONNECTICUT ENERGY CORP	207567	840324	2.9	0.8	K	FP
CDT	CONSOLIDATED DIESEL ELEC CORP	206741	791102	9.1	21.6	K	FP
CNF	CONSOLIDATED FREIGHTWAYS INC	209237	850318	71.7	1.9	SEC	CB
CNG	CONSOLIDATED NAT GAS CO	209615	840409	23.6	0.2	K	FP
CTLC	CONSOLIDATED TOMOKA LAND CO	210226	850405	81.9	0.5	SEC	FP
CONW	CONSUMERS WATER	210723	820401	3.4	4.3	K	FP
CCX	CONTINENTAL COPPER & STL INDS	125005	821019	9.1	5.9	D	BSM
CTB	COOPER TIRE & RUBR CO	216831	850322	51.1	5.2	SEC	FP
GLW	CORNING GLASS WKS	219327	850306	60.5	14.8	SEC	FP
CBL	CORROON REYNOLDS CORP	220291	830330	29.4	11.1	D,K	BSM
CNTYR	COUNTY TOWER CORP	222588	821124	5.1	12.8	D,K	FP
CRED	CREDO PETROLEUM CORPORATION	225439	840302	0.7	17.1	K	FP
MLL	CROWELL COLLIER PUBG CO	554790	830318	50.2	14.0	D,K	FP
ZB	CROWN ZELLERBACH CORP	228669	830331	37.5		D,K	FP
CUL	CULLINANE DATABASE SYS INC	230032	820726	38.9	16.0	D	SM
HLME	D.H. HOLMES COMPANY LIMITED	436416	840427	14.6	14.0	K	FP
DMN	DAMON ENGR INC	235717	841116	43.1	3.4	SEC	AP
DAM	DAMSON OIL CORP	235766	830222	1.6	12.6	D,K	BSM
WOOD	DANIEL WOODHEAD	979438	850111	23.2	8.7	SEC	FP
DANK	DANKER LABS INC	236280	800211	0.0	32.4	D	BSM
DKI	DART & KRAFT INC	237410	830325	55.0	0.8	D,K	FP
DASH	DASH INDUSTRIES	237528	840426	15.7		K	FP
DGN	DATA GEN CORP	237688	841217	76.1	12.5	SEC	FP
DMI	DAY MINES INC	239541	800411	7.9	1.2	D	BSM
DH	DAYTON HUDSON CORP	239753	850424	56.5	1.0	SEC	FP
DCBC	DCB CORP	992326	850325		23.6	SEC	FP
DLX	DE LUXE CHECK PRINTERS INC	248019	850402	44.4	0.4	SEC	FP

BLL	BALL CORP	58498	850311	14.9	6.3	SEC	FP
BPP	BALLY'S PK PL INC	58735	830429	0.0	0.4	D	AP
BCV	BANCROFT CONV FD INC	59695	800527	2.5	0.9	D	SM
BNK	BANCOR PUNTA ALEGRE SUGAR CORP	60221	790213	.	23.2	K	FP
BB	BANK BLDG & EQUIPMENT CORP AMER	60815	810108	15.1	9.8	D	SM
BKSO	BANK SOUTH CORPORATION	65068	830408	29.4	9.7	K	FP
BKNG	BANKNORTH GROUP	66467	850412	.	16.1	SEC	FP
BCR	BARD C R INC	67383	850313	48.7	2.2	SEC	FP
BBF	BARNETT BANKS FLA INC	68055	850228	44.4	1.5	SEC	FP
ROB	BARRY R Q CORP	68797	840330	10.5	24.9	K	FP
BAR	BARRY WRIGHT CORP	68887	830304	33.0	8.0	D,K	FP
BASEA	BASE TEN SYSTEMS INC	69779	801028	4.5	31.6	D	SM
BER	BEARINGS INC	74005	830919	53.7	15.9	D,K	FP
BRY	BEATRICE FOODS CO	74077	840430	42.8	1.0	K	FP
BDX	BECTION DICKINSON & CO	75887	850103	31.4	3.0	SEC	FP
BCS	BEEFSTEAK CHARLIES INC	77017	830823	3.9	20.8	D	BSM
BCOR	BELO A H CORP	80555	840326	24.2	16.2	K	FP
BMS	BEMIS INC	81437	830407	22.4	13.4	K	FP
BNL	BENEFICIAL CORP	81721	830321	36.5	6.6	K	FP
BRQ	BERG ENTERPRISES INC	83730	821211	3.0	32.7	D	CB
BEV	BEVERLY ENTERPRISES	87851	850325	60.0	4.1	SEC	AP
BIBB	BIBB COMPANY	88665	830624	14.9	14.8	D,K	FP
BIN	BINKS MFG CO	90527	840409	9.5	30.0	K	FP
BDK	BLACK & DECKER MFG CO	91797	821227	57.0	1.6	D	SM
AX	BLISS & LAUGHLIN INC	54595	830325	8.0	5.3	D,K	FP
HRB	BLOCK H & R INC	93671	830726	70.8	14.4	D,K	FP
BFLD	BLUEFIELD SUPPLY COMPANY	96167	830318	7.0	2.7	D,K	FP
BMC	BMC INDUSTRIES INC	55607	830315	43.6	9.3	D,K	FP
BOHM	BOHEMIA INC	97329	830808	13.8	24.1	K	FP
BN	BORDEN CO	99599	840305	42.4	0.3	K	FP
BNE	BOWNE & CO INC	103043	840127	21.6	28.5	K	FP
BMV	BRISTOL MYERS CO	110097	840320	52.0	1.6	K	FP
BU	BROOKLYN UN GAS CO	114259	850102	13.1	1.0	SEC	FP
BC	BRUNSWICK CORP	117043	850311	50.9	1.6	SEC	CB
BUR	BURLINGTON INDS INC	121691	821223	51.7	0.4	D,K	FP
BUR	BURLINGTON INDS INC	121691	841220	42.2	0.4	SEC	AP
BNI	BURLINGTON NORTHN INC	121897	850315	47.7	0.2	SEC	FP
BDC	BURNDY CORP	122205	850322	47.6	7.2	SEC	FP
BQH	BURROUGHS CORP	122781	840224	63.3	0.9	K	FP
BMAC	BUSINESSMEN'S ASSURANCE	123277	840406	31.4	.	K	FP
CI	C I G N A CORP	125509	850311	68.3	0.4	SEC	FP
CBT	CABOT CORP	127055	841228	55.4	17.3	SEC	FP
CLNP	CALLON PETROLEUM	131238	840504	2.3	23.5	K	FP
CALI	CALUMET INDUSTRIES INC	131429	791221	12.5	21.9	D	BSM
CAME	CAMELOT INDUSTRIES	133225	820303	0.0	1.0	K	FP
CSA	CARESSA INC	141735	830916	26.7	21.7	D,K	FP
CSL	CARLISLE CORP	142339	840320	25.0	11.4	K	FP
CRL	CARROLS DEV CORP	145744	800929	0.0	43.0	D	SM
CKE	CASTLE & COOKE INC	148429	830912	31.7	2.7	K	FP
CBCT	CBT CORP	124850	850315	40.1	6.3	SEC	SM
CTBC	CENTERRE BANCORPORATION	152007	840308	17.0	2.2	K	FP
CTL	CENTURY TEL ENTERPRISES INC	156686	850325	7.9	17.4	SEC	FP
CHAMP	CHAMPION RESERVE CORP	158636	850416	.	52.0	SEC	SM
CHM	CHAMPION SPARK PLUG CO	158663	840330	64.3	13.5	K	FP
CHCP	CHARTER CORP	161336	840403	16.4	15.0	K	FP
CMD	CHARTER MED CORP	161241	801222	20.4	45.6	D	SM

CMD	CHARTER MED CORP	161241	801222	20.4	45.6	D	SM
CPEK	CHECKPOINT SYSTEMS	162825	850313	24.6	10.7	SEC	FP
CHEM	CHEM LAWN CORP	163530	830316	26.4	32.3	D	BSM
CSK	CHESAPEAKE CORP VA	165159	830325	39.6	21.1	D,K	FP
CNW	CHICAGO & NORTH WESTN TRANSN	167166	830331	25.0	9.2	D,K	FP
CRH	CHICAGO BRDG & IRON CO	124800	830316	29.4	13.1	D,K	FP
CID	CHIEFTAIN DEV LTD	168664	850315	3.4	10.0	SEC	AP
CINF	CINCINNATI FINANCIAL CORP	172062	830301	13.0	22.2	D,K	FP
CSGA	CITIZENS & SOUTHERN GEORGIA CORP	173124	830304	20.9	3.7	D,K	FP
CTYN	CITY NATIONAL CORP	.	810313	6.0	30.5	D	BSM
CLRS	CLAIRE'S STORES	179584	840524	13.6	24.7	K	FP
CLOW	CLOW CORPORATION	189468	840330	21.4	12.4	K	FP
CNBB	CNB BANCSHARES	126126	841228	.	6.5	SEC	FP
CSP	COASTAL STS GAS PRODUCING CO	190441	820412	24.9	8.1	K	FP
COBE	COBE LABS INC	190893	830330	25.3	25.6	D	SM
CLN	COLEMAN INC	193558	630411	34.0	36.9	D	CB
CGES	COLONIAL GAS COMPANY	195674	840329	1.0	3.5	K	FP
COLC	COLORADO NATIONAL BANKSHARES, INC	196538	840312	21.9	8.0	K	FP
CSP	COMBUSTION ENGR INC	200273	830318	32.9	1.2	D	CB
CMCA	COMERICA	200340	840307	31.2	1.2	K	FP
CBSH	COMMERCE BANCSHARES	200525	830318	17.4	9.0	D,K	FP
CBU	COMMODORE BUSINESS MACHS LTD	202660	841016	17.3	20.1	SEC	BSM
COMFD	COMMONWEALTH FEDERAL SAVINGS BANK	.	830707	0.0	.	K	FP
CDI	COMPREHENSIVE DESIGNERS INC	125071	830824	6.3	27.0	D	FP
CDC	COMPUDYNE CORP	204795	810227	0.0	27.8	D	SM
CCS	COMPUTER CONSOLES INC	205003	830419	37.1	28.7	D,K	FP
CMTL	COMTECH GROUP INTERNATIONAL LTD	205286	831026	16.3	.	D,K	FP
COE	CONE MLS CORP	206813	830322	25.7	7.8	D	SM
CNFG	CONIFER GROUP INC	.	800324	1.9	6.6	D	CB
CNE	CONNECTICUT ENERGY CORP	207567	840324	2.9	0.8	K	FP
CDT	CONSOLIDATED DIESEL ELEC CORP	206741	791102	9.1	21.6	K	FP
CNF	CONSOLIDATED FREIGHTWAYS INC	209237	850318	71.7	1.9	SEC	CB
CNG	CONSOLIDATED NAT GAS CO	209615	840409	23.6	0.2	K	FP
CTLC	CONSOLIDATED TOMOKA LAND CO	210226	850405	81.9	0.5	SEC	FP
CONW	CONSUMERS WATER	210723	820401	3.4	4.3	K	FP
CCX	CONTINENTAL COPPER & STL INDS	125005	821019	9.1	5.9	D	BSI
CTB	COOPER TIRE & RUBR CO	216831	850322	51.1	5.2	SEC	FP
GLW	CORNING GLASS WKS	219327	850306	60.5	14.8	SEC	FP
CBL	CORROON REYNOLDS CORP	220291	830330	29.4	11.1	D,K	BSI
CXYR	COUNTY TOWER CORP	222588	821124	5.1	12.8	D,K	FP
CRED	CREDO PETROLEUM CORPORATION	225439	840302	0.7	17.1	K	FP
MLL	CROWELL COLLIER PUBG CO	554790	830318	50.2	14.0	D,K	FP
ZB	CROWN ZELLERBACH CORP	228669	830331	37.5	.	D,K	FP
CUL	CULLIMANE DATABASE SYS INC	230032	820726	38.9	16.0	D	SM
HLME	D.H. HOLMES COMPANY LIMITED	436416	840427	14.6	14.0	K	FP
DMN	DAMON ENGR INC	235717	841116	43.1	3.4	SEC	AP
DAM	DAMSON OIL CORP	235766	830222	1.6	12.6	D,K	BS
WDHD	DANIEL WOODHEAD	979438	850111	23.2	8.7	SEC	FP
DANK	DANKER LABS INC	236280	800211	0.0	32.4	D	BS
DKI	DART & KRAFT INC	237410	830325	55.0	0.8	D,K	FP
DASH	DASH INDUSTRIES	237528	840426	15.7	.	K	FP
DGN	DATA GEN CORP	237688	841217	76.1	12.5	SEC	FP
DMI	DAY MINES INC	239541	800411	7.9	1.2	D	BS
DH	DAYTON HUDSON CORP	239753	850424	56.5	1.0	SEC	FP
DCBC	DCB CORP	992326	850325	.	23.6	SEC	FP
DLX	DE LUXE CHECK PRINTERS INC	248019	850402	44.4	0.4	SEC	FP

DDCC	DECISION DATA COMPUTER	243442	840319	13.3	9.0	K	FP
DLTK	DELTAK CORPORATION	247834	840126	25.2	8.2	K	FP
DIG	DI GIORGIO FRUIT CORP	252435	830423	11.5	12.9	D,K	FP
DIA	DIAMOND ALKALI CO	252741	850410	32.1	0.6	SEC	SM
DBH	DIAMOND BATHURST INC	252563	850415	24.7	3.5	SEC	AP
DN	DIAMOND NATL CORP	252669	790322	.	4.6	K	FP
DINB	DINNER BELL FOODS INC	254448	830921	4.0	21.7	D	CB
DMBK	DOMINION BANKSHARES	257183	850226	24.1	3.4	SEC	FP
DGS	DORCHESTER GAS CORP	258198	831115	17.5	5.8	K	FP
DSY	DORSEY CORP	258435	850315	39.9	2.9	SEC	FP
DOV	DOVER CORP	260003	830317	44.6	11.6	D,K	FP
DRYR	DREYER'S GRAND ICE CREAM INC	261878	850426	37.9	1.4	SEC	FP
DCO	DUCOMMUN INC	264147	840327	45.1	19.0	K	FP
DYNA	DYNASCAN CORP	268075	830405	26.3	28.7	K	FP
EPI	EAGLE PICHER CO	269803	850215	36.1	2.9	SEC	FP
ETN	EATON CORP	278048	830325	46.5	1.3	D	SM
ECK	ECKERD DRUGS FLA INC	278764	831013	54.0	9.0	D,K	FP
ECON	ECONOMICS LAB INC	279029	831004	51.7	2.8	D,K	FP
EDO	EDO CORP	281347	830318	21.4	6.2	D,K	FP
EDCC	EDUCATIONAL COMPUTER CORPORATION	281424	831026	15.3	11.4	D,K	FP
ELK	ELCOR CHEM CORP	284443	820922	18.9	29.6	K	FP
ECTH	ELECTRO CATHETER CORP	285069	850215	9.1	23.1	SEC	AP
EBII	ELECTRO-BIOLOGY, INC	285060	840418	34.6	10.1	K	FP
EAF	EMERY AIR FGHT CORP	291101	830331	56.7	2.1	D	AP
EAF	EMERY AIR FGHT CORP	291101	840326	57.2	1.8	K	FP
EDE	EMPIRE DIST ELEC CO	291641	840323	6.3	0.9	K	FP
EEX	ENERGY EXCHANGE CORP	292666	840507	8.9	2.9	K	FP
EMTH	ENERGY METHODS CORPORATION	292909	840220	.	27.1	K	FP
EBF	ENNIS BUSINESS FORMS INC	293389	830523	14.3	15.6	D,K	FP
EVT	ENVIROTECH CORP	294098	800624	15.1	2.9	D	BSM
EQT	EQUITABLE GAS CO	294497	831118	29.2	1.0	D,K	FP
EQTY	EQUITY OIL COMPANY	294749	830401	11.4	15.3	D,K	FP
ESCC	EVANS & SUTHERLAND	299096	840503	25.1	11.8	K	FP
XLO	EX CELL O CORP	300587	830228	39.2	2.7	D	CB
FMC	F M C CORP	302491	830318	50.5	1.0	D	CB
FCA	FABRI CTRS AMER INC	302846	840504	30.8	36.8	K	FP
FCT	FACET ENTERPRISES INC	303032	850104	23.3	10.6	SEC	CB
FEN	FAIRCHILD STRATOS CORP	303711	830321	30.8	2.0	D,K	FP
FCI	FAIRFIELD COMMUNITIES INC	304231	840604	33.0	17.4	K	FP
FARC	FARR CO	311648	850401	1.4	21.4	SEC	FP
FAY	FAYS DRUG INC	313035	850412	8.8	26.6	SEC	BSM
FMO	FEDERAL MOGUL BOWER BEARINGS INC	313549	800411	22.3	2.4	K	FP
FMO	FEDERAL MOGUL BOWER BEARINGS INC	313549	850329	44.3	2.9	SEC	AP
FRT	FEDERAL RLTY INVT TR	313747	810417	1.8	3.7	D	SM
FIGI	FIGGIE INTERNATIONAL	316830	790414	10.1	8.8	K	FP
FTEC	FILMTEC CORP	317293	850110	25.7	31.8	SEC	CB
FATN	FIRST AMERICAN CORP	993198	850325	20.0	8.8	SEC	FP
FAC	FIRST ATLANTA CORP	318626	840319	26.8	13.4	K	FP
FBF	FIRST BANKERS CORP FLORIDA	319284	830330	13.4	5.0	K	FP
FFAT	FIRST FEDERAL S&L OF AUSTIN	.	830926	.	.	K	FP
FGLN	FIRST GLEN BANCORP	320373	850228	.	7.3	SEC	FP
FHWN	FIRST HAWAIIAN INC	320506	850131	18.5	5.4	SEC	CB
FMBC	FIRST MICHIGAN BANK CORP	320859	850304	10.3	4.0	SEC	BSM
FNAC	FIRST NATIONAL CINCINNATI CORP	335562	830309	14.7	5.5	D,K	FP
FIRO	FIRST OHIO BANCSHARES	335850	850327	47.3	9.8	SEC	FP
FSAW	FIRST SAVINGS ASSOC WISCONSIN	336900	830318	14.0	.	K	FP

FSCO	FIRST SECURITY CORP	336294	850315	32.5	8.0	SEC	F
FSW	FIRST WESTN FINL CORP	337531	830417	1.7	4.6	D,K	F
FSW	FIRST WESTN FINL CORP	337531	790328	.	6.6	K	F
FRST	FIRSTIER INC	681697	850416	19.4	19.1	SEC	F
FIS	FISCHBACH & MOORE INC	337659	831229	37.0	2.3	K	F
FLM	FLEMING INC	339130	850320	37.3	6.8	SEC	FI
FRK	FLORIDA ROCK INDS INC	341140	830902	13.8	45.2	D	SI
FLWB	FLORIDA WESTCOAST BANK INC	343251	850417	.	25.3	SEC	FI
FCBN	FLUOROCARBON	343868	830506	4.0	31.0	D,K	FI
FONR	FONAR CORP	344437	841220	4.3	56.7	SEC	FI
MCK	FOREMOST DAIRIES INC	581556	840618	36.3	1.4	K	FI
FOUR	FORUM GROUP, INC	349841	840615	4.9	19.9	K	FF
FWC	FOSTER WHEELER CORP	350244	830318	19.3	3.3	D,K	FF
FWC	FOSTER WHEELER CORP	350244	800321	.	3.9	K	FF
FRTH	FOURTH FINANCIAL CORP	351070	850308	8.4	21.0	SEC	FF
FSP	FOX STANLEY PHOTO PRODS INC	351586	830719	32.0	16.2	K	FF
FOX	FOXBORO CO	351604	830321	40.7	23.4	D,K	FF
FTX	FREEPORT MCMORAN INC	356714	830307	24.9	4.4	K	FF
FRMT	FREMONT GENERAL CORP	357288	850405	43.1	28.0	SEC	BS
FQA	FUQUA INDUSTRIES INC	361028	850405	34.1	11.7	SEC	AP
FSBB	FSB BANCORPORATION	.	850306	.	36.4	SEC	FP
GABB	GAB BANCORP	993622	850401	.	26.9	SEC	FP
GXY	GALAXY CARPET MLS INC	363171	840109	28.5	22.9	K	FP
GDC	GENERAL DATACOMM INDS INC	369487	840104	29.9	24.3	K	FP
FGN	GENERAL RESH CORP	343465	800926	18.7	6.3	D,K	FP
GSHL	GENERAL SHALE PROCUCTS CORP	370820	840430	7.1	18.4	K	FP
GCO	GENESCO INC	371532	831007	15.9	6.0	D,K	FP
GES	GENISCO TECHNOLOGY INC	372298	840117	22.4	11.0	K	FP
GNTX	GENTEX CORPORATION	371901	830404	3.8	68.8	D,K	FP
GEOI	GEORESOURCES INC	372476	850327	0.4	13.5	SEC	FP
GEB	GERBER PRODS CO	373712	840620	43.8	9.9	K	FP
GEMC	GERIATRIC & MEDICAL CENTERS, INC	373748	830923	0.0	34.9	K	FP
GFB	GF CORP	361614	830411	3.8	48.9	D	BS
GPO	GIANT PORTLAND CEM CO	374532	840410	14.8	26.3	K	FP
GLE	GLEASON WKS	377352	840329	47.1	20.9	K	FP
GLM	GLOBAL MARINE INC	379352	850327	14.9	1.6	SEC	CB
1571B	GODDARD INDUSTRIES	380262	840213	.	.	K	FP
GNG	GOLDEN NUGGET INC	381136	840510	17.3	17.5	K	FP
GDW	GOLDEN WEST FINL CORP	381317	840314	50.9	21.2	K	FP
GLD	GOULD INC	383492	850323	52.7	0.8	SEC	FP
GTR	GOULD INVS TR	383494	800128	0.0	34.5	D	SM
GRAC	GRACO INC	384109	840330	67.7	6.0	K	FP
GNN	GREAT NORTHN PAPER CO	391090	840322	64.9	1.7	K	FP
GW	GREAT WESTN FINL CORP	391442	830316	58.8	1.2	D	CB
G	GREYHOUND CORP	398028	830401	32.5	1.0	D,K	FP
GQ	GRUMMAN AIRCRAFT ENGR CORP	400181	850314	34.1	2.2	SEC	FP
GFD	GUILFORD MILLS INC	401794	831028	27.8	35.5	D,K	FP
GW	GULF & WESTN INDS INC	402064	841026	45.3	6.2	SEC	FP
FULL	H.B. FULLER CO	359694	790305	.	12.7	K	FP
HANF	HANOVER FINANCIAL CORP	.	850404	.	19.4	SEC	FP
HOGI	HARKEN OIL & GAS INC	412552	810519	2.4	17.7	D	BSM
HPR	HARPER & ROW PUBLISHERS DEL	413378	840713	20.0	7.0	K	FP
HMX	HART SCHAFFNER & MARX	417119	830228	52.5	4.4	D,K	FP
HNAT	HARTFORD NATIONAL CORPORATION	416655	840321	22.8	3.1	K	FP
HBOL	HARTFORD STEAM BOILER INSPECTION	416704	840427	62.3	.	K	FP
HAVT	HAVERTY FURNITURE CO	419596	850325	28.4	28.9	SEC	FP

HBOC	HBO & CO	404100	850328	45.6	15.9	SEC	FP
HMI	HEALTH MOR INC	422191	840409	27.6	12.6	K	FP
HEX	HECKS INC	422686	850401	32.7	1.5	SEC	SM
HL	HECLA MNG CO	422704	830326	11.0	1.0	D,K	FP
HFIN	HEIGHTS FINANCE CORP	422821	830407	0.0	23.8	D,K	FP
QHB	HEILEMAN G BREWING INC	422884	830323	18.9	3.4	D,K	FP
HNZ	HEINZ H J CO	423074	830808	55.7	12.5	D,K	FP
HZR	HEIZER CORP	423080	830921	58.7	11.1	D	FP
HC	HELENE CURTIS INDS INC	423236	840509	16.7		K	FP
HCI	HERITAGE COMMUNICATIONS INC	427214	830411	9.4	15.1	K	FP
MLHR	HERMAN MILLER	600544	830830	44.6	9.0	K	FP
AHC	HESS OIL & CHEM CORP	23551	830407	40.0	17.4	D,K	FP
AHC	HESS OIL & CHEM CORP	23551	850328	47.8	17.5	SEC	SM
HXL	HEXCEL CORP	428290	830316	28.9	4.8	D,K	FP
HSI	HI SHEAR CORP	428399	800820	4.8	40.8	D	BSM
HLT	HILTON HOTELS CORP	432848	850405	64.7	32.4	SEC	FP
HIA	HOLIDAY INNS AMER INC	435081	850322	53.0	0.6	SEC	FP
HM	HOMESTAKE MNG CO	437614	840403	26.3	1.0	K	FP
HONI	HON INDUSTRIES	438092	830401	18.5	26.0	D,K	FP
HRES	HORIZON RESEARCH	440443	840322	1.0	22.9	K	FP
BAV	HOWELL ELEC MTRS CO	123645	830325	36.9	18.5	D,K	FP
HCO	HUBCO INC	404382	841120		14.0	SEC	FP
HUF	HUFFMAN MFG CO	444356	820914	13.9	16.7	D,K	FP
HT	HUGHES TOOL CO	444492	830318	32.9	0.6	D,K	FP
HYBD	HYBRIDOMA SCIENCES INC	448605	850401	0.0	18.9	SEC	AP
MAX	HYDROMATICS INC	576829	850110	35.6	13.6	SEC	FP
ID	IDEAL TOY CORP	451650	800507	3.6	29.0	D	SM
ITW	ILLINOIS TOOL WKS INC	452308	840321	55.9	4.9	K	FP
IGC	INDIANA GAS INC	454758	831207	11.3	0.5	K	FP
FLT	INDUSTRIAL BANCORP	338902	830310	17.0	2.8	D,K	FP
INX	INEXCO OIL CO	456623	840413	12.2	16.2	K	FP
IQ	INFORMATICS GEN CORP	456668	850325	32.8	4.9	SEC	FP
IAD	INLAND STL CO	457470	850322	62.9	1.0	SEC	AP
ISN	INSTRON CORP	457776	810403	3.7	33.3	D	BSM
INTF	INTERFACE SYSTEMS INC	458667	850301	10.0	18.0	SEC	CB
IMMC	INTERNATIONAL MOBILE MACHINES	460026	840427	0.4	34.5	K	FP
IP	INTERNATIONAL PAPER CO	460146	850305	50.4	0.6	SEC	FP
INR	INTERNATIONAL SILVER CO	457659	830304	32.6	0.6	D,K	FP
CLRK	J.L. CLARK MANUFACTURING	181468	830301	19.0	2.0	K	FP
JAME	JAMESBURY CORP	470448	821020	6.0	30.4	K	FP
JMY	JAMESWAY CORP	470736	840508	28.8	20.3	K	FP
DIXN	JOSEPH DIXON CRUCIBLE CO	255696	790313		2.7	K	FP
JOY	JOY MFG CO	481196	831212	42.3		K	FP
KDI	K D I CORP	482452	840319	8.3	15.6	K	FP
KTII	K-IRON INTERNATIONAL INC	482730	850402	0.2	49.2	SEC	FP
KNE	KANSAS NEB NAT GAS INC	482620	850222	39.6	2.2	SEC	FP
KWD	KELLWOOD CO	488044	830701	47.1	4.0	K	FP
KELY	KELLY SERVICES INC	488152	810403	25.3	64.2	D	BSM
KMG	KERR MCGEE CORP	492386	850327	45.3	3.7	SEC	FP
KEQU	KEWAUNEE SCIENTIFIC EQUIP CORP	492854	830729	2.9	13.7	K	FP
KII	KEYSTONE INTL INC	493503	840411	17.3	27.2	K	FP
KNAP	KNAP & VOGT MANUFACTURING	498782	850307	31.7	20.5	SEC	FP
KRN	KNIGHT NEWSPAPERS INC	499040	850315	39.3	35.1	SEC	FP
KOP	KOPPERS INC	500602	840316	47.5	1.5	K	FP
KUH	KUHLMAN CORP	501206	850320	5.9	11.8	SEC	AP
LG	LACLEDE GAS CO	505588	831227	10.6		D,K	FP

LCLD	LACLEDE STEEL CO	505606	801222	4.7	0.8	D
LANC	LANCASTER COLONY CORP	513847	831026	23.5	42.8	D
LNCE	LANCE INC	514606	850328	31.1	19.1	SEC
LAND	LANDMARK FINANCIAL GROUP INC		850403		16.6	SEC
LARS	LARSEN COMPANY	517300	830808	6.1	15.5	D,K
LASR	LASER PRECISION CORP	517900	830402	9.4	18.7	D
LSI	LEAR SIEGLER INC	521894	840928	49.9	4.0	SEC
LTC	LEASEWAY TRANSP CORP	522066	830401	48.7	12.4	D,K
LEG	LEGGETT & PLATT INC	524660	840328	24.5	17.3	K
LEH	LEHIGH VALLEY INDS INC	525030	830502	2.9	0.0	D
LVX	LEISURE TECHNOLOGY CORP	525914	831017	39.1	27.4	D,K
LC	LIBERTY CORP S C	530370	850404	31.0	21.4	SEC
LFED	LIBERTY FEDERAL SAVINGS & LOAN		840319			K
LUBC	LIBERTY UNITED BANCORP	531536	850308	5.4	16.1	SEC
LLY	LILLY ELI & CO	532457	850304	64.3	0.5	SEC
LNC	LINCOLN NATL CORP IND	534187	850402	48.2	1.0	SEC
LTEC	LINCOLN TELECOMMUNICATIONS CO	534780	850325	17.0	19.3	SEC
LCE	LONE STAR CEM CORP	542290	840409	46.8	4.0	K
LDG	LONGS DRUG STORES INC	543162	840425	24.2	26.5	K
LGS	LOUISIANA GAS SVC CO	546258	830107	5.0	9.8	K
LLX	LOUISIANA LD & EXPL CO	546268	850326	51.1	2.0	SEC
LPX	LOUISIANA PAC CORP	546347	830317	32.8	5.7	D,K
LZ	LUBRIZOL CORP	549271	850318	57.2	1.2	SEC
LDY	LUNDY ELECTRS & SYS INC	550374	840409	9.3	4.3	K
LUR	LURIA L & SON INC	550484	841106	19.4	26.2	SEC
LYC	LYNCH COMMUNICATIONS SYS INC	551120	820331	8.3	3.1	D
MDSN	MADISON GAS & ELECTRIC CO	557497	830321	7.9	0.6	D
MGC	MAGIC CHEF INC	559108	830909	47.9	5.4	K
MAGI	MAGNA GROUP INC	559214	850329		6.8	SEC
MGNE	MAGNETIC CONTROLS COMPANY	559448	840228	25.7	25.1	K
MHI	MALONE & HYDE INC	561280	831014	33.4	15.1	D
RBW	MANGEL STORES CORP	782309	850321	45.3	11.1	SEC
MCRP	MARINE CORP	568236	820324	18.7	3.8	K
MHS	MARRIOTT CORP	571630	840410	38.5	15.9	K
MMC	MARSH & MC LENNAN INC	571748	850412	56.6	2.5	SEC
ML	MARTIN MARIETTA CORP	573275	830321	13.0	38.9	D,K
ML	MARTIN MARIETTA CORP	573275	850321	51.7	1.5	SEC
MAS	MASCO CORP	574599	810428	51.9	15.1	K
MFL	MAYFLOWER CORP IND	578339	840323	30.1	8.7	K
MYG	MAYTAG CO	578592	840315	32.7	0.8	K
MCD	MC DONALDS CORP	580135		61.1		SEC
MD	MC DONNELL AIRCRAFT CORP	580169	840320	30.9	16.7	K
MHP	MC GRAW HILL PUBG INC	580645	850313	52.4	6.0	SEC
MCFE	MCFARLAND ENERGY INC	580432	840410	15.7	32.4	K
MCIC	MCI COMMUNICATIONS	552673	810605	23.0	4.7	D,K
MEA	MEAD CORP	582834	850318	52.9	4.5	SEC
MX	MEASUREX CORP	583432	850227	64.5	16.2	SEC
MDI	MEDALIST INDS INC	584020	830318	1.4	13.3	D
MDT	MEDTRONIC INC	585055	830718	66.8	4.3	D,K
MTRC	MERCANTILE BANCORPORATION INC	587342	850318	28.1	2.4	SEC
MST	MERCANTILE STORES INC	587533	830418	21.6	41.3	D,K
MRK	MERCK & CO INC	589331	850315	57.9	1.0	SEC
MDP	MEREDITH CORP	589433	830610	51.3	37.0	D,K
MSA	MESA PETE CO	590655	821110	41.8	7.1	D
METH	METHODE ELECTRONICS INC	591520	820825	22.9	25.0	D
MGFO	MGF OIL	552813	831028	20.0	3.7	D

MNCO	MICHIOAN NATIONAL CORP	594563	830318	8.9	9.1	D	BSM
MX	MICHIOAN SEAMLESS TUBE CO	747620	840228	23.6	3.2	K	FP
AT	MID-CONTINENT TELEPHONE	595390	830316	17.0	4.2	D,K	FP
MRC	MILTON ROY CO	602108	840419	23.8	10.5	K	FP
HON	MINNEAPOLIS HONEYWELL REGULATOR	438506	850307	70.9	0.2	SEC	FP
MINL	MINNETONKA INC	604161	810316	1.9	12.6	D	BSM
MPV	MISSOURI PUB SVC CO	606249	840312	9.6	5.6	K	FP
MCCA	MOBILE COMMUNIC CORP OF AMERICA	607243	840424	.	24.3	K	FP
MOD	MODINE MANUFACTURING COMPANY	607828	830610	0.0	5.6	K	FP
MOE	MORAN ENERGY INC	616457	810331	43.1	17.1	D	BSM
MORR	MORRISON INC	618431	810831	6.3	20.4	D	BSM
MRRN	MORRISON KNUDSEN INC	618448	840306	41.5	8.6	K	FP
MRS	MORSE SHOE INC	619075	831101	47.4	.	D,K	FP
MTO	MORTGAGE GROWTH INVS	619103	810507	56.5	1.8	D	BSM
MOSI	MOSINEE PAPER COMPANY	619600	840319	9.8	8.8	K	FP
MFS	MOUNTAIN FUEL SUPPLY CO	624029	830404	35.1	0.5	D	BSM
MKNLA	MULTNOMAH KEENE CLUB	625744	840427	.	.	K	FP
MPH	MURPHY G C & CO	626643	840425	14.4	4.8	K	FP
MYLN	MYLAN LABORATORIES	628530	840514	1.5	22.4	K	FP
NLC	NALCO CHEM CO	629853	840319	71.3	1.3	K	FP
NAN	NANTUCKET INDS INC	630183	840702	12.3	31.4	K	FP
NAP	NAPCO INDS INC	630395	830414	21.9	25.9	D	BSM
NAP	NAPLES FED SVGS & LN ASSN FLA	628724	801216	20.4	6.9	D	SM
NAP	NAPLES FED SVGS & LN ASSN FLA	628724	840103	.	.	K	FP
NCBC	NATIONAL COMMERCE BANCORP	635449	830404	3.5	33.6	K	FP
NCS	NATIONAL CONVENIENCE STORES	635570	831007	51.3	10.3	K	FP
NECT	NATIONAL ENVIRONMENTAL CONTROLS	635830	840206	1.0	21.4	K	FP
NFG	NATIONAL FUEL GAS CO N J	636180	850104	7.2	1.4	SEC	FP
NL	NATIONAL LEAD CO	629156	830321	30.9	1.0	D,K	FP
NPD	NATIONAL PATENT DEV CORP	637130	850430	10.2	1.2	SEC	AP
NEC	NATIONAL SYS CORP	635771	830425	44.5	12.4	K	FP
NSCO	NETWORK SYSTEMS CORPORATION	641217	840402	52.0	8.6	K	FP
NBSC	NEW BRUNSWICK SCIENTIFIC	642876	830428	20.1	27.0	K	FP
NWH	NEW HAMPSHIRE BALL BEARING	644596	830908	62.9	12.0	D,K	FP
NHSB	NEW HAMPSHIRE SAVINGS BANK	644670	840312	.	4.5	K	FP
NJNB	NEW JERSEY NATIONAL CORP	645865	850311	7.5	1.9	SEC	FP
NBL	NOBLE AFFILIATES INC	654894	840316	34.0	34.6	K	FP
NDSN	NORDSON CORPORATION	655663	840127	14.6	38.1	K	FP
NRRD	NORSTAN INC	656535	840709	3.7	12.9	K	FP
NTK	NORTEK INC	656559	840330	9.6	15.6	K	FP
NATL	NORTH ATLANTIC INDUSTRIES	657305	840615	10.4	22.8	K	FP
NESA	NORTHEAST SAVINGS, F.A.	.	840618	9.9	.	K	FP
NI	NORTHERN NAT GAS CO	460575	840227	52.0	1.2	K	FP
NOC	NORTHROP CORP	666807	850328	33.2	7.3	SEC	FP
NWNG	NORTHWEST NATURAL GAS COMPANY	667655	840409	14.3	0.6	K	FP
NWPS	NORTHWESTERN PUBLIC SERVICE CO	668231	850318	6.6	1.0	SEC	FP
NRT	NORTON CO	668605	840315	48.8	2.8	K	FP
NUGO	NUGGET OIL CORP	670518	820811	0.7	37.1	D	BSM
NDNCR	ODEN CORPORATION	.	840406	.	18.3	K	FP
OCAS	OHIO CASUALTY CORP	677240	830318	39.7	12.2	D,K	FP
OMT	OHIO SEALY MATTRESS MFG CO	677401	830302	16.4	43.1	D,K	FP
OKE	OKLAHOMA NAT GAS CO	682678	840210	31.2	2.0	K	FP
OLDR	OLD REPUBLIC INTERNATIONAL	680223	830425	46.2	9.9	K	FP
OSTN	OLD STONE CORPORATION	680293	830425	3.0	1.3	D,K	FP
OLN	OLIN MATHIESON CHEM CORP	680665	850319	60.1	4.8	SEC	CB
OMK	OMARK INDS INC	682063	830926	28.1	36.7	K	FP

OCQ	ONEIDA LTD	682505	831104	25.7	15.4	K	F
OHD	OVERHEAD DOOR CORP	690207	800402	23.9	10.5	D, K	F
OBOD	OWENS AND MINOR INC	690730	830329	12.6	21.6	D	S
OI	OWENS ILL GLASS CO	690768	830304	50.6	1.3	D	C
OI	OWENS ILL GLASS CO	690768	850306	50.7	1.0	SEC	S
OXCO	OXOCO	692066	830428	5.4	13.7	K	F
OZA	OZARK AIR LINES INC	692515	790416	3.4	23.5	K	F
PHH	P H H GROUP INC	693320	830711	47.1	1.3	D	C
PL	PACIFIC LMBR CO	694529	810105	34.5		D, K	F
PSA	PACIFIC SOUTHWEST AIRLS	693602	810410	41.4	17.9	D	F
PLL	PALL CORP	696429	791029	29.4	23.1	K	F
PI	PANDICK PRESS	698337	800916	15.8	18.2	D, K	F
PEL	PANHANDLE EASTN PIPE LINE CO	698462	830316	45.2	1.8	D, K	F
PON	PARADYNE CORP	699113	840328	50.7	2.8	K	F
PPC	PATRICK PETE CO	703347	800826	5.5	13.7	D	B
PCI	PAYLESS CASHWAYS INC	704378	850228	45.7	1.8	SEC	F
JCP	PENNEY J C INC	708160	850412	49.2	1.0	SEC	F
PENT	PENNSYLVANIA ENTERPRISES INC	708720	850503	6.3	3.6	SEC	F
PNL	PENRIL CORP	709352	831118	2.3	26.4	D, K	F
PNTA	PENTAIR INC	709631	810316	10.5	11.5	D	F
PEOP	PEOPLES BANKING CORPORATION	651084	830823	1.0	7.5	K	F
PCR	PERINI CORP	713839	830412	15.2	31.7	D	A
PDS	PERRY DRUG STORES INC	714611	830208	9.3	42.4	D	B
PTO	PETROLANE GAS SVC INC	716544	840110	31.9	2.5	D, K	F
PLIT	PETROLITE CORP	716723	840203	18.3	1.0	K	F
PETT	PETTIBONE	716769	840620	9.1	22.6	K	F
PSC	PHILADELPHIA SUBN CORP	718009	810424	33.1	2.8	D	B
P	PHILLIPS PETE CO	718507	840309	46.0	0.2	K	F
PIE	PIEDMONT AVIATION INC	720101	800317	9.9	7.4	D	S
PHYB	PIONEER HI BRED INTERNATIONAL INC	723686	811217	37.5	23.4	D	S
PNA	PIONEER NAT GAS CO	723645	830325	29.0	3.6	D, K	F
PBI	PITNEY BOWES INC	724479	840321	59.9	1.0	K	F
PPG	PITTSBURGH PLATE GLASS CO	693506	830307	50.8	1.0	D, K	F
PTIS	PLASMA-THERM INC	727900	850314	49.9	51.7	SEC	F
1827B	POCONO HOTEL CORP	730400	850415		13.6	SEC	F
PPP	POGO PRODUCING CO	730448	830321	33.9	4.1	K	F
PFBS	PONCE FEDERAL BANK		840419			K	F
PSI	PORTA SYS CORP	735647	810428	21.5	31.5	D	S
PCH	POTLATCH FORESTS INC	737628	840320	33.6	13.5	K	F
PPCO	PRAIRIE PRODUCING CO	739659	840406	23.2	37.2	K	F
PM	PRATT & LAMBERT INC	739732	850409	13.0	16.2	SEC	B
PCST	PRECISION CASTPARTS CORP	740189	830531	41.9	30.3	K	F
PRMO	PRIMO INC	741624	850214	14.0	20.8	SEC	A
PROP	PRODUCTION OPERATORS CORP	743080	850118	22.7	14.3	SEC	F
PROT	PROTECTIVE CORPORATION	743668	830415	57.9	10.9	D, K	F
PSNC	PUBLIC SERVICE CO OF N CAROLINA	744516	840330	5.1	2.1	K	F
PSNB	PUGET SOUND PWR & LT CO	745332	840323	13.1	9.6	K	F
PURD	PURDUE NATIONAL CORP	746166	850320		11.8	SEC	F
QCHM	QUAKER CHEMICAL CORP	747316	830328	23.3	19.6	D, K	F
OAT	QUAKER OATS CO	747402	831003	45.2	3.5	D	S
KSF	QUAKER ST OIL REFNG CORP	747419	790822	13.7	4.7	K	F
QUIX	QUIXOTE CORP	749056	841228	16.1	21.4	SEC	F
RAL	RALSTON PURINA CO	751277	831206	44.3	6.9	K	F
RMTK	RAMTEK CORP	751874	841130	32.9	10.7	SEC	F
RGO	RANGER OIL CDA LTD	752805	840315	35.6	2.5	K	F
RBC	RANSBURG CORP	753228	850311	35.0	3.1	SEC	F

II	RAYMOND INTL INC NJ	754721	830331	16.9	3.8	D.K	FP
TN	RAYTHEON CO	755111	850419	53.2	1.3	SEC	FP
CA	RCA	749285	840305	51.0	1.0	K	FP
B	READING & BATES OFFSHORE DRILL	755281	830331	29.1	4.0	K	FP
ELT	RELTRON CORPORATION	759529	840109	.	39.4	K	FP
EUT	REUTER, INC	761321	840403	11.5	9.3	K	FP
EV	REVLON INC	761525	850326	54.3	2.8	SEC	SM
XH	REXHAM CORP	761686	830321	37.1	5.1	D.K	FP
EYNA	REYNOLDS & REYNOLDS CO	761695	800111	18.8	53.3	D	BSM
AD	RITE AID CORP	767754	830525	56.2	10.7	D	FP
YB	RITTER INC	871140	850311	44.9	2.7	SEC	FP
HH	ROBERTSON H H CO	770553	840404	20.7	1.2	K	FP
HR	ROHR CORP	775422	841008	65.9	2.1	SEC	FP
EN	ROLLINS ENVIRONMENTAL SVCS INC	775709	841228	25.8	19.4	SEC	BSM
LC	POLLINS LEASING CORP	749901	041228	34.5	25.9	SEC	BSM
ON	RONSON CORP	776338	831007	3.9	8.7	D.K	FP
PCH	ROSPATCH CORP	778204	850403	4.5	9.9	SEC	FP
DR	RYDER SYS INC	783549	840326	81.4	1.8	K	FP
A	SAFEWAY STORES INC	786514	800407	30.6	1.0	D	BSM
NTA	SANTA BARBARA BANCORP	801233	850306	.	20.0	SEC	FP
OCR	SCAN-OPTICS, INC	805894	840419	19.0	4.5	K	FP
CHC	SCHERER R P CORP	806527	820630	23.9	10.8	D	BSM
GP	SCHERING CORP	806605	850311	55.4	0.6	SEC	FP
HLM	SCHULMAN A INC	808194	831111	26.4	19.9	D	FP
CND	SCIENTIFIC INDUSTRIES	808757	841115	.	25.6	SEC	FP
P	SCREW & BOLT CORP AMER	32037	840322	26.4	32.7	K	FP
CN	SEACO INC	811704	800508	24.9	30.6	K	FP
EWY	SEAWAY FOOD TOWN INC	812744	820104	6.3	32.5	D	BSM
NCO	SECOND NATIONAL CORP	813599	850322	1.2	11.8	SEC	FP
CC	SECURITY MTG INVS NEW	814131	850129	22.6	14.9	SEC	FP
ECNY	SECURITY NEW YORK STATE CORP	814797	830304	13.1	14.0	D	CB
AL	SELIGMAN & LATZ INC	816323	830318	11.2	13.7	K	FP
EME	SEMICON INC	816629	830930	4.7	26.4	K	FP
ACH	SERVICE MERCHANDISE INC	817587	830324	70.1	16.8	D	AP
VT	SERVOTRONICS INC	817732	840613	.	21.1	K	FP
33B	SHERBURNE CORP	823534	841018	.	36.2	SEC	FP
W	SHERWIN WILLIAMS CO	824348	830314	42.5	1.9	K	FP
ON	SHONEY'S INC	825039	850225	40.0	33.8	SEC	BSM
NS	SHONEY'S SOUTH INC	825041	850426	26.4	30.2	SEC	FP
OP	SHOPSMITH, INC	825098	830627	7.6	37.0	K	FP
P	SIMPLICITY PATTERN INC	828879	830420	5.8	38.7	D	AP
I	SMITH INDS INTL INC	832110	830331	41.8	3.6	D	CB
A	SNAP ON TOOLS CORP	833034	840328	43.9	2.9	K	FP
CI	SOCIETY CORPORATION	833663	840515	16.4	3.2	K	FP
B	SOLONY MOBIL OIL INC	607059	841231	35.6	0.4	SEC	FP
T	SONAT	835415	830326	45.1	1.0	D.K	FP
R	SOURCE CAP INC	836144	801007	1.0	1.0	D	SM
I	SOUTH JERSEY GAS CO	838518	830310	7.0	0.9	D.K	FP
L	SOUTH PENN OIL CO	709903	850312	43.6	3.6	SEC	CB
SL	SOUTHEASTERN SAVINGS & LOAN CO	841900	850501	.	10.9	SEC	FP
BN	SOUTHERN BANCORPORATION	842239	840321	4.4	15.3	K	FP
VR	SOVEREIGN CORP	846037	830412	10.8	6.4	D.K	FP
	SPERRY RAND CORP	848355	830624	60.2	1.0	D	CB
ER	SPERTI DRUG PRODUCTS INC	848374	850307	.	2.9	SEC	CB
B	SQUIBB BEECH NUT INC	852245	840330	55.9	2.0	K	FP
J	ST JOSEPH LT & PWR CO	790654	840410	7.3	0.7	K	FP

STNA	STARADYNE INC	852864	840309	23.5	1.0	K	FP
SMP	STANDARD NTR PRODS INC	853566	810420	4.4	15.7	D	SM
SN	STANDARD OIL CO IND	853700	850313	35.3	1.0	SEC	SM
SWK	STANLEY WKS	854615	830314	44.3	1.1	D	CB
SWK	STANLEY WKS	854615	840308	42.6	1.0	K	FP
STWB	STATEWIDE BANCORP	857658	840312	8.9	15.3	K	FP
STF	STAUFFER CHEM CO	857721	830318	60.9	0.4	D,K	FP
STY	STERLING DRUG INC	859264	850314	58.2	0.6	SEC	FP
SW	STONE & WEBSTER INC	861572	830325	9.6	4.4	D,K	FP
SHP	STOP & SHOP INC	862097	850418	53.7	13.6	SEC	FP
SUN	SUN OIL CO	866762	840403	41.2	3.6	K	FP
SFS	SUPER FOOD SVCS INC	867884	830216	7.1	8.3	D	BSM
SDI	SUPER MARKETS DISTR	784527	830811	6.0	43.2	K	FP
SEM	SYSTEMS ENGR & MFG CORP	872002	850108		40.2	SEC	FP
TCH	TECHAMERICA GROUP INC	878315	840516	9.5	25.9	K	FP
TO	TECHNICAL OPERATIONS INC	878289	820107	2.8	13.7	D	BSM
TSY	TECH SYM CORP	878308	830326	24.0		K	FP
TC	TELEX CORP	879573	840608	25.5		K	FP
TGT	TENNESSEE GAS TRANSMISSION C	880370	850325	40.8	1.0	SEC	FP
TNY	TENNEY ENGR INC	880625	840402	6.7	21.6	K	FP
TERDL	TERRYDALE REALTY TRUST		801217	1.0	26.5	D	SM
TX	TEXACO INC	881694	840416	29.4	1.0	K	FP
TET	TEXAS EASTN TRANSMISSION COR	882387	840309	48.4	1.0	K	FP
TXT	TEXTRON INC	883203	840319	37.4	1.0	K	FP
HD	THE HOME DEPOT	437076	840501	39.2	25.8	K	FP
PROG	THE PROGRESSIVE CORPORATION	743316	840316	28.1	23.1	K	FP
SUBN	THE SUMMIT BANCORPORATION	866008	840306	14.3	13.0	K	FP
WBBC	THE WEBB COMPANY	947415	850320	27.1	11.2	SEC	FP
TNEL	THOMAS NELSON	640376	840622	15.8	28.2	K	FP
JWT	THOMPSON J WALTER CO	466272		0.0		D	FP
TL	TIME INC	887224	831021	55.4	4.3	D	FP
TIX	TIMEPLEX INC	887350	801010	23.6	26.3	D	FP
TKR	TIMKEN ROLLER BEARING CO	887389	850301	45.0	21.9	SEC	SM
TOD	TODD SHIPYARDS CORP	889039	830615	23.9	7.4	K	FP
TTC	TORG CO	891092	831104	41.7	8.3	D,K	FP
TLX	TRANS LUX CORP	893247	840330	5.4	21.0	K	FP
E	TRANSCO COS INC	893532	830328	30.9	2.6	D,K	FP
TJCO	TRUS JOIST CORPORATION	898240	840402	36.0	34.6	K	FP
TCTY	TWIN CITY BARGE INC	901419	830330	22.5	34.3	D	FP
UNFI	UNIFI	904677	830913	46.8	8.4	K	FP
UNB	UNION BANCORP INC	904853	850226		19.1	SEC	FP
UCO	UNION CORP	906072	841113	11.2	5.9	SEC	FP
UMMC	UNION METAL MANUFACTURING CO	907056	800311	4.5	14.5	D	BS
UNP	UNION PAC CORP	907818	850307	49.0	0.3	SEC	FP
UTX	UNITED AIRCRAFT CORP	913017	830309	52.1	2.3	D,K	FP
UM	UNITED MED CORP	910844	840327	8.6	56.4	K	FP
USBC	UNITED STS BANCORP	911596	840309	39.6	1.6	K	FP
TNW	UNITED STS FGHT CO	894015	800327	22.1	2.5	D	BS
TNW	UNITED STS FGHT CO	894015	850322	57.3	1.4	SEC	AF
USI	UNITED STS INDS INC	912078	830318	34.7	2.9	D	SM
USR	UNITED STS SHOE CORP	912605	830422	60.8	4.5	D,K	FP
USR	UNITED STS SHOE CORP	912605	850422	57.3	5.7	SEC	SM
UBO	UNITED STS TOB CO	912775	840326	40.6	5.0	K	FP
USTC	UNITED STS TRUST CORP	912883	850312	50.2	2.6	SEC	FP
UTVI	UNITED TELEVISION INC	913066	820326	21.5	0.2	D	SM
UT	UNITED UTILS INC	913025	830321	48.4	0.3	D,K	FP

UWR	UNITED WATER RESOURCES INC	840404	9.0	1.9	K	FP
UNV	UNITEL VIDEO INC	913253	850107	12.6	29.3	SEC BSM
UCL	UNOCAL	915289	830326	32.9	0.6	D BSM
U	US AIR	911905	800331	10.9	1.5	D,K FP
USQ	USQ CORP	903293	850408	52.2	1.3	SEC AP
UTBN	UTAH BANCORPORATION	917331	850405	9.7	9.8	SEC FP
UVX	V W R UTD CORP	913353	831028	11.2	16.7	D,K FP
VR	VALLEY RES INC	920062	841114	7.8	1.9	SEC FP
VDC	VAN DORN CO	921033	840328	11.2	13.0	K FP
VBND	VELO-BIND INCORPORATED	922575	840430	25.0	36.7	K FP
VAC	VERMONT AMERN CORP	924138	810325	10.5	47.1	D SM
VIA	VIACOM INTL INC	925526	830316	56.7	3.5	K FP
VME	VULCAN MATLS CO	929160	840322	55.5	12.0	K FP
WAG	WALGREEN CO	931422	831205	40.6	3.8	D,K FP
WRD	WARDS INC	934136	840524		14.1	K FP
WRC	WARNER BROS CO	934391	840327	56.8	3.1	K FP
WECO	WASHINGTON ENERGY COMPANY	938815	840112	7.1	0.5	K FP
WNT	WASHINGTON NATL CORP	939339	800328	14.2	20.5	K FP
WRE	WASHINGTON REAL EST INVT TR	939653	820521	3.2	5.2	D SM
WSAU	WAUSAU PAPER MILLS COMPANY	943317	841119	2.0	30.4	SEC FP
WVTK	WAVETEK CORP	944020	820106	16.3	29.1	D SM
WDFC	WD-40 COMPANY	929236	841101	17.7	23.7	SEC FP
WII	WEATHERFORD INTL INC	947076	830426	16.7	17.8	D,K FP
WST	WEST INC	953348	830405	19.3	34.8	K FP
W	WEST VA PULP & PAPER CO	961548	840103	45.6		K FP
WFSB	WESTCHESTER FINANCIAL SERVICES CO	957378	841019	38.6	2.5	SEC FP
WTC	WESTCOAST TRANSMISSION LTD	957518	850328	2.0	1.0	SEC AP
WSN	WESTERN CO NORTH AMER	958043	830323	12.5	14.0	D,K FP
WHX	WHEELING STL CORP	963150	830321	50.9	3.7	D AP
WHITN	WHITNEY HOLDING CORPORATION	966612	840116		20.1	K FP
WQ	WILLCOX & GIBBS INC	969207	830405	1.3	19.6	D,K FP
WDMR	WINDMERE CORPORATION	973411	840401	11.9	7.4	K FP
WDS	WINDSOR INDUSTRIES INC	973625	830504	0.0	67.1	D AP
WIT	WITCO CHEM INC	977385	830325	37.5	8.8	D,K FP
WOM	WOMETCO ENTERPRISES INC	978165	830322	21.4	33.0	D,K FP
FWO	WYOMING BANCORPORATION	337607	850408	18.0	23.6	SEC FP
YELL	YELLOW FREIGHT SYSTEM	985514	830311	0.0	20.1	D,K FP
ZY	ZAYRE CORP	989195	830503	65.0	12.5	D,K FP
ZRO	ZERO MFG CO	989484	840621	27.7	10.4	K FP

TICK = ticker symbol.

INST HOLD = institutional ownership in percent

INS HOLD = insider (director and officer) ownership in percent

RC = source identifying antitakeover amendment (D = Drexel Burnham Lambert; K = Kidder, Peabody & Co.; SEC = Securities and Exchange Commission).

TYPE = type of amendment (AP = authorized preferred, BSM = supermajority with board out, CB = classified board, FP = fair price, SM = supermajority).

= missing value.

APPENDIX B

INSUFFICIENT DATA IN PREDICTION PERIOD

AUTHORIZED PREFERRED

USG CORP

SUPERMAJORITY WITH BOARD OUT

CONTINENTAL COPPER & STL INDS
KELLY SERVICES INC
MINNETONKA INC
MORAN ENERGY INC

FAIR PRICE

AMERIWEST FINANCIAL CORPORATION
BANGOR PUNTA ALEGRE SUGAR CORP
DIAMOND NATL CORP
ENERGY EXCHANGE CORP
FIRST WESTN FINL CORP
H.B. FULLER CO
HART SCHAFFNER & MARX
HORIZON RESEARCH
OZARK AIR LINES INC
PANDICK PRESS
PENTAIR INC
PLASMA-THERM INC
RANGER OIL CDA LTD
RELTRON CORPORATION

PURE SUPERMAJORITY

LACLEDE STEEL CO
LINCOLN TELECOMMUNICATIONS CO
PORTA SYS CORP

NO REGRESSION RUN

AUTHORIZED PREFERRED

WINDSOR INDUSTRIES INC

FAIR PRICE

BANKNORTH GROUP
BMC INDUSTRIES INC
JOSEPH DIXON CRUCIBLE CO
MULTNOMAH KENNEL CLUB
SCIENTIFIC INDUSTRIES

RETURN SET EQUAL TO ZERO ON DAYS AROUND TAPE ERRORS OR CONFOUNDING EVENTS

SUPERMAJORITY WITH BOARD OUT

ARDEN GROUP INC
DANKER LABS INC
METHODE ELECTRONICS INC
PHILADELPHIA SUBN CORP
SCHERER R P CORP

TRADE HALTED 5/5/80
VOL 20X AVG., RET UP 30% 2/1/80
ISL DIDN'T ADJ FOR SS 9/24/82
ERRORS IN ISL TAPE
TENDER OFFER ANNOUNCED 7/20/82

CLASSIFIED BOARD

SECURITY NEW YORK STATE CORP

ISL DIDN'T ADJ FOR SS 4/4/83

FAIR PRICE

CORNING GLASS WKS
DE LUXE CHECK PRINTERS INC
DORCHESTER GAS CORP
GERBER PRODS CO
MCI COMMUNICATIONS
ZAYRE CORP

ISL DIDN'T ADJ FOR SS 2/13/85
ISL DIDN'T ADJ FOR SS 3/15/85
LBO ANNOUNCED 11/28/83
ISL DIDN'T ADJ FOR SS 7/5/84
ERRORS IN ISL TAPE
ERRORS IN ISL TAPE

PURE SUPERMAJORITY

BASE TEN SYSTEMS INC

ISL DIDN'T ADJ FOR SS 12/8/80

LOST AFTER THE TAPE JOB

AUTHORIZED PREFERRED

AMERICAN UNDERWRITERS GROUP
FUQUA INDUSTRIES INC

SUPERMAJORITY WITH BOARD OUT

CALUMET INDUSTRIES INC
FREMONT GENERAL CORP
GF CORP
LASER PRECISION CORP
UNOCAL

CLASSIFIED BOARD

BERG ENTERPRISES INC

FAIR PRICE

ALLIED TEL CO
AMBANC CORP
ANCHOR HOCKING GLASS CORP
ANR COMPANY
BENEFICIAL CORP
CNB BANCSHARES
COLONIAL GAS COMPANY
COMTECH GROUP INTERNATIONAL LTD
CONNECTICUT ENERGY CORP
CONSOLIDATED TOMOKA LAND CO
CREDO PETROLEUM CORPORATION
DCB CORP
DI GIORGIO FRUIT CORP
ENERGY METHODS CORPORATION
EQUITY OIL COMPANY
FAIRFIELD COMMUNITIES INC
FIGGIE INTERNATIONAL
FIRST AMERICAN CORP
FIRST GLEN BANCORP
FIRST WESTN FINL CORP
FIRSTTIER INC
FLORIDA WESTCOAST BANK INC
GAB BANCORP
GODDARD INDUSTRIES
GOULD INC
GREYHOUND CORP
HECLA MNG CO
HILTON HOTELS CORP
HON INDUSTRIES
LEASEWAY TRANSN CORP
MODINE MANUFACTURING COMPANY
OHIO SEALY MATTRESS MFG CO
PALL CORP

PEOPLES BANKING CORPORATION
POCONO HOTEL CORP
PURDUE NATIONAL CORP
RCA
SANTA BARBARA BANCORP
SEACO INC
SECOND NATIONAL CORP
SHERBURNE CORP
SOCIETY CORPORATION
SONAT
SOUTHEASTERN SAVINGS & LOAN CO
TECH SYM CORP
THE PROGRESSIVE CORPORATION
UNION BANCORP INC
US AIR
UTAH BANCORPORATION
WHITNEY HOLDING CORPORATION
WINDMERE CORPORATION

PURE SUPERMAJORITY

CHAMPION RESERVE CORP
EATON CORP
FEDERAL RLTY INVT TR

A Study

by

The Office of the Chief Economist
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

March 5, 1986

The Economics of Poison Pills

The views expressed herein are those of the Office of the Chief Economist only. The Commission has expressed no view on this study.

THE ECONOMICS OF POISON PILLS

PERSONS TO

CONTACT : Gregg A. Jarrell - 272-7104
John Pound - 272-7147

INTRODUCTION

One of the most popular recent innovations in takeover defenses has been the so called "poison pill" defense. Although the form and potency of "poison pill" defenses have varied, they have all been designed to deter non-negotiated takeovers. Many experts have reacted with alarm, declaring the poison invincible. This view implies that the unilateral creation of a poison pill by a board could lead to managerial entrenchment that harms shareholders. Other experts (including its inventors) downplay the pill's deterrence effect, noting that negotiated "white-knight" deals are the usual outcome of these hostile battles. They also point out that hostile suitors can still use open market purchases to end-run some pills, and proxy fights or conditional tender offers are available to counter other pills.

This release offers a more thorough investigation of poison pills. We find that although all pills have not been invincible, their adoption has not been well received by the

capital markets. Announcements of poison pill plans in the midst of takeover speculation have resulted in on average 2.4 percent net of market price declines for firms adopting the plans. The stock-returns evidence suggests that the effect of poison pills to deter prospective hostile takeover bids outweighs the beneficial effects that come from increased bargaining leverage of the target management.

This empirical evidence will be reviewed in Section III. First, however, a description of the four different generations of poison pill plans that have evolved since June of 1983 is given in Section I. Section II gives a brief analysis of the economics of the most popular and most recently employed plans and suggests what might be learned from an examination of stock returns upon the announcement of such plans. After presenting the evidence in Section III, we present our conclusions in Section IV.

Section I: Poison Pill Plans Described

Poison Pill plans have gotten their names because it has been asserted that if a particular shareholder of a firm takes a particular set of actions (e.g. merging a firms assets, crossing a particular shareholding limit, etc. . .), the economic repercussions will be so severe that it will be as if the shareholder has swallowed a "poison pill." Depending upon the plan, the shareholder may be forced to forego distributions of firm assets that are available to other shareholders, to sell

marketable securities to other shareholders at prices well below true market value, or be given lesser voting rights on his or her shares than other shareholders if he or she takes the above mentioned actions. Management claims that such plans are created so as to maximize their bargaining power with large shareholders who they say are trying to acquire the firm's assets at prices below true value via such allegedly coercive tactics as two-tier tender offers that put small shareholders in a prisoner's dilemma situation. Critics say that management is merely attempting to entrench themselves in their positions via unilateral adoption of poison pill plans. Below is a summary of plans that have been dubbed poison pill plans.

A. ORIGINAL PLANS

The original plans first introduced by Lenox in June of 1983 essentially resembled fair price amendments. In these plans a pro-rata dividend of preferred stock convertible into common stock was issued to shareholders. The holders were entitled to redeem the share for cash if an outside party acquired a substantial holding (for instance 40 percent) with the redemption price being the highest price that party paid for the firm's common or preferred in the preceeding year. In the event of a merger, preferred holders could convert the preferred into voting securities of the

acquirer with value at least equal to the highest price paid by the acquirer for common or preferred shares in the preceeding years.

Note that two-tier tender offers are possible by buying the bulk of the preferred and half the common. The remaining common could then be "frozen out." Since few formal merger offers are explicit two-tier offers,^{1/} these plans were not terribly restrictive. No such plan has been installed since 1983. This may be because three of four firms that employed them were eventually taken over.

B. FLIPOVER PLANS

Flipover plans generally issue a right to shareholders to acquire one share of common at an exercise price far below market value. The rights are evidenced by the stock certificates of the firm. Typically, they cannot be exercised, but can be redeemed by the firm, until 20 percent of the firm is acquired by an outside party or until an outside party makes a tender offer for at least 30 percent of the firm's shares. At this time the pill is triggered and redemption is no longer possible. If a merger or substantial sale of assets should occur, then the rights can be presented to the acquiring party and the holder can purchase a fixed dollar amount of the securities of the acquiring

^{1/} See Office of Chief Economist (1985).

firm at a price far below (usually half) the market price. The rights may also become exercised on favorable terms if a large shareholder engages in "self dealing" as defined in the rights agreement. In this case the large shareholder's rights become void and he suffers substantial dilution.

Despite these plans, a hostile bidder can acquire control of a firm with a creeping acquisition strategy as did Sir James Goldsmith in taking control of Crown Zellerbach. Depending upon the plan, however, the options available to the acquirer may be significantly constrained.^{2/} A merger can still be forced if a substantial number of the rights are acquired. Given the potential value of the rights, however, it may be difficult, if not impossible, to get shareholders to tender their rights at an affordable price.^{3/} Assuming 90 percent of the rights are acquired, however, for our sample of flipover plans, we estimate that the bidder would have to pay premiums of between 18 and 36 percent of the targets market value to accomodate the exercise of the remaining 10 percent of the rights. This is a serious deterrent.

^{2/} Goldsmith acquired over 50 percent of Crown Zellerbach's shares open market and took control of the board of directors. He was able to negotiate the sale of most of Zellerbach's assets, because the Zellerbach plan did not prohibit such sales. Subsequent plans have not allowed such sales.

^{3/} See Bradley (1981) for a discussion of the free rider problem in tender offers.

C. BACK-END PLANS

Back-end plans typically give shareholders a right to tender their common shares for a package of securities in excess of the current market value of the target's common stock, if a shareholder exceeds a certain shareholding limit (30 to 50 percent). These premiums range from 15.7 to 358.3 percent with a median value of 33.3 percent for the 10 firms surveyed here.^{4/} In these situations the large shareholder is not allowed to tender his shares. In some plans, the holders may not need to tender their shares but may exercise rights that allow them to receive the stipulated back end price less the average price paid for the firm's securities by the large shareholder. Plans may also be triggered at lower percentage holdings if there is a change in board composition.

These plans make it virtually impossible for a bidder to acquire a firm at less than the stipulated price that management has set. Since this price is often 30 percent above a current market price that already incorporates a potential control premium, hostile takeovers are often impossible. These plans are more restrictive than flipovers because they do not allow a creeping acquisition strategy such as the one employed by James Goldsmith. If triggered they result in a situation analogous to the discriminatory offer that forced T. Boone Pickens to give up his pursuit of Unocal.

^{4/} Premiums are calculated by dividing the back end price by the market price the day of pill adoption and subtracting one

D. VOTING PLANS

Voting plans generally begin with the issuance of a pro-rata dividend of preferred stock with superior voting rights to current holders of common stock. If a substantial shareholder should cross a specified level, the votes associated with his preferred holdings are considerably lower vis-a-vis the votes of other shareholders. Since votes are required in proxy contests and merger approvals, this is a potent weapon. Due to its discriminatory nature, however, two of three such plans have been ruled illegal by the courts.

Section II: The Economics of the Pill

Due to problems of legality and effectiveness, the original poison pill plans and the voting plans have been rare of late and may well be extinct. This leaves the flipover and back-end plans. These plans can stop an acquirer with alarmingly high probability if they are written stringently enough and if attention is paid to closing all potential loopholes.^{5/}

While flipover plans are subject to creeping acquisition takeovers, provisions that allow all shareholders, but the large blockholder, to exercise their rights upon changes in board

^{5/} See Corporate Control Alert (December 1985) for a description of how Newell defeated the Wm. Wright back-end plan due to an unforeseen loophole in the plan.

composition, asset sales, etc. . . . may serve to turn these plans into back-end plans with less sensitive triggers. Of course, accumulation of shares may be futile if any effective action is ruled out by the pills provisions.

The key to the restrictiveness of these plans is to set the back-end prices high enough so that:

- (a) No acquirer can afford to allow exercise to occur.
- (b) No shareholder would be willing to tender his or her rights or shares at a "reasonable price," because holding out for the back-end is too lucrative.

Of course, delaying a potential bid may have its benefits. Management may be able to cut a better deal for shareholders than shareholders can get for themselves. The pill allows them time to seek out white knights or put together a higher bid themselves. Of course, management could just tell shareholders not to tender until management has an opportunity to shop for higher bids. If shareholders agree that they can get a better price, they will not tender. If they disagree, they can get what they perceive to be the best price possible - the tender price. Some might object that shareholders will be coerced by partial tender offers or explicit two-tier tender offers. The threat of such coercion may be blunted, however, by adoption of fair price amendments that are put to shareholder vote. It would seem that poison pills, especially back-end plans, go well beyond protecting against two-tier tender offers.

Nevertheless, the question of whether poison pill defenses aid or harm shareholders can be empirically addressed. Introduction of pills that are designed to entrench management should result in stock price declines. If poison pill plans help management negotiate better deals for shareholders then prices should go up upon the announcement of such plans.

Section III. Empirical Evidence on Poison Pills

As of December 31, 1985, the Office of the Chief Economist had collected a sample of 37 firms that had introduced poison pill amendments. To the best of our knowledge, this sample is an exhaustive collection of all poison pill plans introduced as of the above date. Table 2 gives a summary of the plans introduced on a firm by firm basis. For each firm, a summary of pertinent facts about the plan and about subsequent events involving the firm is given.

Note that of the 37 firms listed, 10 have experienced a change in control and another, Amsted, has proposed a leveraged buyout. Of these ten, five negotiated takeover bidding while the plan was in effect (Revlon, Cluett Peabody, Great Lakes, International, Lenox, and Enstar), two experienced change of control via creeping acquisitions (Crown Zellerbach and William Wright), two were acquired after their plans were ruled discriminatory and therefore illegal (AMF and Richardson Vicks) and finally Superior

Oil was acquired some time after it withdrew its pill due to a threatened lawsuit and proxy fight by its largest holder Howard Keck. Four of the five mergers negotiated under the plan involved the redemption of the rights specified under the pill plan. Ironically, the Enstar plan was circumvented in facilitating a friendly two-tier bid in which the blended premium fell below a hostile competitive bid. The other takeover negotiated under the plan was Itel's acquisition of Great Lakes International. In this case, there was no need for pill redemption since Itel met Great Lakes International's specified back-end price.

Thus, it would seem that to date, the poison pill has aided management in negotiating higher bids in four cases. On the other hand the pill seems to have lent a definite helping hand in defeating bids for Phillips Petroleum, Unocal, and Michigan National.^{6/} It may well have deterred other acquisition plans, such as John Moran's proposed leveraged buyout of Household International.

So, there appears to be evidence of harm and benefit, but we are interested in the cost-benefit of the typical poison pill proposal.

^{6/} Phillips defeated Carl Icahn's bid with the aid of a back-end plan. Comerica dropped acquisition plans for Michigan National on announcement of their back-end plan. Unocal rid itself of T. Boone Pickens by effectively triggering their pill at a lower level of shareholdings than previously proposed. Their discriminatory self tender led Pickens to give up his pursuit of the firm.

Table 1 presents the average net-of-market stock return in the two-day period around public announcement of these poison pills. Ideally, the stock return summarizes the market's view of the net effect of the pill -- balancing for the typical case the possible benefits from the target management's added negotiating leverage against the potential costs of "entrenched" management preventing lucrative buy-outs. In practice, the stock returns are impure because these pills are usually instituted during hostile control battles, during which time target stock returns become unusually volatile. This forces us to use a relatively short two-day "event window" to measure the effects on stock price larger windows would admit many other important events that mask the independent effects of the pill. Aggregation over a large sample would eliminate most of the remaining irrelevant, case-specific aberrations in returns. Because our sample of 37 cases is relatively small, aggregation is imperfect.

As Table 1 shows, the two-day, net-of-market stock return averaged over all 37 firms is negative 0.93 percent. This negative effect is not statistically significant. But, this sample contains five cases with confounding events (usually bid increases) that occurred during the two-day window. Notice that Bell & Howell, Revlon, and City Federal Financial in Table 2 each have positive net-of-market returns between three and seven percent. Excluding

these five unusual cases leaves 32 poison pills, with an average net-of-market return of negative 1.42 percent (Table 1, second line). This result is statistically significant at the 95 percent confidence level.

Our research reveals that twelve poison pills were initiated by firms that were not the subject of serious takeover speculation. We conjecture that these cases may induce smaller effects on stock price because there should be a lower "expected" control premium built into their stock prices. Additionally, announcement of a pill plan in these cases may be "good news" in the sense that it may indicate that the firm is or soon will be an acquisition target. Excluding these twelve "non-targets" and the five cases having confounding events leaves 20 poison pills for firms subject to significant takeover speculation. For these 20 firms, the average net-of-market stock return is negative 2.39 percent. This result is highly significant.

The twelve non-targets have an average net-of-market stock return of .10 percent. This result is not significantly different from zero.

Interestingly, of the four firms that used the pill to solicit and accept the highest bid possible, Great Lakes International, Lenox, Cluett Peabody and Revlon, the average

net-of-market return was a positive 1.69 percent. Of the four who have seemingly used the pill to kill bids, Michigan National, Unocal, Phillips Petroleum, and Household International, the average net of market return was a negative 4.06 percent. While the sample sizes are certainly scant, the evidence suggests that the market has some discriminatory power in ascertaining which pills will be used in a more abusive fashion than others.

Section IV. Summary and Conclusions

In sum, the narrow two-day event window reveals that the market considers the typical poison pill to be significantly harmful to shareholder welfare when takeover speculation is present. The most damaging cases according to our methodology appear to be Michigan National, Superior Oil, Southwest Forests, Owens Illinois, Enstar, and Unocal. The average net-of-market return is about negative 2.4 percent, which is statistically significant. This result is strong enough to reject the argument that poison pills typically benefit target shareholders. The magnitude of the negative effect, however, is inconsistent with viewing poison pills as guaranteeing a target firm's independence. In fact, many of these 37 targets have been acquired. The market reaction suggests it expects target boards will be reluctant to use the "invincible" poison pill as an absolute defense, or the market expects determined bidders or the courts to defeat some of these pills.

What future course the evolution of the poison pill plans will take should be an item of great interest to those involved in the area of corporate control. This will in large part be determined by the response of state legislatures such as Delaware and by the response of state and federal courts. Currently, the increased use of restrictive flipover plans and discriminatory back-end plans seems to auger the oncoming of tougher pill plans. If this trend continues, but it would seem that such plans may run into eventual resistance via the proxy mechanism. If this is to be the case, proxy fights will have to be led by those with shareholdings of less than 20 percent to avoid triggering certain undersirable aspects of rights plans. This may be possible if third parties can create dissatisfaction amongst shareholders by making tender offers conditional on pill redemption. If shareholders feel that management has cost them hefty premiums by foregoing hostile tender offers, management may find itself foregone by angry shareholders.

Finally, a simple glance at target returns upon announcement of poison pill plans is not sufficient to judge right and wrong in a public policy context. Even if poison pills are used to elicit higher bids from an acquirer, this may not be desirable from an economic efficiency or fairness perspective. If acquirers are to realize returns on the information they generate,

they must be able to make some profit (capital gain) on the shares of a corporation they acquire. The introduction of poison pill rights plans may make this more difficult for acquirers. Fears that such plans will be "sprung" on acquirers may make investment in valuable takeover information less attractive than is socially optimal. In addition to this being economically inefficient, to many the expropriation of property rights to information may also seem unfair. We submit, of course, that fairness is in the eye of the beholder.

Table 1

Net-of-Market Stock Returns over Day of and
Day Before the Wall Street Journal Announcement
of Poison Pill Adoption

<u>Sample Description</u>	<u>Average Two-^{1/} Day Net-of-Market Stock Return</u>	<u>t-test of Statistical Significance</u>
All 37 firms	- 0.93%	-1.78
32 firms having no confounding ^{2/} events.	- 1.46%	-2.87
25 firms subject to ^{3/} takeover speculation.	- 1.42%	-2.00
20 firms subject to takeover speculation having no confounding events.	- 2.39%	-3.60
12 firms with no takeover speculation.	.10%	.18

1/ 2 day return calculated by subtracting 2 day return
on NYSE composite index from 2 day announcement
return of firm.

2/ Confounding event defined as one if the following
occurring during announcement window:

- (a) Potential acquirer/bidder has made or
increased bid (Revlon, Phillips);
- (b) potential acquirer's appearance noted
(Jerrico, Bell & Howell); and
- (c) potential acquirer has significantly
increased bid (City Fed. Financial).

3/ Takeover speculation defined as:

- (a) Potential or actual bidder publicly
noted at time of announcement; and/or
- (b) takeover rumors accompanied by a price
run-up of 10% net of market in two
months prior to announcement.

Firm	WSJ Date	of-Market Stock Return (%)	Specula- tion		Confound- ing		Original		Flip- Over		Back- End		Voting Plans		Longer Inde- pendent		Illegal or with- draw	
			Present	x	Event	x	Plans	x	Plans	x	Plans	x	Plans	x	x	x	x	(w)
Lenox	6/16/83	-2.84																
Bell & Howell	7/18/83	7.14	x		x		x											
Enstar	8/16/83	-4.20	x				x								x		x (w)	
Superior Oil	11/25/83	-6.10	x				x								x		x (w)	
Household Interna- tional	8/15/84	-2.00											x					
Colgate Palmolive	10/15/84	-2.73	x										x					
Crown Zellerbach	7/20/84	1.19											x					
Owens Illinois	9/12/84	-4.86	x										x					
General Host	2/21/85	-1.83											x					
Interco	9/25/85	-3.40											x					
RCA	9/10/85	0.39											x				x (w)	
Johnson Controls	11/19/84	-2.04	x										x					
Southwest Forests	10/23/84	-4.47	x										x					
Tandem Computers	5/20/85	2.93											x					
Rorer Group	2/8/85	-2.77	x															
Morton																		

Table 2 (cont'd)

Firm	WSJ Date	Two-Day Net- of-Market Stock Return (%)	Poison Takeover Specula- tion Present	Pill Sample Confound- ing Event	Original Plans	Flip- Over Plans	Back- End Plans	Voting Plans	Firm no Longer Inde- pendent x*	Pill Ruled Illegal or With- draw
Amsted	5/31/85	0.30	x			x				
Dart & Kraft	9/6/85	0.99				x				
McDonald	9/16/85	-0.23				x				
Wainaco Oil	2/22/85	2.56	x			x				
Cluett Peabody	8/16/85	3.33	x				x		x	x (w)
Great Lakes Inter- national	5/24/85	1.49	x				x		x	
Revlon	8/20/85	3.10	x	x			x		x	x (w)
Phillips	2/8/85	-0.56	x	x			x			
Unocal	4/17/85	-4.65	x				x			
AMF	5/10/85	-1.41	x				x		x	x (I)
William Wright	9/24/85	-1.95	x				x		x	
Jerrico	10/22/85	-0.47	x	x			x			
Michigan National	7/11/85	-9.03	x				x			
Asarco	4/9/85	-2.77	x					x		x (I)
City Fed. Financial	7/22/85	2.97	x	x				x		

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Table 2 (cont'd)

Firm	WSJ Date	Two-Day Two-Day Net- of-Market Stock Return (%)	Poison Pill Sample				Flip- Over Plans	Back- End Plans	Voting Plans	Firm no Longer Inde- pendent	Pill Ruled Illegal or With- draw
			Takeover Specula- tion Present	Confound- ing Event	Original Plans						
Green Tree Acceptance	10/11/85	0.45	x				x				
Eaton Corp.	9/30/85	0.361					x				
Bard, C.R.	10/10/85	-1.22					x				
Schering Plough	11/12/85	1.32					x				
UNC Resources	10/30/85	-2.46	x					x			

*Amstead has preliminarily proposed a leveraged buyout.

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