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Corporations

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3. Vertical effects of the merger.
4. Competitive advantages of the merging firms.
5. Prior acquisitions by the merging firms.

A separate section is devoted to the failing company defense.

The value of Professor Bok's article rests upon his successful attempt to fuse law and economic theory in order to achieve an intelligible standard with which to construe Section 7 of the Clayton Act.

THEODORE C. REGNANTE

CORPORATIONS

DUTIES OF DISCLOSURE OF CORPORATE INSIDERS WHO PURCHASE SHARES, by Michael Conant, 46 Cornell L.Q. 53 (Fall 1960).

Professor Conant examines the question of whether a corporate officer or director who purchases outstanding shares in his firm has an affirmative fiduciary duty of disclosure to the selling shareholder. The factual basis of the corporate insiders fiduciary duties to his corporation and the arguments for extending the duty of disclosure to the individual shareholder are discussed and analyzed, as is the impact of Federal legislation in this area. Specific legislation is recommended since the traditional remedies of the courts will not suffice to solve the problem.

The majority of decisions have held that there is no fiduciary duty upon the insider to make affirmative disclosures to individual shareholders of facts which may affect the value of the stock, obtained by virtue of his position with the company, in the absence of actual fraud. Since the insider is not dealing with the corpus of his trust, the corporate management, property and business opportunities, the courts see no reason for extending the fiduciary duty to the individual shareholder. The law of fraud demands honest and complete answers to questions asked by the seller, but the burden of disclosing the facts should not rest on the insider absent inquiry.

The minority-rule courts hold that the insider is a fiduciary of each individual stockholder and must disclose all material or special circumstances within his knowledge that might have a bearing on the value of the stock, and are not readily available in the corporations books or financial reports. Most of the cases decided by these courts could have been founded on common law fraud or a duty of trust arising from another source. The author maintains that insiders should be held to account to the corporation for all profit gained through use of corporate information but that this remedy cannot be extended to the individual shareholder on a theory sounding in trust.

Section 16B of the Securities Exchange Act of 1934 bolsters the author's contention that the fiduciary duty of the corporate insider is owed to the

corporation and not to the shareholder with whom he is dealing. However, this section is limited in scope in that it is aimed at the short-swing speculation of insiders owning ten percent of the firms stock, provided such stock appears on a national exchange. The rigid objective standards of this statute may enable insiders to make gifts of inside information to outsiders and under the statute not become liable to the corporation for the profit made by the donees of the information. Judicial interpretation of SEC Rule X-10B-5 seems to impose a fiduciary obligation on the insider to disclose all material facts, and the courts consistently imply a civil remedy although such is not provided for by the express language of the statute.

Mr. Conant concludes that both federal and state courts have established a trend toward extending the fiduciary duty of disclosure, but that the reasons given for such extensions are not valid when based on traditional trust concepts. Due to the fact that an exceptional opportunity for security manipulation exists in these transactions, they should be controlled by state and federal statutes aimed at the specific problem, rather than relying on present remedies.

LAWRENCE A. KLINGER

LABOR LAW

INVESTIGATIONS UNDER LANDRUM-GRIFFIN, by Stanley M. Rosenblum and Merle L. Silverstein, 49 Geo. L.J. 257 (Winter 1960).

Two Missouri lawyers in reiterating the substance of a paper presented before the National Conference of Teamster Lawyers examine the untested investigatory provisions contained in the Labor-Management Reporting and Disclosure Act of 1959. Deeming Landrum-Griffin a statute wanting in clarity, the authors assay the rights given to those subject to investigation under it.

Grasping the gauntlet of those who would cede to the Secretary of Labor independent investigatory powers under Section 206, the writers argue that the ability of the Secretary to investigate under Landrum-Griffin derives from Section 601. Proof of this, they say, lies in the legislative history of Section 206, the treatment of its prototype in the Fair Labor Standards Act, and in its plain wording.

They contend that the legislative history makes it clear that Section 601 confers upon the Secretary the same powers given him in the Fair Labor Standards Act. Arguing analogically from the judicial treatment of the latter statute, the writers foreclose any exercise of the Secretary's investigatory powers under 601(a) without the use of subpoena. And while 601(a) would seem to grant a right of access to documents without subpoena, the right granted is so limited as to affect only those employers who are being investigated under Landrum-Griffin. Labor, therefore, needn't be too concerned about this provision.