

## Hostile Takeover Insurance?

by Robert W. Wood • San Francisco

Since in this issue we cover the important *Dana Corp.* case (see Muntean, "Dana Says: *INDOPCO* Benefits the Taxpayer", this issue at p. 1), it seems only appropriate to report on another development in the takeover expense arena. This time, it is takeover insurance, the premiums for which would seem to be above tax scrutiny. As reported in the July 1997 issue of *The Economist* (the article was suitably captioned "Gekko Insurance,") after the role Michael Douglas made famous in the movie "Wall Street," the insurance is to be available from one of Wall Street's biggest investment banks. Large corporate clients must be able to insure themselves against the risk that they will ever be forced to seek takeover advice.

Interestingly, as reported by *The Economist*, this product originally belonged to TOI, a small British company that has been selling takeover insurance to British companies since 1990. Although TOI has evidently refused to release the identity of its roughly 70 publicly quoted British clients, most are apparently relatively small companies that would be devastated by the cost of fending off a takeover.

TOI guesses that a company with a market capitalization of say, £30 million, could expect to pay out approximately £500,000 to investment bankers, lawyers and public relations consultants during a successful defense against a hostile takeover bid. To provide insurance against such fees, TOI evidently charges annual premiums ranging from 3.5% to 6% of the amount covered. The variation in the premium rate is determined according to the probability that a company will face a hostile bid. Apparently TOI employs a handful of number crunchers that use various measuring sticks to judge this risk, including the company's market share, the sector in which it operates, the percentage of shares held by management, the names of investors, etc.

### Go Gekko

As reported by *The Economist*, TOI now hopes to expand across the pond, allowing investment banks to sell its insurance policies under their own names. TOI may even want to float itself on the U.S. NASDAQ stock market. (Wouldn't it be curious if it did so and

then TOI were the target of a hostile takeover?)

Such musings aside, it seems this is yet another niche whose time has come. Of course, if peripatetic critics like *Tax Notes'* Lee Sheppard can be believed (consider her recent piece, "Will There Ever Be Another Friendly Takeover?", *Tax Notes*, July 28, 1997, p. 461), then maybe there will be some line-drawing in the insurance industry—even if Sheppard thinks it is too late for line-drawing when it comes to deductibility! Lee Sheppard's words do seem a bit ridiculous that: "Now that the Seventh Circuit has spoken, all tender offers will be hostile, and Chief Executives will have to take acting lessons from Hulk Hogan." If there is any symbiosis between professional wrestling and reporting on tax cases, it seems (to me anyway) that Lee Sheppard is the principal champion. (For another attack on the Seventh Circuit's *Staley* decision, see Johnson, "Snarling for the Cameras: Hostility and Takeover Expense Deductions," *Tax Notes*, August 4, 1997, p. 689.) ■

### THE M&A TAX REPORT

Yes! Enter my subscription to *The M&A Tax Report* at the price of only \$375 for twelve full issues, including postage and handling charges. I enclose full payment by check or credit card. For Mastercard and Visa orders, enter card information below or call (800) 852-5515. Full money-back guarantee applies to unused part of subscription.

Yes! Enter my subscription for \$375 and bill me.

Name \_\_\_\_\_

Title \_\_\_\_\_

Firm \_\_\_\_\_

Street \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Telephone (\_\_\_\_) \_\_\_\_\_

#### For Credit Card Orders:

Mastercard # \_\_\_\_\_ Exp. \_\_\_\_\_

Visa # \_\_\_\_\_ Exp. \_\_\_\_\_

Authorized Signature \_\_\_\_\_



TAX INSTITUTE

235 Montgomery Street #972

San Francisco, CA 94104

e-mail: [info@taxinstitute.com](mailto:info@taxinstitute.com)

(800) 852-5515

Fax (415) 834-1888