SMU Law Review

Volume 24 | Issue 3 Article 12

January 1970

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quences to the defendant."[38] Instead, the court determined that the jurisdictional-amount requirement was satisfied because of the "inescapable dependency" of Mrs. Hatridge's suit upon that of her husband.[39] This determination was based primarily on the Arkansas characterization of a consortium suit as being derivative of the spouse's action. The consortium claim, therefore, could not be separated from Mr. Hatridge's much larger claim. Hence, it was this overall effect on the defendant that met the "matter in controversy" requirement, and brought the consortium claim within the pendent jurisdiction of a federal court.

In further considering the determination of the issues in *Hatridge*, it could be argued that the court's conclusion that the Hatridge's actions in federal court were dependent and intertwined was in itself erroneous. The claims of Mr. and Mrs. Hatridge are said by the court to be intertwined, and hence subject to the doctrine of pendent jurisdiction. But it would seem that because both had already recovered default judgments, the two claims would no longer be dependent. The receiving of a judgment "establishes an indisputable obligation."[40] It would seem that the court failed to note this distinction between an action to recover on a judgment, and a cause of action based on the consortium claim where the rights and liabilities of the parties have not been finally determined.

III. Conclusion

The desire for judicial economy and the prevention of forum-shopping is a beneficial quest. However, it must be determined whether these objectives are important enough to alter significantly accepted requirements for entrance to the federal courts. It would appear that federal judges are placed in a confusing position, for they are given the discretionary power to grant pendent jurisdiction in an effort to promote judicial economy, but at the same time are required to adhere to strict congressional requirements for entrance to the federal courts. Using a highly questionable application of precedent, the court in *Hatridge* has seemingly betrayed the federal requisites and left the gates to federal courts unguarded in an apparent effort to create an economical judicial system.

R. Terry Miller

Securities — The Williams Act: A "Tender Trap"

A director and certain shareholders desired to replace the chief executive officer of their corporation and to move the corporate offices from Milwaukee to New York. To accomplish this they agreed to pool their voting interests to obtain control of the corporation and force the desired resig-

[38] 415 F.2d at 816.
[39] *Id.*
[40] 46 AM. JUR. 2D *Judgments* § 229 (1969).

nation, or to call a special stockholders' meeting and possibly force a reorganization of the board. The corporation brought suit to enjoin them from voting the stock they held, from requesting a stockholders' meeting, and from acquiring additional shares.[1] The suit was based on the failure of the director and the other shareholders to file a schedule under section 13(d) of the Securities Exchange Act of 1934,[2] a provision added by the Williams Act in 1968. *Held, preliminary injunction ordered*: A "group" that has undertaken a plan to pool its voting interests of more than ten per cent of a corporation's securities constitutes a "person" with beneficial ownership of the pooled stock within the meaning of section 13(d). *Bath Industries, Inc. v. Blot*, 305 F. Supp. 526 (E.D. Wis. 1969).

I. THE WILLIAMS ACT—FIRST LEGISLATIVE ATTEMPT AT REGULATION OF CASH TENDER OFFERS

In Senate hearings on the Williams Act, the former chairman of the SEC called the lack of federal regulation in the area of cash tender offers "a

[1] The Securities and Exchange Commission [hereinafter referred to as the SEC] was not a party to the suit. Apparently, a suit by the corporation was authorized by Securities Exchange Act of 1934, § 27, 15 U.S.C. § 78aa (1964). Bath Industries, Inc. v. Blot, 305 F. Supp. 526, 535 (E.D. Wis. 1969).

[2] 15 U.S.C. § 78m(d) (Supp. IV, 1969), *amending* 15 U.S.C. § 78m (1964). [Hereinafter the Securities Exchange Act of 1934 will be referred to as the 1934 Act, and citation will be to sections of that Act only]. Relevant parts of § 13(d) are as follows:

> (d)(1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered [under the 1934 Act] . . . is directly or indirectly the beneficial owner of more than 10 per centum of such class shall, within ten days after the acquisition, send to the issuer of the security . . . , send to each exchange where the security is traded, and file with the Commission, a statement containing such of the following information . . .
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> (A) the background and identity of all persons by whom or on whose behalf the purchases have been or are to be effected;
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> (B) the source and amount of the funds or other consideration used or to be used in making the purchases, and if any part of the purchase price is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading such security, a description of the transaction and the names of the parties thereto, except that where a source of funds is a loan made in the ordinary course of business by a bank . . . if the person filing such statement so requests, the name of the bank shall not be made available to the public;
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> (C) if the purpose of the purchases or prospective purchases is to acquire control of the business of the issuer of the securities, any plans or proposals which such persons may have to liquidate such issuer, to sell its assets to or merge it with any other persons, or to make any other major change in its business or corporate structure;
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> (D) the number of shares of such security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by (i) such person, and (ii) by each associate of such person, giving the name and address of each such associate; and
>
> (E) information as to any contracts, arrangements, or understandings with any person with respect to any securities of the issuer, including but not limited to transfer of any of the securities, joint ventures, loan or option agreements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into, and giving the details thereof.
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> . . . .
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> (3) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a 'person' for the purposes of this subsection.

rather large gap in the securities statutes."[3] To fill this gap the Williams Act was signed into law July 29, 1968,[4] amending sections 13 and 14 of the 1934 Act. It marked the first entry of the SEC into the direct regulation of the market for corporate control by means of the cash tender offer.[5]

According to proponents of the legislation, the "gap" to which Chairman Cohen referred was largely one of disclosure requirements applicable to other securities transactions. The prohibitive language of rule 10b-5, for example, often does not impose a duty to disclose in the early, but important, stages of the cash tender offer.[6] Also, the beneficial owners of ten per cent of the securities of a corporation who are required to file statements under section 16(a)[7] are not required by that section to provide the information needed in a cash tender offer situation.[8] What was lacking, it was argued, was information needed by a shareholder of the "target" corporation to make an "informed" decision concerning disposition of his stock.[9]

Stimulated in part by the increasing frequency of "outsiders" obtaining control of corporations through cash tender offers,[10] differing interests sought disclosure requirements in tender offer situations. Corporate management was concerned with the corporate "raider," whose purpose in obtaining control was to appropriate the corporate assets for his own benefit.[11] Management was also concerned with the secrecy with which outsiders could obtain control,[12] which often did not allow management an adequate opportunity to defend its corporate position.[13] The concern of the SEC, on the other hand, was with maintaining "public confidence in the integrity of the securities markets" so that investors could "make an informed and unalarmed choice as to whether to sell or to hold all or some of their stock."[14] These "public stockholders," who were being asked in the normal

[3] *Hearings on S. 510 Before the Subcomm. on Securities of the Senate Comm. on Banking and Currency*, 90th Cong., 1st Sess. 15 (1967) [hereinafter cited as *Hearings*].

[4] Act of July 29, 1968, Pub. L. No. 90-439.

[5] Swanson, *S. 510 and the Regulation of Cash Tender Offers: Distinguishing St. George from the Dragon*, 5 HARV. J. LEGIS. 431, 433 (1968).

[6] *See id.* at 457.

[7] Securities Exchange Act of 1934, § 16(a), 15 U.S.C. § 78p(a) (1964).

[8] *Hearings* at 36.

[9] *Id.*

[10] *Hearings* at 3. The author of the Act, Senator Williams of New Jersey, in a statement indicating the general purpose of the Act, was concerned solely with the equalization of the interests involved in the tender offer situation: "This bill will put all on an equal footing with respect to the availability of significant facts about a *tender offer or a corporate stock purchase program*. All will be able to deal in the securities markets knowing that all of the pertinent facts are available. *Id.* (emphasis added).

[11] Brudney, *A Note on Chilling Tender Solicitations*, 21 RUTGERS L. REV. 609, 610-11 (1967).

[12] *Hearings* at 2.

[13] Brudney, *supra* note 11, at 610.

[14] *Id.* at 611. More specifically, Chairman Cohen argued that for the "public shareholder" to make that "informed" decision concerning a tender offer, he needed information from the offeror for the following reasons: (1) Because the shareholder was being offered not just cash, "but the possibility that he *may* get a certain amount of cash" for all or part of his shares based on unknown contingencies of the time for, and amount of, shares to be purchased, he needed disclosure of the exact terms of the offer and "substantive protections" against the contingencies. (2) Price alone was not enough for a decision. The shareholder needed to know the possible impact of an offeror's successful purchase upon the control of the corporation. Depending on whether there was to be a change in control, the shareholder could not correctly evaluate the "control premium." (This is the difference between the offer price and the current market price of the stock. *See*

tender offer situation to sell their interest in the target corporation, needed additional information concerning the identity and background of the offeror, the arrangements surrounding the financing of the tender offer and the offeror's present holdings, and the "intent" of the offeror with respect to the future of the corporation once he obtained control.[15] These and other arguments for passage of the Williams Act strongly indicated that the principal purpose of the Act was to regulate the making and acceptance of cash tender offers.[16]

II. Section 13(d)—Its Scope and Application

The two sections of the 1934 Act as amended by the Williams Act are quite dissimilar. The amendments to section 14—primarily section 14(d)—focus on the classic tender offer, where an outsider threatens to obtain control by making an offer to the shareholders of the target corporation.[17] However, the amendments to section 13 appear to go well beyond this classic situation.

Section 13(d) is aimed solely at the owner of stock who has already acquired "more than 10 per centum" of an issuer's outstanding stock.[18] It applies to beneficial ownership[19] of any equity security of any class registered under the 1934 Act acquired either directly or indirectly.[20] As defined in section 13(d)(3), the phrase "any person" may include several different parties. That subsection provides that "[w]hen two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a 'person'. . . ."[21] However, the requirements of section 13(d) do not apply where a beneficial owner has acquired securities at a rate of less than two per cent of the total securities outstanding within any twelve-month period.[22]

Swanson, note 5 *supra*, at 466-67; note 29 *infra*.) The shareholder thus needed information concerning the offeror's future plans. (3) When a shareholder tenders his shares it is not true that what happens to the corporation is no longer of any concern to him. This "would be true only if the person making the offer were to take up all the stock tendered, which is by no means always the case." The shareholder needed protection by requiring the offeror to take the tendered shares pro rata if more were tendered than were wanted. *Hearings* at 205-06. This last "reason" was specifically met by the Williams Act. *See* § 14(d)(6).

[15] Brudney, *supra* note 11, at 617. *See* note 14 *supra*.

[16] The record of Senate hearings on the Williams Act—at least with respect to proponents of the legislation—was concerned almost exclusively with the tender offer situation. *See, e.g.*, the statements of various witnesses in *Hearings* at 15, 41, 47, 69 *passim*.

[17] Section 14(d) applies to "any person" who makes a tender offer and thereafter would be the beneficial owner of more than 10% of the securities outstanding. The restrictions and disclosure requirements closely parallel those of section 13(d). *See* notes 18-20 *infra*, and accompanying text. Section 14(e) provides a type of 10b-5 regulation of fraudulent statements and omissions of material facts "in connection with any tender offer or request or invitation for tenders." Section 14(f) is concerned with arrangements made, otherwise than at a shareholders' meeting, in connection with acquiring securities that affect the designation of directors of the target company.

[18] *See* note 2 *supra*.

[19] There is nothing in the Williams Act defining "beneficial ownership." *But see* note 51 *infra*.

[20] *See* note 2 *supra*.

[21] *Id.* There is no indication why the term "person," applicable to § 13(d)(1), is defined in § 13(d)(3) in terms of the same word—"two or more persons."

[22] Section 13(d)(5)(B). Conceivably a "beneficial owner" could ultimately acquire in excess of 10% and not be subject to § 13(d) as long as he never acquired "directly or indirectly" more than 2% of the total number of shares outstanding within any twelve-month period.

Once a beneficial owner has acquired securities of the same class in excess of ten per cent of the total of that class outstanding, section 13(d) requires him, within ten days after "such acquisition,"[23] to send to the issuer of the security, to any exchange where the security is traded, and to the SEC, a statement disclosing certain information.[24] The required information includes: (1) the background and identity of the holder of the ten per cent; (2) the source and amount of funds used in making the acquisition; (3) any plans of the holder with respect to the issuer to liquidate, sell the assets, merge, or "make any other major change in [the issuer's] business or corporate structure," if the reason for the acquisition in the first place was to obtain control of the issuer; (4) the number of shares of the issuer beneficially owned, including those owned "by each associate" of the filer of the statement; and (5) information concerning any arrangements with any person concerning any securities of the issuer.[25]

In addition to an exception previously mentioned,[26] section 13(d) recognizes an additional, conceptually-important exception. An acquisition in excess of ten per cent that the SEC determines not to have been made for the purpose of "changing or influencing the control of the issuer or otherwise as not comprehended within the purposes" of section 13(d) is not subject to the disclosure requirements.[27] Hence the Williams Act gives the SEC the power to exempt by rules and regulations that which the framers of the Act did not intend to be covered.[28]

Critics of the necessity of the legislation were not lacking. Much of the criticism was concerned with the regulation of tender offers in and of themselves.[29] Strong arguments were also made against the regulations imposed by section 13(d). Those opposing passage of that section were concerned with the advantages that disclosure requirements would produce for incumbent corporate management, particularly an entrenched management that was unresponsive to minority shareholders.[30] This fear was enhanced by the growing tendency of management to consider itself independent

[23] The Act does not indicate the time when "such acquisition" becomes operative, other than when a holder has acquired in excess of 10% beneficial ownership. Conceivably, this could be a date difficult to determine with any precision.

[24] Section 13(d)(1); *see* note 2 *supra*.

[25] Section 13(d)(1)(A)-(E); *see* note 2 *supra*. The SEC is given authority to require additional information in the statement as it "may by rules and regulations prescribe as necessary and appropriate in the public interest or for the protection of investors." Section 13(d)(1). The information now required on schedule 13D exemplifies the SEC's exercise of this authority. 2 CCH FED. SEC. L. REP. ¶ 23,683 (1969).

[26] *See* note 22 *supra*, and accompanying text.

[27] Section 13(d)(5)(D).

[28] However, only acquisitions made pursuant to pre-emptive rights under certain conditions have been made exempt. 17 C.F.R. § 240.13d-4 (1969). Nonetheless, this provision does indicate an area of discretionary authority for the SEC to distinguish between the owner of securities bent on obtaining control of a corporation and the owner of securities interested only in a return on his money. The two other statutory exceptions are "any acquisition or offer to acquire securities made or proposed to be made by means of a registration statement under the Securities Act of 1933," § 13(d)(5)(A), and "any acquisition of an equity security by the issuer of such security," § 13(d)(5)(C).

[29] Some of the arguments for non-regulation of tender offer situations, alone, closely parallel the arguments specifically opposed to § 13(d)—where 10% ownership has already been acquired. These parallel arguments are discussed in the text *infra*. *But see* note 35 *infra*.

[30] *Hearings* at 133.

and not accountable to others with interests in the corporation.[31] Thus, it was felt that the "psychology of entrenched management" tended "toward ineptitude or complacency."[32] Because of management's control over the proxy machinery, the tender offer was the only effective way to dislodge inefficient management.[33] This also held true for a strong minority stockholder interest of already-acquired stock. The potential threat that these owners represented to corporate management tended to keep the latter more efficient.[34]

It was argued that the disclosure requirements of section 13(d) would have a further adverse effect on the imbalance of power that already existed between corporate management and minority interests in situations where there had been no tender offer.[35] "The road of the dissenter is rough enough anyhow . . . without his being required to telegraph his punches."[36] More specifically, some of the particular items required in the disclosure statement were deprecated. Disclosure of identity was considered superfluous since this was already required of a ten-per-cent shareholder under section 16(a) of the 1934 Act,[37] and in most situations corporate management would already be well aware of a shareholder of that size.[38] Disclosure of the source of funds of one accumulating a ten-per-cent interest was either irrelevant or presented the possibility of adverse pressure being brought to bear on the supplier of the funds.[39] Disclosure of future plans by a ten-per-cent owner was considered meaningless, since no businessman would be willing to commit himself to a definite, future plan.[40] Aside from the further strengthening of the position of management, it was argued that, assuming the ten-per-cent owner desired control of a corporation, the information required in the disclosure statement was not the kind of information needed by the "other" shareholders to make that "informed" decision.[41] Rather, the decision was thought to depend on the likelihood of the success of the bid for control, whether by tender offer, proxy fight, or otherwise.[42]

Although section 13(d) was enacted against a background of concern over cash tender offers, the language of the section clearly seems to impose

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[31] *Id.*
[32] *Id.* at 135.
[33] *Id.* at 133.
[34] *Id.* at 129.
[35] *Id.* at 129-31; *cf.* Brudney, *supra* note 11, at 610-11.
[36] *Hearings* at 65.
[37] 15 U.S.C. § 78p(a) (1964).
[38] *Hearings* at 65-66.
[39] *Id.* at 129.
[40] *Id.* at 129-30. This problem is pointed out by a recent ruling of the SEC in Susquehanna Corp., CCH FED. SEC. L. REP. ¶ 77,741 (1969). Susquehanna had made a cash tender offer and had filed a somewhat ambiguous statement of its future plans for the target corporation. Prior to the filing, the president of Susquehanna had made some oral statements to various individuals indicating that the assets of the target corporation might be disposed of. Even though the board of Susquehanna had adopted no definite plan, much less a formal proposal, concerning the use of the target corporation's assets, the SEC determined that the information contained in Susquehanna's filed statement was false and misleading for failure to reveal that a major change in the business was intended.
[41] *See* note 14 *supra.*
[42] Brudney, *supra* note 11, at 617.

in other situations the same disclosure requirements as those demanded of an outsider making a cash tender offer.[43] Section 13(d) left unanswered the various kinds of situations or transactions which might be subject to its requirements.[44] Specifically, because the Act defines "person" to include a "group" that acquires, holds, or disposes of securities, much importance attaches to the determination of what constitutes a "group."

III. BATH INDUSTRIES, INC. v. BLOT

In *Bath* the court dealt with several, previously-unanswered questions raised by the Williams Act. The sole plaintiff, Bath Industries, Inc., was a holding company.[45] Named as defendants were several individuals and corporations. Blot was a director and substantial shareholder of Bath. The other defendants were Bath shareholders or holders of options to purchase stock.[46] During the trial, a sheet of paper was introduced as an exhibit containing a list of Bath shareholders, prepared in Blot's handwriting. The listed shareholders were supposedly sympathetic to the desires of the named defendants. Led by Blot, the individual and corporate defendants, as well as the listed shareholders, undertook what the court termed a "deliberate, conscious plan"[47] to pool their voting interests in Bath with the objective of obtaining control in order to force the resignation of the chief executive officer and move the corporate offices. Their motives and reasons for such an objective were not clearly revealed in the opinion. Alternatively, they hoped to cause the board of directors to discharge the chief executive officer and replace him with one of their own choosing. If this failed, they intended to obtain control of the board through a special stockholders' meeting, presumably preceded by a proxy battle.[48]

[43] *See* § 14(d).

[44] At the Senate hearings on the Williams legislation, one advocate for passage of the Act may have unwittingly indicated a possible consequence of this initial regulation of the tender offer market:

> Putting the spotlight of disclosure on covert purchasing activities . . . will hinder undesirable covert purchasing activities. Attempts by sound and highly regarded persons or corporations to *dislodge incompetent but entrenched management* also *may be hindered in limited situations*, but this *seems a small price to pay* for protection against undesirable covert purchasing operations.

Hearings at 49 (emphasis added).

[45] Through one of its subsidiaries, Bath was in prime contention for a large Navy contract, the award of which would greatly increase earnings, require a large amount of capital outlay, and greatly affect the economy surrounding the location of the subsidiary. *See* note 53 *infra*.

[46] The others named as defendants represented a broad and diverse portion of the financial community. Defendant Merkle was president of defendant corporation Madison Fund, Inc., a closed-end investment company, and associated with defendant MAD International, Inc., a foreign investment company. Defendant McConnell was vice-president of defendant Donner Corporation, which acted as an investing agent and nominee for a Donner family. Defendant Hambro American Bank & Trust Co. was owned by a holding company which was owned partially by Hambros Bank, Ltd. (also apparently a defendant, thought not named) and partially by a small group of individual stockholders, including Blot, who was also a director of Hambros Bank, Ltd. Defendant Penturn was an individual stockholder of Bath. Defendant Clark Estates, Inc., provided investment advice and related services for a Clark family. Also included, although not named as a defendant, was Daly & Co., which was composed of individuals who were associated with Hambro American Bank & Trust Co. Daly & Co. was a nominee partnership for Hambros Bank, Ltd., which kept its own and its subsidiaries' accounts at Hambro American Bank & Trust Co. through which the transactions in Bath securities were made.

[47] 305 F. Supp. at 531.

[48] The intended date for the meeting was one day prior to the scheduled announcement by the Navy of the winner of the contract. *See* note 53 *infra*.

Bath's chief executive officer and other board members had been told by Blot and some of the other defendants of the "group's" intentions. These defendants said that parties to their agreement had recently purchased substantial amounts of Bath's securities and that they were prepared to exercise their warrants and convert their preferred stock to common if necessary.[49] The defendants indicated they held far in excess of ten per cent.[50]

Bath is the first reported decision involving section 13(d) interpreting what is or is not a "group" within the definition of "person" in section 13(d)(3). Interestingly, the court concluded that all of the named defendants, and some who were not named, *including those shareholders whose names were listed on a sheet of paper*, were a "group" within the meaning of section 13(d). This conclusion was reached without discussion.[51] Apparently, the court merely applied section 13(d)(3) to its findings without discerning any necessity for explanation.

This conclusion would appear to be far-reaching, yet compelled by the language of section 13(d). The defendants were composed of a diverse group. For reasons not discussed in the decision, they wanted to replace the leadership of the corporation in which they all had varying amounts of equity interest. By any other name, their "deliberate, conscious plan" was nothing more than a shareholders' voting agreement to pool their voting interests to attempt to bring about a change in the corporate management.[52] However, because of the language of section 13(d), the court's conclusion seems inevitable. The defendants had, however loosely, formed a "group for the purpose of acquiring, holding, or disposing" of Bath securities. Thus they were "deemed a 'person' for the purposes" of section 13(d).[53]

Significantly, the factual background in *Bath* does not fit that for which the Williams Act supposedly was framed. First, there was no tender offer. The only common factor of this "plan" and a tender offer is the apparent attempt by the defendants to reach their objectives by obtaining control of Bath. The decision gives no indication as to how these defendants acquired

[49] Each share of preferred stock had one vote but could be converted to common stock in the ratio of 2.43 shares of common for each share of preferred. Each warrant granted the holder the right to purchase one share of common at the price stated on the warrant. Of most importance, the decision does *not* reveal how the defendants obtained the Bath securities that they beneficially owned.

[50] Assuming full conversion, the defendants indicated that they held some 930,000 out of a total of some 1.9 million shares, which they believed to be outstanding. Subsequent to the beginning of the suit, Blot and two other defendants filed a motion that no injunction issue because they had sent statements to the SEC purporting to fulfill the requirements of § 13(d). However, pending determination of the legal sufficiency of the statements, the defendants were enjoined from proceeding with their plan until compliance with § 13(d) was made.

[51] The legal discussion by the court regarding application of section 13(d) is limited to establishing that the defendants were beneficial owners. The court defines beneficial ownership of stock to include "the right to determine how the stock was *voted*," as well as power over the purchase or sale of the stock. 305 F. Supp. at 537 (emphasis added).

[52] *See* H. Henn, Handbook of the Law of Corporations § 200 (1961).

[53] In fact, at least three of the defendants virtually admitted as much by attempting to file statements after the suit began. *See* note 50 *supra*. Of subsidiary importance, but apparently underlying the decision, was the court's desire to maintain corporate stability in the face of the threat of the concurrence of the defendants' call for a special stockholders' meeting on one day and the scheduled announcement by the Navy of the contract award on the next. The court felt that if the meeting were called "it is very likely that [Bath's] chances of obtaining a part of the . . . Contract will be severely limited." 305 F. Supp. at 538.

"directly or indirectly" the securities they controlled.[54] Importantly, the court's discussion of the reasons prompting the passage of the Williams Act includes nothing that alludes to tender offers. Second, these defendants were not corporate raiders. They were not even "outsiders," as that term is normally used in tender offer situations. Their main purpose was to cause a change in management. There is no indication in the decision that protection of other shareholders was needed. There was no indication that other shareholders were even involved.

It is important to consider whether the disclosure requirements of section 13 (d) were relevant to the situation in *Bath*. All of the material information required in section 13 (d) had been voluntarily given to the corporation. It is possible that not all of the identities of the parties involved had been communicated, but a significant number had been, and the central figure in the "plan" was a director of the issuer. Assuming that little or no information was communicated concerning the source of funds used by the defendants in making their acquisitions, it is difficult to see of what relevance such information would have been to Bath. No other stockholder was being asked to tender his shares, and consequently no knowledge of whether the defendants could pay for them would have been needed. The purpose of the defendants' plan, the number of shares owned or to which the defendants had a right to acquire, and information concerning "any contracts, arrangements, or understandings" of the defendants with any other person concerning Bath securities had been explicitly conveyed to Bath.

Finally, there is nothing in the decision to indicate the efficiency or inefficiency of the incumbent management of Bath, especially with respect to the "object" of the defendants' activities. This voting agreement of the defendants represented a direct threat to corporate management. It was a thrust at control of the corporate structure. In this sense, it can be likened to a tender offer. Possibly, the management of Bath was protecting the interests of its "shareholders in connection with its supervision over the affairs of the company."[55] However, it can be more easily seen as an act of self-preservation.

IV. Conclusion

The scope of the court's conclusion of what persons constitute a "group" and the application of section 13 (d) in *Bath* appear to go far beyond the supposed intent of the framers of the Williams Act. The broad application of the term "group" by the court to what was otherwise a shareholders' agreement would appear to sweep within its grasp every type of shareholders' voting agreement that even remotely affects the controlling interest of a corporation. All that would appear to be required is a cumulative interest that exceeds ten per cent.[56] If such an agreement does exceed that

[54] *See* note 49 *supra*.

[55] 305 F. Supp. at 538.

[56] The present Commissioner of the SEC wants the percentage lowered to 5%. *Hearings on Problems in the Securities Industry Before the Subcomm. on Securities of the Senate Comm. on Banking and Currency*, 91st Cong., 1st Sess. 15 (1969).