

WHAT WE DO | Contests for Corporate Control

IGI helps clients prevail in contests for corporate control by gathering and analyzing in-depth information about opposing parties that may be helpful to companies and their shareholders in evaluating the competence, integrity and reputations of adversaries and their board nominees. Such information and analysis often has proven instrumental in our client's efforts to thwart – or execute, as the case may be – a hostile takeover attempt or proxy contest.

IGI also helps by defending client companies, their officers and directors against attacks on their reputations by adversaries, who may seek to disseminate false, negative and misleading rumors, speculation and information to affect the outcome of the contest for corporate control. IGI has developed unique and creative methodologies for tracing the true source of the false and damaging information – a significant challenge in this era of blogs and chat rooms.

IGI is typically retained early in the contest for corporate control as part of the client's legal, investment banking and public relations team. Clients incorporate IGI's findings in court filings seeking to enjoin or compel takeover-related measures, or communicate the findings to shareholders, institutional investors, lenders and other stakeholders who may be influential in the contest's outcome. Clients also may submit information compiled by IGI to government antitrust or other regulators who are positioned to affect the course of events.

In hostile takeover defense cases, for example:

- IGI has focused on would-be acquirers to spot material misrepresentations and omissions in the companies' SEC filings;
- We have found breaches of fiduciary duty by the companies' executives, including undisclosed conflicts of interest and self-dealing;
- We have discovered irregularities in executive compensation, including options backdating and spring-loading;
- We have detailed and documented companies' pattern and practice of asset stripping or failure to effectively integrate previously acquired companies and accomplish promised synergies;
- We have demonstrated that would-be acquirers do not have the financial wherewithal to consummate a deal, or that their financing is highly contingent, allowing our client to adopt an aggressive posture;
- We have shown that would-be acquiring companies have distorted reported income via overly aggressive accounting or revenue recognition, or have artificially understated liabilities – the revelation of which has the potential to lower the hostile company's stock price and directly affect the value of a share-denominated bid; and

- We also have found evidence that hostile raiders have engaged in stock parking and illegal undisclosed concert-party actions, as well as market manipulation to drive down a target company's share price as a prelude to a hostile bid.

Case Studies

- IGI provided information and analysis to assist its client, a publicly traded company in the healthcare industry, to fend off a hostile takeover attempt that threatened to derail its planned merger with another public company. IGI developed information showing that the unsolicited offer, although higher, was highly conditional and would burden the combined entity with debt. IGI also determined that the hostile suitor had issued millions of shares of its stock to a company that was one of its biggest clients, and had issued additional shares to that company's CEO, under terms that raised an array of potential antitrust, legal, financial reporting and disclosure issues. IGI's client won a favorable Delaware court ruling and a shareholder vote approving its preferred merger.
- A publicly traded company retained IGI to assist its defense against a proxy contest launched by an activist investor fund that proposed its own slate of nominees for election to the company's board and prescribed comprehensive changes to the company's management and operations. IGI found that biographies and credentials of the fund's manager and two of the nominees, which had been included in the fund's SEC filings, contained material misrepresentations and omissions. IGI also found that the fund had structured a series of equity investments in public companies in ways that unfairly favored the fund and its investors over other shareholders, and otherwise violated corporate governance norms. Our client used the information to negotiate a standstill agreement and other limits on the activist fund's actions.