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Beyond the Tipping Point: A Strategic Shift in the Relationship Between Investors and Their Portfolio Companies

Craig Newman and David Daniels

May 27, 2009

The credit crisis has introduced a new and adversarial dimension into the relationships between hedge fund or private equity investors and their portfolio companies, leading some investors to resort to litigation as a last-ditch option to protect the value of their holdings. In a recent case, RK&O persuaded the U.S. District Court for the Southern District of New York to issue a preliminary injunction granting RK&O's investor client interim control over the management of a portfolio company, pending a full trial on the merits of the investor's claims. *Oracle Real Estate Holdings I LLC v. Adrian Holdings Co. I, LLC*, 582 F. Supp. 2d 616 (S.D.N.Y. 2008). Our partners, Craig Newman and David Daniels, discuss the Court's opinion and offer guidance on issues to consider in situations where corporate control is at issue and investors may be able to preserve value by exercising their control rights through an injunction or other extraordinary relief at the outset of a lawsuit without the expense and delay of lengthy court proceedings.

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